

MONTGOMERY COUNTY

PUBLIC SCHOOLS

v.

[REDACTED],

STUDENT

BEFORE ROBERT B. LEVIN,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH NO.: MSDE-MONT-OT-22-23961

DECISION

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STATEMENT OF THE CASE

On October 3, 2022, Montgomery County Public Schools (MCPS) filed a due process complaint (Complaint) against [REDACTED] (Student) with the Office of Administrative Hearings (OAH) pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. § 1415(f)(1)(A) (2017);¹ 34 C.F.R. § 300.503 (2021), 34 C.F.R. § 300.507 (2021);² Md. Code Ann., Educ. §§ 8-405(g)(3), 8-413(a)(3), and 8-413(d)(2) (2022);³ and Code of Maryland Regulations (COMAR) 13A.05.01.15C(1). The Student is a thirteen-year-old student enrolled in [REDACTED] Middle School in MCPS. MCPS requested a hearing and determination as to whether the MCPS may provide a free appropriate public education (FAPE) to the Student by enrolling him in an alternative education program that does not issue or provide

¹ U.S.C.A. is an abbreviation for the United States Code Annotated.

² C.F.R. is an abbreviation for Code of Federal Regulations. Unless otherwise noted, all citations of 34 C.F.R. hereinafter refer to the 2021 bound volume.

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

credits toward a Maryland high school diploma but rather provides a certificate, and identifies him for the alternative education assessments aligned with the State's alternative curriculum.

Specifically, MCPS seeks an order overriding the refusal of the Student's parents to consent to MCPS's enrolling the Student in its [REDACTED] ([REDACTED]) alternative education program at [REDACTED] Middle School.⁴

On October 13, 2022, the Student, through his former counsel Wayne D. Steedman, Esquire, and the law offices of The Steedman Law Group, filed a Response to the Complaint, requesting the dismissal of the Complaint or, in the alternative, a finding that the recommendations made by MCPS are not reasonably calculated to provide the Student with FAPE in the least restrictive environment under the IDEA.

First Prehearing Conference: November 3, 2022

On November 3, 2022, I conducted a remote telephone pre-hearing conference (First PHC) on the Webex platform. Stacy Reid Swain, Esquire, participated on behalf of MCPS. Mr. Steedman and Jaclyn Vincent, Esquire, participated on behalf of the Student and his mother, [REDACTED] who was also present. I advised the parties of the time requirements for issuing a decision. The applicable regulations state the following, in part:

- (a) The public agency must ensure that not later than 45 days after the expiration of the 30 day period under § 300.510(b), or the adjusted time periods described in § 300.510(c) -
 - (1) A final decision is reached in the hearing; and
 - (2) A copy of the decision is mailed to each of the parties.

34 C.F.R. §300.515(a).

⁴ MCPS brought its action under Md. Code Ann., Educ. §8-405(f)(3) (2020). However, effective July 1, 2021, the provision authorizing a school system to file a due process complaint seeking to override a parent's refusal to consent to an alternative education program (which is at issue in this case), was renumbered as Md. Code Ann., Educ. §8-405(g)(3)(2021). The Education Article of the Maryland Code was updated again in 2022, with no changes to §8-405(g)(3). MCPS filed its complaint with OAH on October 3, 2022, after the provision was renumbered as section 8-405(g)(3). Accordingly, I deem MCPS's due process complaint to have been brought under section 8-405(g)(3), the provision in effect on the filing date, October 3, 2022.

In this case, neither party requested mediation, and a resolution session was not required because the MCPS filed the due process complaint. *Id.* § 300.510(a); COMAR 13A.05.01.15C(11)(d)(iii) (when a public agency requests the due process hearing, the otherwise mandatory resolution meeting, which would extend the time for the decision, is not necessary).

Accordingly, the triggering event for the forty-five-day timeline period was the MCPS's filing on October 3, 2022 of the Complaint. 34 C.F.R. §§ 300.510(b)-(c), 300.515(a). Forty-five days from October 3, 2022 was Thursday, November 17, 2022. The case had been scheduled for a pre-hearing conference on November 3, 2022, which only allowed fourteen days to complete the hearing and issue a decision. Considering the 15-day deadline for witness subpoenas, the first date that the due process hearing could have been held was November 18, 2022. The Student's counsel stated they would be out-of-town that day.

I may grant specific extensions of time at the request of either party. 34 C.F.R. § 300.515(c). Because there were multiple scheduling conflicts for both the Student's attorney and MCPS which rendered them unavailable to participate in the hearing in this matter in November or December 2022, the parties jointly requested an extension of the time for holding the hearing and issuing the decision.⁵ Specifically, the parties jointly requested that the hearing begin on January 30, 2023, the earliest day they were available.

Based on the parties' scheduling conflicts, witness availability, and the attorneys' and my schedules, the parties requested, and finding good cause to do so, I agreed to extend the timeline to allow the case to be heard on January 30-31 and February 1-3 and 6-7, 2023. The parties also jointly requested that to allow sufficient time for me to consider the evidence, evaluate legal arguments, and draft a decision, I issue a decision within thirty days after the conclusion of the hearing. I found good cause to grant the joint request for an extension of the regulatory

⁵ The scheduling conflicts are described in detail in the Prehearing Conference Report issued on November 7, 2022, at pp. 8-9.

timeframe so that the hearing in this matter would take place on January 30-31 and February 1-3 and 6-7, 2023, and the decision would be issued within thirty days after the conclusion of the hearing. *See* November 7, 2022 First PHC Report and Order.

Second Prehearing Conference: January 25, 2023

On January 20, 2023, Mr. Steedman, who had been representing the Student from the outset, announced by email to the OAH, without explanation, that he and his law firm were withdrawing their appearance in this case and would not attend the hearing. The OAH Rules of Procedure do not require permission of the presiding administrative law judge to effectuate counsel's withdrawal from representation. COMAR 28.02.0.1.08D. In Mr. Steedman's email he also conveyed the request of [REDACTED], the Student's father and [REDACTED], the Student's mother (collectively the Parents) that the hearing be postponed for one or two months because Dr. [REDACTED]⁶ father was very ill in [REDACTED] ([REDACTED]), and she needed to be by his side. Dr. [REDACTED] provided a letter from her father's doctor in [REDACTED] and photographs of her father in a hospital bed, both indicating he was gravely ill.

In addition, Mr. Steedman conveyed the Parents' request that the hearing be postponed to provide time for them to seek alternate counsel. On January 20, 2023, MCPS through its counsel, Manisha S. Kavadi, Esquire (who entered her appearance as counsel for MCPS on January 5, 2023), advised by email that it did not consent to the request for postponement, noting that MCPS is the petitioner in this case and was ready to proceed on the scheduled hearing dates.

In view of these developments, I convened a second prehearing conference (Second PHC) on January 25, 2023, on Webex, to hear from the parties on the Parents' postponement request. Ms. Kavadi appeared on behalf of MCPS. Dr. [REDACTED] appeared on behalf of herself. She stated she was thinking about traveling to [REDACTED] but had not made travel arrangements or

⁶ I refer to the Student's mother as Dr. [REDACTED], as she is a graduate of [REDACTED] in [REDACTED] ([REDACTED]), [REDACTED], and practiced in [REDACTED] as a licensed physician. She is not licensed to practice medicine in Maryland.

definite plans to travel there, in part because the current political situation for U.S. citizens⁷ who travel to [REDACTED] is unstable and presents risks of prolonged interrogation and possible detention.

Dr. [REDACTED] further stated that she desired to engage successor counsel and was prepared to try immediately to locate counsel, though she had not yet undertaken such efforts. She requested a postponement of two months and, thus an extension of time for holding the hearing and issuing the decision, pursuant to 34 C.F.R. § 300.515(c).

MCPS opposed the postponement request, arguing that Dr. [REDACTED] had not shown she would, in fact, travel to [REDACTED]. MPCPS further noted that it filed the Complaint and was concerned that delaying the hearing would adversely impact its responsibility under the IDEA to provide the Student with a FAPE.

After considering the parties' positions, I concluded as follows: First, considering Dr. [REDACTED]'s lack of current plans or a definite intention to travel to [REDACTED], her father's distressing medical circumstances did not constitute good cause to postpone the hearing. Second, I concluded that good cause did exist to postpone the hearing for approximately one month so the Parents and Student would have a reasonable opportunity to engage new counsel, but without causing the hearing to be unduly delayed. Dr. [REDACTED] stated she still desired legal representation and committed to immediately attempting to secure new counsel who would be available on the scheduled dates.

MCPS counsel (without waiver of MCPS' objection to any postponement) advised that the earliest dates she was available, should the hearing be postponed, were February 27 through March 3, to continue March 9 and 10, 2023. Dr. [REDACTED] was also available on those dates. Having found good cause to postpone the hearing to provide time for the Parents to attempt to secure

⁷ The Student and the Parents are U.S. citizens,

new counsel, I ordered in the Second PHC Conference Order, issued on January 25, 2023, that the Webex hearing would commence on February 27, 2023, and continue on February 28, March 1, March 2, March 3, March 9 and March 10, 2023, the earliest dates both parties were available.

The Second PHC Order further provided that if the Parents were unable to secure counsel who would be available on the new hearing dates, there would be no further postponements related to issues with securing counsel, and the Parents would be self-represented.

MCPS provided its exhibits and witness list to the Parents and the OAH on January 23, 2023, as required by the November 7, 2022 PHC Order. The Parents' exhibits and witness list were also due on January 23, but were not submitted. In the Second PHC Order, I extended the deadline for the Parents'/Student's exhibits and witness list to February 13, 2023. The Second PHC Order also extended the deadline for parties to request subpoenas for witnesses from the OAH to February 13, 2023. In addition, I granted MCPS' unopposed request that I issue the decision within thirty days of the conclusion of the rescheduled hearing, as provided in the First PCH Order.⁸

I conducted the merits hearing via Webex on February 27-28, March 1-3, and March 9 -10, 2023.⁹ Ms. Kavadi represented MCPS. Dr. ■■■ represented herself.¹⁰

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

⁸ The Second PHC Order provided that all provisions of the First PHC Order not inconsistent with the Second PHC Order would remain in full force and effect.

⁹ On February 12, 2023, Dr. ■■■ requested a postponement of the hearing on the grounds that her father had passed away, she did not have time to prepare for the hearing, and she needed more time to secure counsel. On February 13, 2023, I expressed condolences, but declined to postpone the hearing.

¹⁰ Mr. ■■■, the Student's father, did not attend the hearing.

Issues:¹¹

The issues are:

1. Whether the MCPS's proposed enrollment of the Student in an alternative education program that does not issue or provide credits toward a Maryland high school diploma but rather provides a certificate, and identifies him for the alternative education assessments aligned with the State's alternative curriculum, would offer the Student a FAPE and is otherwise appropriate under the IDEA and,
2. Whether the MCPS's proposed placement at [REDACTED] Middle School in the [REDACTED] program would deny the Student a FAPE in the least restrictive environment in accordance with the IDEA.

SUMMARY OF THE EVIDENCE

Exhibits

A list of the exhibits admitted into evidence is attached to this Decision as an Appendix.¹²

Testimony

MCPS presented the testimony of the following witnesses:

- [REDACTED], instructional specialist with MCPS's Department of Special Education Services, who was accepted as an expert in special education, educational assessments, and reading instruction,
- [REDACTED], MCPS school psychologist, who was accepted as an expert in school psychology, and

¹¹ The First PHC Order (p. 2, n. 2) noted that, as discussed with the parties during the conference, the above statement of the issues was intended as a summary of the parties' claims and defenses as set forth in the Complaint and the Response. For clarity, Issue No. 1 aligns with MCPS' request for relief, *i.e.*, that it be "allowed to provide FAPE by enrolling [the Student] in an [REDACTED] program that does not issue or provide credits toward a Maryland high school diploma and identify him for the alternative education assessments aligned with the State's alternative curriculum." (Complaint, p. 3). Issue No. 2 encapsulates the thirteen enumerated defenses/arguments set forth in the Response, including but not limited to the Response's request for "a finding that the recommendations made by MCPS are not reasonably calculated to provide a [FAPE] in the least restrictive environment in accordance with the IDEA." Response, p. 2.

¹² MCPS's exhibits are cited as MCPS-1, etc. The Parent's exhibits are cited as P-1, etc. Exhibit pages are cited as MCPS 1-1 and P1-1, etc., except that citations to multiple pages of an exhibit are cited as MCPS-1, pp. 1-2 or P-1, pp. 1-2 etc. All documents marked for identification but not offered or admitted into evidence are retained in the file, except for several documents identified on the Parent's exhibit list that the Parent submitted electronically as Dropbox links but were blank exhibits, *i.e.*, they contained no content.

- [REDACTED], MCPS special education resource teacher at [REDACTED] Middle, who was accepted as an expert in special education.

Dr. [REDACTED] testified and did not present additional witness testimony.

FINDINGS OF FACT

Background

1. The Student was thirteen years old at the time of the hearing. He was born in [REDACTED], Maryland, where he lives with his Parents, American citizens who are bilingual in [REDACTED] and English. The Student's primary language is English. He is a happy, kind, curious, and social child. He likes to greet familiar adults and respond to greetings. He likes to give high-fives and blow kisses to familiar adults. He loves to listen to music and participate in outdoor activities. He enjoys dancing and moving during classroom movement breaks. As of the hearing he was in seventh grade at MCPS's [REDACTED] Middle School ([REDACTED]) in [REDACTED].

2. When the Student was six months old, he received physical therapy for his muscle tone. His developmental milestones were significantly delayed. He was not walking at eighteen months and not speaking at age two. (MCPS 34-2).

3. The Student attended a [REDACTED] preschool from 2012-2015, where delays in all areas of his development were noted.

2015-2016 [REDACTED] Elementary School

4. During the 2015-2016 school year, the Student attended kindergarten at [REDACTED] Elementary School ([REDACTED]) in Montgomery County, in that the school's [REDACTED]. The [REDACTED] is a self-contained program for students two or three years below grade level. The Student was self-contained in the [REDACTED] Kindergarten for all academic subjects and was included with his typical (i.e., non-disabled) peers during lunch and recess.

5. Following an April 2015 evaluation by MCPS, the Student was found eligible for special education services, and qualified to receive an individualized education program (IEP) under the federal classification code of developmental delay.

6. The Student made limited progress during the 2015-2016 school year.

Dr. [REDACTED]'s June 2016 Report

7. On June 3, 2016, when the Student was completing his kindergarten year in the [REDACTED], [REDACTED], Ph.D., an MCPS school psychologist, conducted an Initial Psychological Assessment and Reevaluation Determination. Dr. [REDACTED] observed in her June 7, 2016 report that the Student had not made much academic progress. She found he met the criteria for intellectual disability, demonstrating significantly below average scores on several measures of nonverbal intelligence. Verbal scores could not be obtained because of the Student's limited English and limited verbal skills generally. Dr. [REDACTED] assessed the Student's adaptive skills i.e., the practical, everyday skills needed to function, take care of oneself, and interact with other people, in the extremely low range. As a result, Dr. [REDACTED] stated in her report that the Student's IEP (Individualized Education Program) team would complete MCPS's Multidisciplinary Evaluation Form to code the Student as having an intellectual disability. (MCPS-34).

8. An IEP is a document mandated by the IDEA that is developed for each public-school student who needs special education services. The Student's IEPs were created by a team of the child's Parents and MCPS personnel. The IEPs were reviewed every year to track the Student's educational progress.

9. In or about June 2016, the Student's coding was changed to intellectual disability and the IEP team recommended the Student's placement in a [REDACTED] Program ([REDACTED]). [REDACTED] is an [REDACTED] ([REDACTED]) program designed for students

with mild to moderate intellectual disability. ■■■ students focus on functional academic skills (such as learning math skills to use money) and adaptive skills (such as self-care and navigating the school building). (MCPS-32-3; 37-1).

10. The Students' Parents disagreed with Dr. ■■■'s opinion that the Student qualified for the intellectual disability coding and with the recommendation for the ■■■ program. As a result, the Parents home-schooled the Student in first grade during the 2016-2017 school year. He was instructed by his Parents and a tutor. (MCPS-32).

11. In July 2016, a private clinical psychologist, ■■■, Ph.D. conducted a psychological assessment of the Student at his Parents' request. The results of Dr. ■■■'s testing indicated delayed cognitive and pre-academic skills. Dr. ■■■ deferred a diagnosis of intellectual disability given the Student's limited learning and work skills and lack of appropriate, specialized school programming at the time. (MCPS-33).

12. A May 30, 2017 assessment by ■■■, a ■■■ Kindergarten teacher, recommended numerous supports and instructional strategies for implementation in the Student's educational program. The Student's mother, Dr. ■■■, and the Student's private tutor attended this assessment. (MCPS 32; 37).

Dr. ■■■'s June 2017 Report

13. In a June 7, 2017 Reevaluation Report that followed Ms. ■■■'s May 30, 2017 assessment, Dr. ■■■, who also attended the May 30, 2017 assessment, found that despite some gains in naming letters, copying words, and using his fingers to solve some math problems with numbers five and lower, the Student continued to function well below age and grade expectations. He had a few sight words he could point to in isolation and read aloud. He did not read known words when they were presented in unfamiliar sentences. Rather than reading, he

said the names of the letters in a word and then repeated the word after his mother or the tutor stated it. Dr. [REDACTED] concluded that the 2016 coding of the Student with intellectual disability and the recommended [REDACTED] placement continued to be appropriate. (MCPS-32-5).

Dr. [REDACTED]'s September 2017 Report

14. Dr. [REDACTED] reevaluated the Student on August 15, 2017, and submitted a September 10, 2017 Reevaluation Report of School Psychologist. She administered the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V) test, a commonly used measure of cognitive ability, with multiple measures of verbal skills, nonverbal skills, memory, and processing speed. The Student's WISC-V scores for verbal comprehension, visual spatial, fluid reasoning, working memory, and processing speed were all in the "extremely low range" and corresponded to the 0.1 percentile or lower when compared to same-age peers. Dr. [REDACTED] reported that the Student's cognitive and adaptive scores consistently fell in the range of intellectual disability. (MCPS-31).

15. Dr. [REDACTED] observed that while the Student had some rote skills such as copying words and identifying letters and numbers, his verbal and nonverbal skills remained very low compared with same-age peers. She opined that his skills were far below the typical level of the [REDACTED] program. She concluded that his coding of intellectual disability remained his primary educational disability because his verbal, nonverbal, cognitive, and adaptive skills were significantly below average and were not explained by exclusionary factors such as another educational disability, environmental factors, or language difference. (MCPS-31-11).

16. Dr. [REDACTED] also evaluated the Student's adaptive functioning, which refers to "independent skills in everyday life." (MCPS 31-7). She administered the Adaptive Behavior Assessment System (ABAS), which provides scores for the conceptual (communication, basic

reading, writing and math, and self-direction), social, and practical domains (self-care, community use, and health and safety skills). He scored “extremely low” in each ABAS domain (conceptual, social, and practical). His scores were significantly below average across evaluators and across time. (MCPS-31, pp. 8-10.)

2017-2018 School Year: [REDACTED]

17. In November 2017, the Student returned to the [REDACTED] for the 2017-2018 school year, for second grade, after having been home-schooled for first grade.

18. The Student’s second grade teacher, [REDACTED], assessed his classroom progress in a January 29, 2018 report. Ms. [REDACTED] noted that he was self-contained for all academic subjects, though he attended lunch and recess with his typical peers. He received speech-language services for six thirty-minute sessions per month. Ms. [REDACTED] assessed the Student’s then-current levels of academic and behavioral progress as follows:

- he had scattered skills in the components of literacy (comprehension, phonemic awareness, vocabulary, fluency, and phonics) but was not able to put these skills together to read with meaning,
- he had scattered skills in math literacy (calculation and problem solving) but needed instruction at the foundation of each level to begin to develop his math skills,
- he was beginning to acquire the skills of writing (content, expression, and mechanics) but has few skills in these areas, which significantly impacted his ability to produce written output, and
- his behavior was curious and affectionate, with a need to develop increased attention, initiating bathroom use and toileting, and expressive and receptive communication. (MCPS-36)

February 2018: the Student Is Coded for Intellectual Disability

19. On February 27, 2018, Dr. [REDACTED] signed MCPS’s Multidisciplinary Evaluation Form, certifying the Student’s coding for intellectual disability. Based on the Student’s scores on the WISC-V cognitive assessment instrument and the Adaptive Behavior Assessment System

(ABAS) adaptive behavior assessment tool, she certified that the Student demonstrated each of the following characteristics required for coding a student with intellectual disability:

- the age of onset was before age eighteen,
- the Student exhibited significantly subaverage intellectual functioning, demonstrated by comprehensive measures of verbal and nonverbal reasoning competencies at or below two standard deviations below average,
- the scores on the assessment instruments were two or more standard deviations below the mean on multiple measures of verbal and nonverbal reasoning due to severe physical disability, speech, hearing, or vision impairment, the Student exhibited significantly subaverage adaptive functioning in practical skills, social skills, and conceptual skills, and
- the Student exhibited significantly subaverage intellectual functioning, concurrent with deficits in adaptive behavior.

(MCPS 26-3).

20. Concurrently with Dr. [REDACTED]'s February 27, 2018 certification that the Student met the characteristics of intellectual disability certification, the Student's IEP team, which consisted of the [REDACTED] Principal, the Parents, a speech language pathologist, an occupational therapist, a general educator, and Ms. [REDACTED], a special education teacher, concluded that the Student required special education services both "across all academic and adaptive areas including social" as well as in "speech [and] OT [occupational therapy]." (MCPS 26-4

21. The Parents dissented from the team's February 27, 2018 conclusions. (MCPS 26-4).

22. During the 2018-2019 school year, the Student attended third grade at the [REDACTED].

23. During the 2019-2020 school year, the Student attended fourth grade at the [REDACTED].

24. During the 2020-2021 school year, the Student attended fifth grade at the [REDACTED].

April 27, 2021 IEP Team Meeting

25. On April 27, 2021, as the Student was nearing the end of fifth grade and would be transitioning in the fall to middle school at [REDACTED], the IEP team met. The team consisted of [REDACTED] (speech/language pathologist), [REDACTED] (occupational therapist), [REDACTED] (special education teacher), [REDACTED] (assistant principal), and the Parents.

26. The team, with the Parents dissenting, stated the Student's primary diagnosis was intellectual disability, which affected him in the following areas:

- Academic: math calculation, reading comprehension, reading phonics, expressive language, receptive language, written language content
- Behavioral: self-care, self-management, and
- Physical: fine motor coordination.

(MCPS 20-1).

27. In an April 27, 2021 Prior Written Notice,¹³ the IEP team proposed that the Student receive the following services: two thirty minute sessions of speech-language services per month; fifteen minutes quarterly of OT services; self-contained classroom instruction for ELA (English language instruction), math, science, social studies, art, music, PE (physical education) and flex (flexible period); lunch and recess in an inclusion setting with support; transportation to school via school bus; that a "chewy" be added as a sensory aid to the supplementary learning aids he was receiving; and ESY (special education and related services beyond the usual school year). (MCPS-1; 20A, pp. 47-48).

28. The IEP team stated in the April 27, 2021 Prior Written Notice that the proposed services were aimed at addressing the Student's expressive and receptive language skills including functional communication, and to address fine motor skills to manage technologies,

¹³ A Prior Written Notice is a document the IDEA requires when a school system proposes to initiate a change to the identification, evaluation, educational placement of or provision of FAPE to a student.

that he required significant scaffolds and specially designed instruction across the school day by a special educator to access curriculum. The team proposed the chewy due to his ongoing oral sensory-seeking behavior of putting non-food items in his mouth such as plastic gloves, wallpaper, Styrofoam, phone cords and other items. The team stated that he qualified for extended school year (ESY) services based on his academic and toileting needs. (MCPS-1).

The April 27, 2021 IEP Team Recommends [REDACTED] ([REDACTED])

29. The IEP team also determined that the Student should be educated under the Maryland [REDACTED] ([REDACTED]) standards, to be implemented when the Student started sixth grade at [REDACTED] Middle School ([REDACTED]). The [REDACTED] standards are based on a limited sample of academic content that is linked (aligned) to grade-level content standards. Despite this alignment with grade-level content, content in an [REDACTED] program may not fully represent grade-level content standards. [REDACTED] programs may include content that is substantially modified from grade-level standards.

30. A child who participates in the [REDACTED] “track” will progress toward a Maryland High School Certificate of Program Completion rather than a high school diploma. Theoretically, a student who is participating in an [REDACTED] program could eventually earn a high school diploma, but only after meeting all graduating requirements, which include passing the general education statewide assessments and earning high school credits. The IEP team is required to continually monitor the student’s progress to determine if and when that is a possibility. (MCPS-15, pp. 8, 10).

31. Maryland law provides parents of students with disabilities the right to refuse their child’s assignment to a certificate (non-degree bearing) program. A local education agency like

MCPS may challenge the parents' refusal of consent by pursuing a due process complaint as provided under the IDEA and Maryland law. Md. Code Ann., Educ. §§8-405(g)(1), (3), 8-413(a)(3), and 8-413(d)(2).

Features of the [REDACTED] "Track": the [REDACTED] ([REDACTED]) and [REDACTED] [REDACTED] Programs

32. As a certificate program, the [REDACTED] track includes functional academics but primarily focuses on the acquisition of adaptive life skills that prepare a student for life after school. Earning a certificate of completion from an [REDACTED] program does not require passing academic courses, proficiency in any subject, or passing statewide assessments. A student will receive a Maryland certificate (not a diploma) at the conclusion of their high school experience.

33. When a student is on a diploma track, MCPS may modify the way the student is instructed in the general education curriculum, but MCPS is not permitted to modify the curriculum itself. In a diploma program, teachers must teach the students at grade level, regardless of their true instructional level. In the [REDACTED] track, by contrast, teachers are allowed to teach at the appropriate instructional level for a student.

34. The MCPS IEP team considered two [REDACTED] programs for the Student: (1) the [REDACTED] program, and (2) the [REDACTED] program.

35. MCPS offers other [REDACTED] programs that focus on students with autism or significant maladaptive or externalizing behaviors. It determined those other programs were inappropriate for the Student, who does not have autism or behavioral issues.

36. MCPS describes the [REDACTED] program as follows:

[REDACTED] services are designed for students with complex learning and cognitive needs, including *mild to moderate intellectual disabilities*. Services support the implementation of [REDACTED] aligned with the curriculum. Students are provided with many opportunities for interaction with

general education peers, including inclusion general education classes as appropriate, peer tutoring, and extracurricular activities. They learn functional life skills in the context of the general school environment and in community settings. Community-based instruction and career/college readiness are emphasized at the secondary level so that students are prepared for the transition to post-secondary opportunities upon graduating with a certificate from the school system.

(MCPS-17-1, emphasis added).

37. MCPS describes the [REDACTED] program as follows:

[REDACTED] Program services are designed for students with *severe or profound intellectual disabilities* and/or multiple disabilities. Students typically have significant needs in the areas of communication, personal management, behavior, and socialization. The program emphasizes individualized instruction, using [REDACTED] aligned with the curriculum in comprehensive schools and related community and work environments. The [REDACTED] model includes the following components: age-appropriate classes, heterogeneous groupings, peer interactions, specialized instruction, community-based instruction, and career readiness. The goal of the program is to prepare students to transition to post-secondary opportunities upon graduation with a certificate from the school system.

(MCP-17-2, emphasis added).

The Four “Appendix A” Criteria

38. The MSDE and MCPS mandate that when determining the eligibility of students with a “significant cognitive disability” to participate in the alternate assessments and/or alternate instructional standards, an IEP team utilize “*Maryland Guidance for IEP Teams on Participation Decisions for the Alternate Assessments*, April 1, 2019, and Alternate Appendix A: Participation Criteria and Checklist.” All of the following four criteria must be satisfied to establish a student’s eligibility for [REDACTED] participation:

(1) The student has an IEP that includes specially designed instruction comprised of accommodations, evidence-based practices, program modifications, personnel support, and evidence the student cannot access the general education standards despite ongoing interventions.

(2) The student has a significant cognitive disability that impacts intellectual functioning and adaptive behavior. A significant cognitive disability is pervasive and affects learning across all content areas, independent functional, community living, leisure, and vocational activities.

(3) The student is learning content derived from the MCCRS (Maryland College and Career Ready Standards) in English/language arts and Mathematics and the Next Generation Science Standards with grade-level curriculum significantly modified for the student to access knowledge and skills that allow the student to make progress.

(4) The student requires extensive, direct, repeated, and individualized instruction and substantial supports to achieve measurable gains in the grade and age-appropriate curriculum. This instruction is not temporary or transient in nature. The student uses substantially modified materials and individualized methods of accessing information in alternative ways to acquire, maintain, demonstrate, and transfer skills across academic content.

The April 27, 2021 Appendix A

39. Using the “Alternate Appendix A: Participation Criteria and Checklist (sometimes referred to as “Appendix A” or the “Alt Tool”), the April 27, 2021 IEP team conducted a comprehensive evaluation of the Student in making its recommendation that the student be instructed pursuant to the [REDACTED] alternative assessments and standards. (MCPS-2). The team noted that MCPS held a reevaluation planning session on January 25, 2021, and the Parents did not give MCPS consent to conduct formal assessments. As a result, MCPS utilized the Student’s historical sources and a variety of district and classroom-based data. (MCPS-2-5).

40. The criteria for a Student’s participation in the [REDACTED] assessments and standards must reflect the pervasive nature of a significant cognitive disability across all content areas. The IEP

team determined that the Student met all four of the Appendix A criteria for participation in an [REDACTED] program. (MCPS-2).

41. In determining that the Student met Criterion 1 on Appendix A (that the Student has an IEP that includes specialized instruction and there is evidence he cannot access the general education curriculum), the April 27, 2021 IEP team relied on the Student's IEP's progress notes (MCPS 20) and teacher reports. (MCPS-2-2).

42. In determining that the Student met Criterion 2 on Appendix A (that the Student has a significant cognitive disability), the April 27, 2021 IEP team relied on the following information concerning the Student's cognitive and adaptive abilities: results of individual cognitive ability tests; results of adaptive behavior skills assessments; results of individual and group-administered achievement tests; results of informal assessments; results of individual English/language arts, science and math assessments; and results of language assessments including English Learner (EL) assessments. The Student's scores on the WISC-V and ABAS tests as described in Dr. [REDACTED]'s September 10, 2017 report were "extremely low," and informal classroom-based and district assessments (the latter showing the Student (then in fifth grade) at the pre-Kindergarten (pre-K) level in LexiaCore Reading, and at the first grade level on the iReady Math assessment).

43. In determining that the Student met Criterion 3 on Appendix A (that the Student is learning content with grade-level curriculum significantly modified in order for him to access knowledge and skills that allow him to make progress), the team reviewed examples of curriculum, the Student's present levels of academic and functional performance, the goals and objectives of his IEP, data from scientific research-based interventions and progress-monitoring data.

44. In determining that the Student met Criterion 4 of the Appendix A Alt Tool (that the Student requires extensive, direct, repeated, and individualized instruction and substantial supports to achieve measurable goals in the grade and age-appropriate curriculum) the team reviewed examples of curriculum, instructional objectives, and materials including work samples, teacher-collected data, present levels of academic and functional performance, and goals and objectives.

The Parents' Refusal to Consent to [REDACTED]

45. The Parents have consistently refused to consent to the Student's being instructed with [REDACTED] assessments and standards. At the April 27, 2021 IEP team meeting, the Student's mother disagreed with the team's recommendation of [REDACTED] programming. She told the team she wanted the Student to remain on the grade-level curriculum and work toward a high school diploma. Dr. [REDACTED] also conveyed her belief that the Student is best taught in a one-on-one environment with non-special education teachers. She stated the [REDACTED] teachers are good teachers, but the Student's learning style is best met by non-special education teachers. She said he learned well from tutors, including high school students and high school general education teachers. She reported the Student exhibited appropriate bathroom skills at home, but the IEP team responded that until he demonstrated those skills in the school environment, bathroom skills should remain on his IEP. (MCP- 1).

46. In the April 27, 2021 Appendix A document, both Parents signed the following dissenting statement:

[The Student] will be pursuing a Maryland High School diploma. [Parents] do NOT agree to [REDACTED] curriculum. Parent has provided IEP team with [the Student's] videos yearly and possible reasons for incompatib[ility] with special needs teaching explained in several emails and prove that [the Student] is NOT intellectually disabled.

(MCPS-2-7).

July 12, 2021 Middle School Transition Meeting: MCPS Recommends the [REDACTED] [REDACTED] Program at [REDACTED] Middle School; the Parents Decline to Consent

47. The IEP team conducted a Middle School Transition Meeting on July 12, 2021, as the Student transitioned from the end of elementary school at [REDACTED] (ending with fifth grade) to the beginning of middle school at [REDACTED] (beginning with sixth grade). The transition meeting's purpose was to determine how his IEP would be implemented in middle school. (MCPS-4-1).

48. At the transition meeting and a July 19, 2021 Prior Written Notice, the MCPS team recommended that the Student be educated in the [REDACTED] program at MCPS's [REDACTED] Middle School ([REDACTED]) in [REDACTED]. [REDACTED] is a comprehensive MCPS middle school, located in [REDACTED].

49. The Parents refused to consent to the Student's placement at [REDACTED] to be educated under the [REDACTED] assessments and standards programming. (MCPS-20B-53; MCPS-4; MCPS-5). At the transition meeting, MCPS counsel, Ms. [REDACTED], stated that MCPS would file a due process complaint to override the Parents' refusal to consent to [REDACTED].

50. During the 2021-2022 school year the Student attended sixth grade at [REDACTED] Middle School in [REDACTED]. The Student's IEP was updated on July 19, 2021. (MCPS-20B).

51. MCPS held a reevaluation planning meeting in November 2021. Educational, speech, and psychological reevaluations were completed. The Student's IEP was updated again on November 11, 2021. (MCPS-20C).

The Student's IEP Goals and His Progress Toward Them

52. The Student's IEP, as amended on November 11, 2021, identifies his goals, and reports his progress toward meeting the goals:

a. Academic-Written Language:

Goal: With support to compose narrative, explanatory and opinion texts

Progress Code: Not making sufficient progress to meet goal; as of 4/1/22, not writing his name correctly without prompting.

b. Behavioral-Self Care:

Goal: to initiate the need to go to the bathroom

Progress Report: Not making sufficient progress to meet goal: as of 4/1/22, the Student did not initiate going to the bathroom verbally or nonverbally; accidents occurred.

c. Academic: Speech and Language, Expressive Language

Goal: to produce 2-3 word combinations

Progress Report: Making sufficient progress to meet goal (as of 4/1/22, is able to say, "I love..." phrases, "what time is it," "I don't know," "show me," "what is;" the Student requires modeling of 2-3 word phrases.

d. Behavioral: Self-management

Goal: to attend to a speaker or task for five minutes with no more than two reminders

Progress Report: Not making sufficient progress to meet goal (as of 4/1/22 with adult support the Student requires multiple individual prompts to attend to speaker and will turn and share with others during class comments such as "Go Home." (MCPS 20C-43).

e. Behavior-Self-management

Goal: to complete classroom routines safely with no more than two prompts.

Progress Report: Not making sufficient progress (as of 4/1/22, the Student requires three to four prompts to complete one task at a time.

f. Academic: Reading Phonics

Goal: Given explicit instruction, frequent opportunities for practice, manipulation, the Student will orally produce all 36 English sounds

Progress Report: Not making sufficient progress to meet goal (as of 4/1/22, the Student made minimal progress toward making sounds of vowels and consonants but not enough to meet goal

g. Academic: Reading Comprehension

Goal: Given direct and small group instruction, fading teacher prompts, modeling, instructional level texts, and visual cues, the Student will recount key details and elements of a story.

Progress Report: Not making sufficient progress to meet goal (Reading Comprehension score: 6/32; Reading check score 0/10; the Student will state random words when asked what the setting is or any details about pictures

h. Academic: Reading Comprehension

Goal: to determine important ideas and messages in literary and instructional texts

Progress Report: Not making sufficient progress to meet goal (as of 4/1/22, Reading Comprehension score: 6/32; Reading check scores 0/10; the Student will pick random choices if given pictures or words to state the main idea. He is not able to discuss what is happening in the picture books that are read to him.

i. Physical: Fine Motor Coordination

Goal: to manage technologies such as keyboard and calculator

Progress Report: Achieved, as of 4/1/22 (the Student scans and locates all numbers on a calculator or keyboard with supervision and increased time. He scans and strikes keys in his first name with minimal cues. He has difficulty locating letters on the keyboard since he cannot identify all letters of the alphabet.

j. Academic-Math Calculation

Goal: to know number names and count sequence

Progress Report: Not making sufficient progress to meet goal (on four learning checks his score was 0/10. While students focused on fractions and decimals, the Student is not able to count to 20 independently with prompts and/or manipulatives.

k. Academic-Math Calculation

Goal: with support to demonstrate understanding of addition as putting together and adding to and understand subtraction as taking apart and taking away from.

Progress Report: Not making sufficient progress to meet goal (students focused on fractions and decimals; the Student is not able to independently draw a picture to represent numbers 1-10 and is not able to independently use the calculator.

l. Academic: Speech and Language-Receptive Language

Goal: to follow novel one-step directions that contain spatial concepts (in, out, on, under, next to) and size concepts (big, small) given a verbal or visual cue.

Progress Report: Making sufficient progress to meet goal (as of 4/1/22, the Student follows directions about 60% of the time given modeling and simple step-by-step prompts. He can sort items by color when given modeling; he has difficulty understanding what it means to “turn” a puzzle piece but when given hand-to-hand prompts, his accuracy and independence increases.

m. Academic-Speech and Language Receptive Language

Goal: to answer what, what doing, and where questions about a picture or picture story given three answer choices.

Progress Report: Making sufficient progress to meet goal (as of 4/1/22, the Student struggles to answer “what doing” questions; however, he continues to be about 70% accurate with answering “what” questions given a picture of common objects.

(MCPS-20C, pp. 38-56).

The Student’s Special Accommodations and Aids Under His IEP

53. Pursuant to his IEP, as amended, the Student receives special accommodations at [REDACTED] to access the grade level curriculum due to his significantly below grade level performance. These special accommodations include the following: assistive technology, writing tools to support handwriting, human reader, human scribe, text to speech, calculation devices, monitored test responses, extended time, use of word processor, sentence starts, advance preparation for questioning, assistive technology, paired oral and written instructions, word bank to reinforce vocabulary, use of manipulatives, test modifications, limited amount of required reading, chunking assignment,; preferential seating, one-on-one adult support for safety because the Student wanders in the building, puts non-food items in his mouth, and requires constant support with academic work and engagement, use of a key locker lock due to his inability to use a combination lock, and full physical prompting. (MCPS-20C; 61).

54. Pursuant to his IEP as amended, the Student receives the following special education services: a one-on-one paraeducator with the Student all day in addition to his instructional teachers; a self-contained setting (a special education teacher is responsible for the instruction) for ELA (English Language Arts), math, science, social studies, art, music, PE and flex; inclusionary setting daily for lunch and recess; attended/supported English, math and social studies daily in the general education setting; decoding reading intervention and resource class daily outside of the general education setting; use of a visual (picture) schedule; fifteen minutes quarterly of OT services; and two thirty minute sessions weekly of speech-language services.

55. The Parents have not declined the above-listed supplemental aids and special education services.

56. The IEP offered, but the Parents declined, ESY (extended school year) services and transportation to and from school.

The Student's Present Levels of Academic Achievement and Functional Performance

57. Despite the provision of supplemental aids and special education services, the Student cannot access the grade level curriculum.

58. The Student's present level of academic achievement and functional performance (present level), was assessed by the IEP team in the November 11, 2021 IEP, and on district-wide assessments (where indicated), as follows:

- Reading Phonics: Pre-K
- Reading Comprehension: Pre-K (Measures of Academic Progress-Reading (MAP-R) score in first percentile) (MCPS 23-1)
- Math Calculation: K (Measures of Academic Progress-Math (MAP-M) score in 1st percentile) (MCPS 23-1)
- Written Language Content: Pre-K
- Speech and Language, Receptive Language: Below age expectations
- Speech and Language, Expressive Language: Below age expectations

- Behavioral: Self Care: Below age expectations
- Physical: Fin Motor Coordination: Mildly below expectations

59. The Student's intellectual disability causes him to have difficulty with decoding, reading comprehension, math problem solving, math calculation, oral language, and behavior, i.e., putting non-food items in his mouth and not initiating his need for the bathroom.

December 2021 Educational Assessment

60. In December 2021, the Student's special education teacher [REDACTED] conducted an Educational Assessment to confirm whether he continued to be educationally disabled and eligible for special education services. In the area of reading, he scored in the very low range on all reading subtests of the Woodcock-Johnson IV-Tests of Achievement: letter word identification, passage comprehension, word attack, sentence reading fluency and reading recall. As Ms. [REDACTED] assessed, his reading and comprehension are at a pre-Kindergarten level. (MCPS-35-10).

61. In math, the Student scored in the very low range on all Woodcock-Johnson IV math subtests: applied problems, calculation, math facts fluency and number matrices. The Student's skills are at a Kindergarten level. (MCPS-35-10).

September 8, 2022 Amended IEP

62. The Student's IEP was amended again on September 8, 2022. The IEP team again found him eligible for the [REDACTED] assessments and standards using the Appendix A Alt Tool. The Parents again refused to provide consent for [REDACTED]. Therefore, the Student continued to be assessed and instructed on grade level outcomes. (MCP- 18).

63. In the Present Level of Academic Achievement and Functional Performance section of the Student's September 8, 2022 IEP, when he was in seventh grade at [REDACTED], his

then-current instructional grade level performance was assessed as follows: Academic: Reading Phonics (Pre-K); Academic: Reading Comprehension (Pre-K); Academic: Math Calculation (K); Academic: Written Language Content (K); Academic: Speech and Language Articulation: (Below age expectancy, noting reduced intelligibility); Academic: Speech and Language/Receptive Language: (Below age expectations); Academic: Speech and Language/Expressive Language: (Below age expectations); Self-management: (Below age expectancy, noting continued placing non-edible items in his mouth); Behavioral: Self Care: (Below age expectations, noting as of March 2022, the Student does not indicate verbally or nonverbally to staff that he needs to go the bathroom, so staff takes him to the bathroom regularly to avoid accidents); and Physical: Fine Motor Coordination: (functional fine motor skills for current academics, noting the Student writes his first and last name legibly with a model present for reference with approximately 90% accuracy, that his OT goal and objectives were met).

64. MCPS has continued to adhere to its recommendation that the Student be assessed and instructed on the [REDACTED] “track,” and in the [REDACTED] [REDACTED] program. The team considered both the [REDACTED] and [REDACTED] programs but stated following its June 3, 2022 meeting that the [REDACTED] program is the Student’s least restrictive alternative, based on district data (the MAP-R and MAP-M test results), updated psychological and educational assessments, historical data, benchmark assessments, classroom-based assessments, progress notes, report card grades, work samples, observations, intervention data, and parent input, He is not making progress toward his IEP goals and objectives. His educational needs require him to be in small self-contained class (i.e., for students with IEPs) across the day. He requires significant modifications, scaffolds, and supports to gain access to the learning content. (MCPS-18-55).

65. The team determined that the Student requires a smaller student-to-teacher ratio environment that is led by a special education teacher who can employ special education services all day. He requires significant adult support throughout the entire school day. (MCPS-18-55).

66. In continuing to recommend [REDACTED], the team considered videos shared by Dr. [REDACTED]. The videos showed the Student's Parents or private tutors engaging in reading practice and instruction with the Student. Dr. [REDACTED] urged the team to find, based on the videos, that the Student could read both adult-level medical texts as well as eighth grade level texts.

67. The IEP team found that the videos "were rehearsed and the text has been previously provided to [the Student]. In addition, the words from the text were spelled to and practiced by the Student." After viewing the videos in November 2022, the team adhered to its [REDACTED] recommendation. (MCPS--3).

68. In February 2022 the Student was found eligible to continue as a student with a disability.

The Student's Report Cards

69. In the Student's sixth grade report card, he received failing grades of "E" ("Unacceptable level of performance") in Physical Education, Grade 6 Adv English, Developmental Reading, Grade 6 math, Investig in Science 6, and Historical Inquiry Global Hum 6. He received a "C" grade ("Acceptable Level of Performance") in his special education resource class, the only subject in which he did not receive a failing grade. (MCPS-2-1).

70. In the Student's seventh grade report card, he received failing, "E" grades in PE, Grade 7 Adv English, Middle School Academic Literacy, Accelerated Math 7 Plus, and "Investing in Science 7". He received a "D" ("Minimal Level of Performance") in the Resource class. (MCPS 22-3).

Teachers' Reports

71. In the Student's Teachers' Reports from May-October 2022 his teachers consistently reported that the Student was not accessing the grade level curriculum due to his academic deficits. For example, his math teacher expressed "concern" in an October 14, 2022 report about his performance in math concepts, basic operations, and math application, noting he struggled with basic math operations and is unable to compute on his own. His MAP-M score was at the first percentile for a seventh grade student, and he was unable to access the seventh grade curriculum. (MCPS-21-8).

72. As the Student's reading teacher reported on May 23, 2022, while he was in sixth grade, his reading level was pre-primer. He was "unable to complete any grade level material in reading and writing due to his limited abilities in the areas of reading and written language." (MCPS-92).

73. As the Student's science teacher reported on May 23, 2022, the Student "does not exhibit any understanding of classroom content or routines. Classroom work that is attempted shows no understanding of content or subject matter. There is limited data to assess fully-as work is not completed." (MCPS 21-78).

The Student's Work Samples

74. On a series of classroom work samples, the Student performed at a Kindergarten level, and did not demonstrate the ability to access the grade level standards, despite being helped to "reach back" and acquire foundational skills needed to do the assignment. The Student's samples do not align with seventh grade standards, but rather with the IEP's goals for developing foundational skills in phonics, writing and math calculation, for which his curriculum was modified because he was unable to access middle school standards. (MCPS-20, pp. 46-57; 63).

Classroom Observations by [REDACTED]

75. [REDACTED] an instructional specialist with MCPS's Office of Special Education, observed the Student at [REDACTED] for about ninety minutes on December 19, 2022, when he was in seventh grade. Despite assistance from his paraeducator, he struggled and reached frustration level because the math assignment was too difficult. He is not permitted to walk around the school independently and is always supervised. He had difficulty with his locker. He does not use much spontaneous language in the moment. He primarily communicates with two-to-three-word phrases, such as "go home," "mommy," "go PE," "Lamborghini," "good morning," "thank you," "you do," and "good boy." He rarely initiates his trip to go to the bathroom or announces that he is feeling sick until he throws up. ([REDACTED] Test.).

MCPS School Psychologist [REDACTED]'s January 31, 2022 Evaluation Report

76. [REDACTED], MCPS school psychologist, assessed the Student over three days in November and December 2021, when he was in sixth grade at [REDACTED]. His strengths include his curiosity, cooperativeness and compliance, and desire for social interactions and connections. His overall performance on the three measures of cognitive functioning she administered (WISC-V; Universal Nonverbal Intelligence Test-Second Edition (UNIT-2); and the ABAS-3 adaptive functioning tool were consistently well below age expectations, with his performance consistently falling within two standard deviations or more below the average range as compared to same-age peers.

77. The Student's scores on the UNIT-2 test for Memory (Symbolic and Spatial); Reasoning (Analogic Reasoning and Cube Design); and Quantitative (Nonsymbolic Quantity and Numerical Series) were all in less than the first percentile and classified as "Very Delayed." His score was three standard deviations below the mean. (MCPS-30-6; [REDACTED] Test.).

78. The Student's scores on the Comprehensive Test of Nonverbal Intelligence (Second Edition (CTONI-2), an ideal test for those who have language difficulties, for Pictorial Scale (Pictorial Analogies, Pictorial Categories, and Pictorial Sequences) and Geometric Scale (Geometric Analogies, Geometric Categories, and Geometric Sequences) were all in less than the first percentile and classified as "Very Poor." His score on the CTONI-2 was three standard deviations from the mean. (MCPS-30-7; [REDACTED] Test.).

79. The Student's scores on the WISC-V test for Verbal Comprehension (Similarities and Vocabulary); Visual Spatial (Block Design and Visual Puzzles); Fluid Reasoning (Matrix Reasoning and Figure Weights); Working Memory (Digit Span and Picture Span); and Processing Speed (Coding and Symbol Search); and Full-Scale IQ were all in less than the first percentile and classified as "Extremely Low." His score on the WISC-V was four standard deviations below the mean. His full-scale IQ was 40, which is in less than the first percentile. (MCPS-30-9; [REDACTED] Test.).

80. Ms. [REDACTED] concluded that the Student could learn, but not currently at grade level. He was at the Kindergarten level across all areas measured. Ms. [REDACTED] assessed his cognitive disability as "severe" on a scale of mild, moderate, severe, and profound. She based this assessment on the amount of support the Student needs, the level of his adaptive functioning, his limited understanding of written language, his speaking in two-to-three word utterances, and his difficulty with math concepts like time, money, and quantity. ([REDACTED] Test.).

81. The Student's adaptive skills are in the "severe" disability category. ([REDACTED] Test.).

82. As Ms. [REDACTED] assessed, the [REDACTED] program is more appropriate for the Student than the [REDACTED] program, because [REDACTED] students do not require the level of support the Student requires to function independently in school. [REDACTED] students are able to go to the bathroom, play a game like

UNO, use laptops, go from class to class independently, write a simple sentence, and follow a simple recipe. As such, [REDACTED] students are functioning above the Student's level. The Student needs to learn functional skills that would enable him to be safe, such as speaking up when he is ill or needs to use the bathroom. ([REDACTED] Test.). The Student demonstrates significant impairment in his overall cognitive functioning, which was consistent with the prior psychological testing conducted during his elementary school years. ([REDACTED] Test.).

83. Ratings of the Student's adaptive skills resulted in scores consistently and significantly below age expectations. Ms. [REDACTED]'s observations during the assessment sessions were consistent with these findings, which indicated significant needs requiring accommodations and support to address the Student's understanding of tasks and attention to tasks and activities. He showed a relative strength in practical skills (use of community, personal and health care, home living) and social skills, but significant weaknesses in the conceptual domain (communication, functional academics, and self-direction) and leisure planning and participation.

84. Ms. [REDACTED]'s current assessment reconfirmed the presence of Intellectual Disability given his significantly subaverage cognitive functioning in concurrence with deficits in adaptive functioning in the conceptual domain, which require significant support and modifications within the educational environment. (MCPS-30-11).

WIDA English Language Proficiency Test

85. In 2022 the Student was administered the WIDA test of English language proficiency, given to students who use more than one language at home. He scored at level 1 (the lowest level) in listening, speaking, reading, and writing. Given the facts that it takes five years to develop English proficiency, the Student's mother indicated that English is his primary language, and the WIDA test was administered in 2022, if the Student did not have a significant cognitive

disability, he would be at WIDA level 5 or 6. His low WIDA score was the result of his cognitive disability, rather than the result of his living with bilingual parents.

Burns and Roe Informal Reading Inventory

86. The Student was administered the Burns and Roe Informal Reading Inventory on August 31, 2022. This test is a reading inventory to determine a student's instructional and frustration levels for reading words in isolation and comprehension of multi-paragraph passages. After reading the passages, the Student was asked a series of comprehension questions including main idea, detail, sequence, cause and effect, vocabulary, and inference. The Student's performance on the Word Lists part of the Burns and Roe test was at the Pre-Primer level, with 20% accuracy, which was interpreted by the tester ([REDACTED]), a special educator at [REDACTED]) as showing "Frustration." Out of twenty words he recognized "a," "for," "go," and "I." He could not read the other sixteen one-syllable words on the list, such as "at," "in," "of," and "that." When the Student was asked to read the Pre-Primer passage he could not do so. The first sentence of the passage was "Jill's Mom said, 'It is time for bed.'" The Student's response was "Been M [unintelligible word]. It an [unintelligible word] an in." He was presented the alphabet and was able to recall nineteen out of twenty-six letters. (MCPS 25-1).

87. The Student was also administered the Burns and Roe inventory in December 2021. He recognized 35% of the Pre-Primer word list, indicating the "Frustration" level. He was unable to read the comprehension passage. The passage was read to him pointing to each word. He was unable to answer any of the comprehension questions and by the last question said, "done, done, done." (MCPS 25-2).

COVID Compensatory/Recovery Services and ESY Declined by Parents

88. In the wake of the COVID-related school shutdowns, MCPS offered compensatory/recovery services to all students with an IEP. MCPS offered the Student ten hours, which would have been provided after school or during ESY. The Student's mother declined compensatory/recovery services because she said the Student did not have an intellectual disability and the services would be based on a phonics-related reading methodology in which she did not believe. Because the Parent declined them, MCPS did not provide compensatory/recovery services. The Parent also declined to consent to ESY, so it also was not provided.

Physical Education

89. The Student's seventh grade schedule includes PE in the first period. The Student's mother, who drove him to school, usually did not drop him off until after the PE class, because she believes that superior athletic ability is inversely proportional to intellectual ability. As a result, he missed most of his PE classes. (Dr. ■■■ Test.).

Reading Interventions

90. MCPS has attempted multiple reading interventions with the Student:

- Phonics for Reading (a supplementary program designed to aid students building phonemic awareness, decoding, and fluency skills to strengthen reading comprehension. The program is systematic and utilizes explicit instruction.)
- Orton Gillingham (a direct, explicit, multisensory, structured, sequential, diagnostic, and prescriptive way to teach literacy when reading, writing, and spelling.)
- HD Word/Really Great Reading (the focus of HD Word is word study: phonics and phonemic awareness), there is a high rate of transfer to students' skills in other areas of reading, such as fluency and comprehension).

91. Despite these interventions, the Student's reading skills are significantly below age and grade level expectations. To meet his reading needs, the [REDACTED] staff also tried to work on the i-Ready program with him; however, his skills were too low.

PARCCC/MCAP Scores

92. The Student's scores on MSDE's PARRC (Partnership for Assessment of Readiness for College and Careers) and MCAP (Maryland Comprehensive Assessment Program) state-wide assessments, as reported for the 2018-2019 school year, were low: 1 out of 5. (MCPS-24).

MAP Scores

93. The Student's performance on the 2022 MAP-R and MAP-M reading and math assessments were each in the first percentile.

December 2021 Speech-Language Reassessment

94. MCPS undertook a speech-language reassessment of the Student in December 2021. The examiner, [REDACTED], found:

- the Student's Receptive One-Word Picture Vocabulary test score was within the below average range,
- his Expressive One-Word Picture Vocabulary test score was below the average range,
- on the Functional Communication Profile-Revised tool, the Student presented with weaknesses in expressive and receptive language, social interactions, and articulation. His voice was within functional limits and although his verbal output is not typical for his age (he used 1-2 word utterances), he did not demonstrate characteristics of a fluency disorder.

The Parent's Reading Instruction Methodology

95. The Student's mother believes that that special education instruction methods in reading are incompatible with the Student. She believes that multisensory reading instruction

methods used by MCPS such as Orton-Gillingham, which involve the visual, auditory, and tactile senses, may cause a hypnotic response in the Student, making him dizzy and inhibiting his ability to learn to read effectively.

96. The Student's mother has instructed the Student at home and encouraged his private tutors to teach him reading with a different method that she believes is more effective and compatible with the Student's needs and abilities than the reading instruction methods preferred by MCPS. She teaches him to read words by spelling out the word for him, saying the word, asking him to repeat it and eventually memorizing the word. When Dr. [REDACTED] was in medical school in [REDACTED], she had to memorize a multitude of medical words. Dr. [REDACTED] refers to her approach as the "ABC" method, to contrast it with what both she and MCPS witnesses sometimes referred to colloquially at the hearing as the "Ah Bah Cah" method. The Ah Bah Cah method involves the use of phonics to identify phonemes (units of speech that distinguish one word or part of a word from other) and learn the ability to decode unfamiliar words through familiarity with the sounds of the English language letters. Dr. [REDACTED] learned English and medical terminology with the ABC method and does not approve of MCPS's use of the so-called Ah Bah Cah sounding-out method, which she finds incompatible with the Student's ability to learn to read fluently. More broadly, the Parent believes special education techniques are incompatible with the Student. (P-2; [REDACTED] Test., [REDACTED] Test.).

97. The Parent's ABC method is not an evidence-based reading instruction approach. ([REDACTED] Test.).

The Student's Private Tutors

98. The Parents hired private tutors over the years for the Student. In first grade he was tutored by [REDACTED], who had been a schoolteacher in [REDACTED]. She also hired [REDACTED], a special needs teacher, but she could not teach the Student and thought he could not learn, so the

Parent discontinued her services. In second grade the Parent engaged [REDACTED], who is [REDACTED] and was a student teacher at the time. Mr. [REDACTED] does not have experience with special education teaching methods. The Parent hired [REDACTED], also [REDACTED] and a special needs teacher in Montgomery County. He was unable to teach the Student. The Parent tried to hire a [REDACTED] teacher, [REDACTED], who does not have special education teaching experience, and who was surprised the Student memorized many words. Dr. [REDACTED] believes that the teachers who feel the Student cannot learn are special education teachers, while the teachers who can teach him are general education teachers who do not use special education techniques.

Videos of the Student

99. The Parent submitted several videos of the Student for the hearing.¹⁴ The videos were also provided to the IEP team for its November 2022 meeting. Most of the videos show the Student engaged at home in reading instruction. (P-20-27; 31). The remaining videos show him engaged in outdoor activities and outdoor rides. (P-28-29). The Parent provided the following videos, for which she provided their titles.

“Medical Book Reading Videos Hemoptysis”

100. In this video, made on January 21, 2023,¹⁵ the Student was dressed in a shirt and tie and a crisp white doctor’s coat. He had a stethoscope around his neck. With extensive prompting from his mother, who frequently said or spelled out words from a medical text concerning hemoptysis (the coughing up of blood), the Student haltingly said some of the words, but was

¹⁴ The Parent’s videos (P-20 through P-30) were submitted to the OAH and MCPS counsel through Dropbox links included in the Parent’s exhibit list. The videos were also submitted and are available for viewing on a 64GB flash drive the Parent provided OAH and MCPS counsel. This flash drive is retained in the case file. The Parent’s documentary exhibits (P-1 through P-19 and P-31 through P-39) are in the file in hard copy and were also contained on a separate, 32 GB flash drive which is also retained in the case file. Exhibit P-6 was not admitted. P-33, P-38, and P-39 are blank and had no content. Although exhibit P-36 was referenced in the Parent’s exhibit list, no exhibit P 36 was submitted.

¹⁵ The Parent provided the dates of the videos to MCPS counsel and the OAH in a March 7, 2023 email that is retained in the file.

unable to read many other words. The words he spoke were not clearly enunciated. Many words could not be understood unless the word was visible in the portion of the text that could be seen on the screen. He appeared to give his best effort but paused between virtually every word and showed a complete lack of fluency. He did not demonstrate, at least by any discernible manifestation, that he comprehended the medical text. At the end of the video, his mother said, “Thank you very much, Dr. [REDACTED].” (P--20).

“Medical Book Reading Videos Diabetes Mellitus”

101. In this video, taken on January 7, 2022, the Student attempted to read a passage in a medical text about diabetes mellitus. (P-21). His performance was similar to his performance in the hemoptysis video. (P20).

“8th Grade Spectrum Reading Comprehension Videos”

102. The Parent submitted a five-part video under the heading “[The Student’s] 8th Grade Reading Comprehension Videos.” (P-22). The dates of each video are as follows: Part 1: June 14, 2022; Part 2: June 16, 2022; Part 3: June 2, 2022; Part 4: June 2, 2022; and Part 5: June 14, 2022.

103. In these five videos, the Student haltingly read words in an eighth grade-level passage about “The Bill Gates Story,” often only after his mother pointed to and either spelled or said the word first. He did not clearly enunciate the words. The Student did not demonstrate that he understood the passage.

“1st Grade Reading Comprehension Videos”

104. Under the heading “1st Grade Reading Comprehension Videos,” the Parent submitted fourteen videos, taken on various dates between January 19, 2018 and July 7, 2018 during the Student’s second grade year. He was able, under the supervision of his tutor [REDACTED], to read hesitantly and mostly without smoothness or fluency, from first grade-level texts

(which included “The Three Little Pigs”) words like “tree,” “we,” “rocks,” and “grapes” and “apples.” The Student showed some comprehension, i.e., he read the word “mad” and pantomimed angry body language, read the word “up” and pointed up, read the word “hair,” and pointed to his hair, and read the word “watch” and pointed to the tutor’s wristwatch. He was able to spell out and then read the words “last” and “song.” He could read some sentences rather smoothly, such as “My watch is new.” The tutor did not spell out or say the words.

“Second Grade Reading Comprehension Videos”

105. This series of seventeen videos was taken between September 13, 2018 and March 22, 2019. (P-23). The Student was able haltingly and with fair accuracy to read words at a higher degree of difficulty than the first grade reading videos. (P-22). He was also able to spell out some words. Many words were not clearly enunciated but some were intelligible. In texts about baseball, he understood the words “throw” and “hit.”

“Third Grade Reading Comprehension Videos”

106. This series of videos was taken between August 22, 2019 and November 30, 2019. (P-25). With these apparently more difficult passages, the Student read haltingly and had difficulty with longer words like “surprised” and “sister.” His enunciation was largely unclear. He appeared to have some ability to sound out words by reading their letters.

“4th Grade Reading Comprehension Videos”

107. This video was taken on January 25, 2020. (P-26). His reading appeared similar to his performance in the third grade reading comprehension video. (P-25). He was able to read and demonstrate his understanding of the word “open.” He had difficulty with the word “seaweed.” He could not read the word “clown.”

“6th Grade Spelling Videos”

108. This short video was taken on November 10, 2021. (P-27). He was able to identify the letters of two-to-three syllable words like “audience” and “combination” but could not read the words. He was able to say the word after he spelled it out and his mother spoke the word. He showed his understanding of the word “ceiling.” He did not read fluently.

“[The Student’s] The Student’s Outdoor Activities Videos”

109. This series of nineteen videos, taken between May 23, 2022 and August 29, 2022, shows the Student with his parents enjoying outdoor activities like golf cart riding and roller coaster rides. (P-28). He competently drove with his mother in a golf cart over a large lawn, turning left when his mother told him to do so. He was able to drive the cart forward and in reverse. He parked the vehicle in the driveway. He boarded, rode, and exited a roller coaster ride without difficulty.

“Outdoor Rides”

110. This series of five videos taken between June 12, 2021 and June 20, 2021, show the Student at the wheel of a go-cart with his father in the vehicle, riding a roller coaster, and enjoying floating in an inner tube at a water park. (P-29). No academic endeavors are shown on the outdoor activities and outdoor rides videos. The Student appeared to enjoy the activities with no signs of distress or difficulty.¹⁶

“1st Grade Phonics Videos”

111. These two videos taken on January 5, 2018, show the Student able (in the first video) to identify the letters in and read three-letter words like “bed” and “pen.” (P-30). He understood

¹⁶ The videos identified as P-28(f), (g), (h), (i) and (j) were not playable. All of the other videos presented by the Parent were able to be viewed.

words like “lip,” and “pen.” He had difficulty with the word “hat.” His performance was more halting in the second video, in which his attention appeared to wane.

DISCUSSION

Standard and Burden of Proof

The standard of proof in this case is a preponderance of the evidence. *See* 20 U.S.C.A. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3). To prove an assertion or a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002). The burden of proof rests on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005). In this case MCPS, which seeks to override the Parents’ refusal to give consent to MCPS educating the Student under alternate assessments and standards, is the party seeking relief and therefore bears the burden of proof. *Id.*

I conclude for the reasons that follow that MCPS met its burden of proving that the Student should be instructed under the [REDACTED] assessments and standards to provide FAPE in the least restrictive environment. Accordingly, I will order the Parents’ refusal to consent to the [REDACTED] program to be overridden. While it is highly probable that MPCPS’s decision will deny the Student a high school diploma,¹⁷ placing him at [REDACTED] Middle School in the [REDACTED] [REDACTED] program as MCPS proposes will give the Student the skills he needs most at this time—functional academic and adaptive life skills that will enable him to access the community and achieve a greater level of independent functioning.

Legal Framework

The identification, assessment, and placement of students in special education are governed by the IDEA. 20 U.S.C.A. §§ 1400-1482 (2017); 34 C.F.R. pt. 300 (2016); Md. Code

¹⁷ Though that is not a foregone conclusion if he is able to make progress, which has so far eluded him.

Ann., Educ. §§ 8-401 through 8-417); and COMAR 13A.05.01. The IDEA provides that all children with disabilities have the right to a FAPE which “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).

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

COMAR 13A.05.01.09 defines an IEP and outlines the required content of an IEP as a written description of the special education needs of the student and the special education and related services to be provided to meet those needs. The IEP must consider:

- (i) the strengths of the child;
- (ii) the concerns of the parents for enhancing the education of their child;
- (iii) the results of the initial evaluation or most recent evaluation of the child; and
- (iv) the academic, developmental, and functional needs of the child.

20 U.S.C.A. § 1414(d)(3). Among other things, the IEP depicts a student’s current educational performance, explains how the student’s disability affects the student’s involvement and progress in the general curriculum, sets forth annual goals and short-term objectives for improvements in that performance, describes the specifically-designed instruction and services that will assist the student in meeting those objectives, describes program modifications and supports for school personnel that will be provided for the student to advance appropriately toward attaining the annual goals, and indicates the extent to which the child will be able to participate in regular educational programs. § 1414(d)(1)(A)(i)(I)-(V); COMAR 13A.05.01.09A. IEP teams must consider the students’ evolving needs when developing their educational programs. The development of an IEP is a prospective process. *See Andrew F.*, 580 U.S. 386, 137 S. Ct. 988, 999 (2017).

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

In *Andrew F. v. Douglas County School District RE-1*, 580 U.S. 386, 137 S. Ct. 988 (2017), the Supreme Court of the United States set forth the following “general approach” to determining whether a school has met its obligation under the IDEA:

To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.

The “reasonably calculated” qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials....The Act contemplates that this fact-intensive exercise will be informed not only by the expertise of school officials, but also by the input of the child’s parents or guardians....Any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal. *Id.*, at 206-207, 102 S. Ct. 3034.

The IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement. *See* §§ 1414(d)(1)(A)(i)(I)-(IV). This reflects the broad purpose of the IDEA, an “ambitious” piece of legislation enacted in response to Congress’ perception that a majority of handicapped children in the United States ‘were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to “drop out.”’A substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act.

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

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

Andrew F. instructed that the “absence of a bright-line rule . . . should not be mistaken for ‘an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.’” *Andrew F.*, 137 S.Ct. at 1001 (citing *Rowley*, 458 U.S. at 206). At the same time, the *Andrew F.* stated that in determining the extent to which deference should be accorded to educational programming decisions made by public school authorities, “a reviewing court may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” *Andrew F.*, 137 S.Ct. at 1002.

Ultimately, a disabled student’s “educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.” *Id.* at 1000. Moreover, the IEP must be reasonably calculated to allow a child to advance from grade to grade, *if that is a “reasonable prospect.” Id.* (emphasis added).

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 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. The IDEA mandates that the school system segregate disabled children from their non-disabled peers only when the nature and severity of their disability is such that education in general classrooms cannot be achieved satisfactorily. 20 U.S.C.A. § 1412(a)(5)(A); *Rowley*, 458 U.S. at 181 n.4; *Hartmann v. Loudoun Cty. Bd. of Educ.*, 118 F.3d 996, 1001 (4th Cir. 1997); *see also Honig v. Doe*, 484 U.S. 305 (1988).

Because including children with disabilities in regular school programs may not be appropriate for every child with a disability, the IDEA requires public agencies like MCPS to offer a continuum of alternative placements that meet the needs of children with disabilities. 34 C.F.R. § 300.115. The continuum must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, and make provision for supplementary services (such as resource room or itinerant instruction) 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).

Maryland law provides parents of students with disabilities the right to refuse their child’s assignment to a certificate program. A local education agency like MCPS may, as here, challenge the parents’ refusal of consent by pursuing a due process complaint as provided under the IDEA and Maryland law. Md. Code Ann., Educ. §§8-405(g)(1), (3); 8-413(a)(3); and 8-413(d)(2).

Analysis

The key issue in this case is whether MCPS may provide a FAPE to the Student by enrolling him in a certificate program rather than a diploma-granting program, overriding the Parents’ refusal to consent to the █████ programming, a remedy available pursuant to Md. Code Ann., Educ. § 8-405(g)(3). I shall not “substitute [my] own notions of sound educational policy for those of the school authorities which [I] review.” *Andrew F.*, 137 S.Ct. at 1001 (citing *Rowley*, 458 U.S. at 206). But I “may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” *Andrew F.*, 137 S.Ct. at 1002.

In Maryland, the MSDE has provided explicit guidance to local school districts on how to make the type of placement/programming decision at issue in this case. (MCPS-15: *Guidance for IEP Teams: Participation Decisions for the Alternate Assessments and Instruction Using Alternate Standards*, April 1, 2019 (MSDE Guidance)). The MSDE Guidance establishes four criteria—all of which must be satisfied to place a student in a certificate program. Those four criteria, discussed in detail below, are: (1) the student has a current IEP, (2) the student has a significant cognitive disability, (3) the student is learning content with grade-level curriculum significantly modified in order for the student to access knowledge and make progress, and (4) the student requires extensive, direct, repeated, and individualized instruction to achieve measurable gains in the grade and age-appropriate curriculum. (MCPS-15, pp. 14-15). The MSDE Guidance includes an Appendix A listing the Participation Criteria and Checklist, on which the IEP team may check off and identify the evidence the team relied on to support each of the criteria.

For the reasons that follow, I conclude that MCPS properly applied the MSDE Guidance by (a) reviewing student records and important information across multiple school years and settings (e.g., school, home, community) and (b) determining that the Student met all the criteria for participating in the alternate assessments and/or alternate instructional standards as outlined in the MSDE Guidance. (MSCPS-15-2).

The credible and persuasive testimony of the three MCPS witnesses showed that the Student does not have the cognitive capability necessary to access the grade level curriculum and achieve a high school diploma. Despite extensive supplemental aids and special education services, the Student is unable to access the middle school grade-level curriculum, either with or without curricular modifications. Though he has relative ability and strength in the rote memorization of letters and numbers, he has severe deficits in academic performance. Though he

is in the seventh grade, his academic performance is at the pre-K or K level. He is also far less advanced compared to his typical peers in adaptive functioning, (e.g., activities of daily life such as communication and self-management).

The Student's mother fervently argued that the Student should remain on track for a high school diploma. She argued that MCPS has misdiagnosed her son as intellectually or cognitively disabled. She relied heavily on videos of the Student attempting to read a medical text and an eighth-grade narrative about Bill Gates. The MCPS witnesses persuasively testified, however, that the Student was prompted in the videos and often just repeated words his mother spoke. My own observations of the videos showed the Student reading haltingly, often repeating words after prompting or, in some cases reading words with no indication that he comprehended the text. Moreover, the MCPS witnesses persuasively testified that Dr. [REDACTED]'s so-called "ABC" reading method is not an evidence-based method of reading instruction. In any event, the Parent's method used at home has not resulted in the Student's reading level rising above Pre-K or K level. I was also not persuaded that the multi-sensory instruction that MCPS has attempted with the Student causes him to become hypnotized or dizzy, as Dr [REDACTED] argued.

MCPS Established Criterion 1: The Student Has a Current IEP

The first criterion under MSDE's [REDACTED] Guidance is: "The student has a current Individualized Education Program (IEP) that includes specially designed instruction comprised of accommodations, evidence-based practices, program modifications, personnel support, and evidence the student cannot access the general education standards despite ongoing interventions." (MCPS-14, underlining in original).

The Appendix A checklists completed successively by the May 6, 2020; April 27, 2021; and June 3, 2022 IEP teams are MCPS-72, MCPS-2 and MCPS-10, respectively. The Student's most current (September 8, 2022) IEP is MCPS-18. The Student's IEP includes a comprehensive

list of current levels of performance with respect to academics and behavior; numerous supplementary aids, services, program modifications and supports; transition plans and goals; and goals and objectives for academics and adaptive skills.

The IEP provides two thirty-minute sessions of speech-language services per month; fifteen minutes quarterly of (OT) services; self-contained classroom instruction for ELA (English Language Arts), math, science, social studies, art, music, PE, and flex period); lunch and recess in an inclusion setting with support; a “chewy” and other supplementary learning aids. (MCPS-1; MCPS-20A, pp. 47-48).

MCPS used evidence-based instructional methods in attempting to teach the Student reading and math, and program modifications, resource classes, instruction in reach-back skills, scaffolding (breaking up learning into chunks and providing a tool or structure with each chunk), a one-on-one paraeducator every day; instruction by special education teachers; and speech services.

MCPS’s evidence showed that the Student cannot access the general education standards despite ongoing interventions as required to meet Criterion 1. Specifically, the IEP’s progress notes document his substantial lack of progress in meeting his academic goals. (MCPS-20) His report cards show he failed every subject except his special education resource class.

(MCPS-22). His present levels of academic achievement and functional performance show he is at the pre-K or K level in reading and math. (Section II of MCPS-20A, MCPS-20B, and MCPS-20C). His teachers’ reports show he is consistently not accessing the grade level curriculum due to his academic deficits. (MCPS-21) His MAP scores on reading and math were in the first percentile. (MCPS-23). And his state-wide assessment scores were at the level one, the lowest score in a scale of one to five. (MCPS-24).

These data establish overwhelmingly that despite the interventions included in his IEP in the form of resource classes, specially designed instruction, chunking, a visual schedule, sentence starters and frames, a grid sheet for math, and other supports, the Student cannot access general education standards. MCPS satisfied its burden of proving that Criterion 1 is satisfied.

MCPS Established Criterion 2: The Student Has a Significant Cognitive Disability

This criterion is defined in the MSDE Guidance as: “The student has a significant cognitive disability that impacts intellectual functioning and adaptive behavior. A significant cognitive disability is pervasive and affects learning across all content areas, independent functioning, community living, leisure, and vocational activities.” (MCPS-15-14). The MSDE Guidance further explains this criterion:

The student has a “significant cognitive disability.” A review of student records indicates a disability or multiple disabilities that significantly impact cognitive functioning and adaptive behavior. Adaptive behavior is defined as a collection of behaviors, including conceptual, social, interpersonal, and practical skills, essential for someone to live independently and to function safely in daily life. A significant cognitive disability is pervasive and affects learning across all content areas, independent functioning, community living, leisure, and vocational activities.

Having a significant cognitive disability is not determined by just an IQ score, but rather a holistic understanding of a student. The term “significant cognitive disability” is a designation given to a small number of Maryland students with disabilities for purposes of their participation in the statewide assessment program and instruction. Students eligible to be assessed and/or instructed based on alternate academic achievement standards may be from any of the disability categories listed in the IDEA. 34 CFR 200.1(f)(2).

When IEP teams are making a decision as to whether a student is a student with a “significant cognitive disability” for participation in the alternate assessment and/or alternate instructional standards, IEP teams must review and discuss multiple sources of information for evidence of a significant cognitive disability including for example, psychological assessments, assessments of adaptive skills, classroom observations, and formal and informal assessment data. The IEP team must also document why the general curriculum and assessments are inappropriate even with

accommodations; how the student will be assessed; and why the alternate assessments and/or instructional standards are appropriate. COMAR 13A.05.01.09A(1)(g).

(MCPS-15, pp. 3-4).

MCPS presented the following substantial, credible, and persuasive evidence that the Student has a significant cognitive impairment: results of individual cognitive ability tests; results of adaptive behavior skills assessments; results of individual and group-administered achievement tests; results of informal assessments; results of individual English/language arts, science, and math assessments; and results of language assessments including English Learner (EL) assessments. As discussed below, the Parent disputed that the Student has either a significant cognitive disability or an intellectual disability.

a. Cognitive Disability That Impacts Intellectual Functioning

Dr. [REDACTED]'s September 10, 2017 psychological report revealed the Student's scores on the WISC-V, a commonly used measure of cognitive ability, were in the "extremely low range," corresponding to the 0.1 percentile or lower as compared to his same-age peers. While a significant cognitive disability (rather than intellectual disability) must be shown to meet Criterion 2, Dr. [REDACTED] also found that his cognitive and adaptive skills consistently fell in the range of intellectual disability, a finding that reinforces the conclusion that he has a significant cognitive disability.

More recently, MCPS school psychologist [REDACTED] assessed the Student over three days in November and December 2021. Ms. [REDACTED], whom I found to be a straightforward, dispassionate, and credible witness, reported that his overall performance on the WISC-V, UNIT-2, CTONI-2, and ABAS-III measures of cognitive functioning were consistently well below age expectations. His performance consistently fell within two standard deviations or more

below the average range as compared to same-age peers. (MCPS 30). Ms. [REDACTED] assessed his full-scale IQ as 40, which is less than the first percentile. (MCPS-30-9, [REDACTED] Test.).

Ms. [REDACTED] opined that the Student is able to learn, but not currently at middle school grade level. He was at the Kindergarten level across all areas measured. She assessed that his cognitive disability is “severe” on a scale of mild, moderate, severe, and profound. She based the assessment on the amount of support he needs, his limited understanding of written language, that his speech is limited to two-to-three-word utterances, and his difficulty with math concepts like time, money, and quantity.

Ms. [REDACTED] also found the Student’s adaptive skills were in the “severe” disability category. Her observations during the assessment were consistent with her findings, indicating significant needs requiring accommodations and support to address his understanding of and attention to tasks and activities. While Ms. [REDACTED] found the Student showed a relative strength in use of community, personal and health care, home living, and social skills, she observed significant weakness in the conceptual domain (communication, functional academics, and self-direction. She found this assessment confirmed the diagnosis of intellectual disability, given the Student’s significantly subaverage cognitive functioning concurrent with deficits in adaptive functioning in the conceptual domain, which require significant support and modifications in the educational environment. (MCPS-30-11).

In December 2021, when the Student was in sixth grade, his special education teacher [REDACTED] assessed him as in the pre-K level for reading and comprehension, and the Kindergarten level for math. Her findings were supported by his very low scores on his most recent Woodcock-Johnson tests of academic achievement in reading and math. (MCPS-35).

The Student’s December 2021 performance on the Burns and Roe Informal Reading Inventory was at the “Frustration” level. He was unable to read the comprehension passage. He

was readministered the Burns and Roe instrument in August 2022. His performance was assessed again at the “Frustration” level. He could not read a Pre-Primer passage. He was able to recall nineteen out of the twenty-six letters. (MCP- 25).

His classroom-based academic assessments showed he did not perform at a level required to meet grade level standards. *See* (MCPS-27 (the Student scored 0 out of 15 correct on math end-of-unit test); MCPS-28 (the Student scored 4 out 10 correct, but consistently and apparently randomly selected the last answer choice on each question); and MCPS 29 (the Student pointed, seemingly at random, to answer choices on a science test concerning photosynthesis and respiration, without any apparent understanding of the science concepts).

The Student’s December 2021 speech-language assessment showed he has weaknesses in expressive and receptive language, social interactions, and articulation. His speech was generally in one-two word utterances with the exception of common three-word phrases that he uses. (MCPS-42).

His sixth grade 2022 WIDA English language proficiency test (given to students who are at home with two languages) was at level one out of six levels. (MCP- 41). ██████████, an MCPS special education instructional specialist, persuasively opined that because it takes five years to develop English proficiency, the Student’s low WIDA score was the result of a cognitive disability, rather than the result of the Student’s living with parents who are bilingual in English and ██████████. (██████ Test.). I find Ms. ████████’s opinion in this regard was supported by the Student’s mother’s testimony that English is the Student’s primary language. Ms. ████████ also persuasively testified that the Student’s significant cognitive impairment affects all content areas, i.e., is “pervasive,” as the MSDE Guidelines require.

b. Cognitive Disability That Impacts Adaptive Functioning

A finding of significant cognitive disability under the MSDE Guidelines requires a disability that significantly impacts both cognitive functioning as well as adaptive behavior. The Student's cognitive functioning was discussed above. Adaptive behavior is a collection of skills needed for daily living, including basic functional communication, and self-care.

In addition to the Student's "extremely low" scores on the ABAS adaptive behavior assessments (MCPS-31, pp. 8-10), MCPS presented the testimony of [REDACTED], a [REDACTED] special education resource teacher, concerning his adaptive functioning. She credibly testified that the Student receives a visual (picture) schedule because he is unable to use the printed schedules his peers receive that lists the course name and room number. Yet, he cannot follow the picture schedule independently. He has a toileting schedule because he does not or cannot verbalize to staff that he needs to go to the bathroom. He has had toileting accidents. He does not say that his pants are wet or that he "pooped" until staff notices. ([REDACTED] Test.). He goes to the bathroom in the health room with staff waiting outside. He is cued from outside the bathroom to pull up his pants and wash his hands with soap and water. He cannot manipulate pants with a zipper, button, or snap, but can manage elastic pants. He can ambulate but he cannot navigate the school building independently, needing assistance to locate room assignments. He cannot follow a fire drill without prompting by staff.

He puts non-food items in his mouth. (MCPS-61). At lunch he takes his food out and then puts it back in his lunch box without eating it, rarely eating his lunch at school. He can unzip his lunch box. Dr. [REDACTED] credibly and persuasively opined that the Student cannot perform typical seventh grade tasks. She views his adaptive functioning behavior as at the Pre-K or K level.

c. The Parent's Denial That the Student Has A Significant Cognitive Disability

Dr. ■ denied the Student has a significant cognitive disability. She testified that MCPS has misdiagnosed her child as having either a cognitive or intellectual disability. She testified he has no underlying genetic condition or disease that could have caused or predisposed him to cognitive or intellectual disability. She noted that she and many members of her family are doctors or other persons of high intellectual accomplishment. She noted that MCPS did not present expert testimony from a physician to support its contention that the Student has a significant cognitive disability. She stated that writing is difficult for the Student because of his muscle tone, and that MCPS failed to recognize his need for glasses (which, she noted, he frequently loses). She stated he has “tongue tie” which she believed could affect his speech and pronunciation.

Dr. ■ further testified that she believes her “ABC” reading method, in which she spells and says a word, and has the Student repeat the word until he memorizes it, is superior to MCPS’s use of the method referred to colloquially as the “Ah Bah Cah” multisensory method, in which students are taught to sound out words with reinforcement such as tapping different parts of their body as each letter’s sound is spoken. She believes that multisensory learning techniques can hamper the Student by hypnotizing or making him dizzy. She learned complex medical school vocabulary with her method and believes it is a better method than the special education reading methods employed by MCPS. She testified she learned with the ABC method and so should the Student. Dr. ■ noted that the Student missed most of his PE classes which were scheduled in the first period. She drops him off at school at a certain time and believes that excellence in athletics is inversely proportional to intellectual ability. She believes the Student is intellectually gifted and does not need excellent athletic ability.

Dr. [REDACTED] also relied on a journal article, Michael J. Maiorano and Marie Tejero Hughes, “Teaching Word Recognition to Children with Intellectual Disabilities,” 4 International Education Research 14-30 (2016) (P-37), to support her argument that MCPS should be using her reading instruction method. The Parent’s reliance on the article is misplaced for several reasons. The small study sample in the article consisted of three children with Down syndrome. The Student does not have Down syndrome. The three children in the study had mild intellectual disability. Ms. [REDACTED] assessed the Student’s cognitive disability as severe. The Student’s IQ score was 40. The three children in the study had IQ scores ranging between 69-55.

Ms. [REDACTED] read the article and opined credibly that the study does not support the Parent’s reading instruction approach. The study used a reading instruction technique known as “constant time delay,” a prompting procedure that was used to teach phonics. When a study participant got an answer wrong the teacher would give a few second time delay and have the student restate and continue. The results of the study suggested that the decoding strategy and time delay procedure may be effective in instructing children with intellectual disability who are having a difficult time blending words together to read words, but additional supports are warranted. (P-7-14). Ms. [REDACTED] noted that the article concerned phonics, which is sounding out or automatic word recognition. The study did not involve prompting with the word’s letters, which is the Parent’s preferred reading instruction methodology. The authors of the article noted that “generalizing the results of the present study to all children with Down syndrome or to a more heterogeneous group of children with Down syndrome should be done with caution.” (P-37-26). Considering these differences between the study (e.g. the small study population all had Down syndrome and IQ scores higher than the Student’s and the study involved a different methodology than the Parent’s) I conclude the article supports neither the Parent’s instructional method nor her contention that [REDACTED] instruction would be inappropriate for the Student.

The Parent argued that Ms. [REDACTED] did not check the Student's vision, did not evaluate whether he is gifted or not, and did not try phonics with him. She testified that the videos she submitted of the Student show that he can learn hundreds of words in a short time, and can remember entire paragraphs, which is why he did not look at the text in the medical videos. She testified that MCPS did not make significant modifications to the Student's instruction after viewing her videos. She stated he needs a "master" teacher or professor in a particular field to teach him effectively, similar to the professors she had in medical school. She attributed his lack of progress in sixth and seventh grade to having the same teacher, Ms. [REDACTED], in those grades.

Dr. [REDACTED] further argued that the Student's adaptive behavior is "fine." When he had appendicitis, he pointed to his belly button area when the doctor asked him where it hurt. The videos show him driving a golf cart and safely going on amusement park rides. He was able to find his missing coat where he left it in a school room. At home he retrieved important tax and insurance documents for his parents. When his mother mistakenly picked up a dog leash instead of an exercise band at [REDACTED], the Student brought her the correct item. He is kind and feels other people's pain, which she believes is evidence of high intelligence because cruel people commit crimes and wind up in jail. He is able to enter the passcode in his mother's phone and understood which button to push in the car to adjust the mirror. She said he understood a lawyer's biographical entry and that lawyers charge fees. She indicated that there are medical reasons (which she did not specify) to explain his toileting behavior, which she said is fine. She strongly believes he should stay in the general education track so he will obtain a diploma and have a chance to go to college or university. She sent emails to MCPS in which she asserted that the Student is not intellectually disabled, has shown great intelligence, and that she would not consent to the non-diploma track. (e.g., P-19A, P-35C, and P-35E).

The Parent's testimony was dramatically at odds with MCPS's voluminous evidence that his academic and adaptive functioning are far below grade-level. Having weighed the parties' conflicting evidence and arguments as to whether the Student has a significant cognitive disability as defined by the MSDE Guidelines, I conclude that MCPS proved by more than a preponderance of the evidence that he has such a disability. I find MCPS's evidence more persuasive than the Parent's. MCPS's position was based on abundant, convincing, and consistent evidence – both objective as well as subjective evidence—from multiple sources. By contrast, the Parent's evidence (except for the videos) was primarily anecdotal and based on her subjective impressions. I do not suggest that the Parent consciously testified falsely. But she is invested in and motivated to overestimate the Student's cognitive ability.

As to the videos, on which the Parent heavily relied, MCPS argued (and I agree) that to the extent the Student had memorized the passages (as his mother suggested he did), he was not reading the passages, but was instead reciting words from memory with assistance from his mother's prompting. Ms. [REDACTED] retested him with the "Bill Gates Story" by showing him the passage without calling out the letters as his mother often did in the videos. Ms. [REDACTED] found he only recalled the word "in" and could not read the passage. ([REDACTED] Test.).

Dr. [REDACTED] performed memory testing and found the Student was below average for memory, refuting the Parent's contention that he has a superior memory. And to the extent the Parent argued that the videos show he can read at a higher level than Pre-K or K, his substantially below average results on the PARCC and MCAP State and district-wide assessments objectively refute that contention.

The Parent also argued that the Student is academically gifted. But Ms. [REDACTED] testified credibly that the objective cognitive tests she administered would have revealed giftedness but did not do so.

Ms. [REDACTED] convincingly testified that there is no evidence that multisensory instruction causes students to enter a hypnotic trance or become dizzy, as the Parent argued. The Student has failed to make appropriate progress in reading despite the Parent's use at home of her preferred, "ABC" reading method. The Parent's reading approach, despite serving her well in medical school, is not an evidence-based reading instruction method for a child. On the other hand, the instructional modalities favored by MCPS are evidence-based.

The Parent suggested that the Student's lack of progress in reading is due to vision problems. But the Parents never provided a vision report, instead merely alleging that his reading difficulty is vision related. And in many of the videos that the Parent argued supported her belief that the Student is able to read at grade level, he was not wearing glasses.

The Parent argued that the Student's lack of progress was due to his having the same teacher (Ms. [REDACTED]) in the sixth and seventh grades. But the Student has had some different teachers in sixth and seventh grades in addition to Ms. [REDACTED]. All are certified teachers.

I also heavily weighed the agreement of Dr. [REDACTED]'s findings and opinions (from elementary school) and those of Ms. [REDACTED]'s (from middle school) regarding the Student's significant cognitive and intellectual disability. I conclude that MCPS has established the Student has a significant cognitive disability as defined in Criterion 2 that impacts his intellectual functioning and adaptive behavior and is pervasive.

MCPS Satisfied Criterion 3: The Student is Learning Content with Grade Level Curriculum Significantly Modified in Order for the Student to Make Progress

Criterion 3 is defined in the MSDE Guidance as: "The student is learning content derived from the MCCRS [Maryland College and Career Ready Standards] in English/language arts and the Next Generation Science Standards with grade-level curriculum significantly modified in order for the student to access knowledge and skills that allow the student to make progress." (MSDE-15-15).

The three MCPS witnesses testified consistently and credibly that the Student cannot access the grade-level curriculum even with significant modifications. Ms. ■ explained that MCPS significantly modified the curriculum by providing extensive accommodations and supplementary aids and services in an effort to make the curriculum accessible to the Student. For example, MCPS 46-1 is a full page of such modifications for a lesson on the area of parallelograms. He was also provided specialized instruction. Nevertheless, as shown on his workpaper, even with assistance and a calculator, he could not write an equation. He simply scribbled on his paper. (MCPS 46-5). On another exercise, he was given grid paper with geometric shapes (square, rectangle, and triangle) superimposed and was unable to count the grid squares to determine the area of the shapes. (MCPS 46-6). Then he was given a paper with dots and asked to count the dots, in an effort to teach him the “reach back,” or Kindergarten-level skill of counting. He was able to count rows of three, ten and eleven dots, but counted a row of eight dots as eighteen dots. (MCPS-46-7).

The Student was provided multiple accommodations and supplemental aids to attempt to access grade level standards for learning fractions of a group. (MCPS 47-1). On the exercise, the answers he wrote (“ $1 \times 2 = 1$ ” and “ $12 \div 5 = [\text{indecipherable}]$ ”) were incorrect, and he was unable to shade a diagram to reflect the problem. (MCPS 47-7). He was unable to access the curriculum. He was able to identify five, two, and six numbers of pictured onions, hats, pizza slices, books, and fans on a fractions worksheet, but misspelled his first name on the back of the worksheet. (MCPS 47-8 and 47-9). He was able to count five pizza slices on another workpaper but could not write the numbers below each slice. (MCPS-47-10). On an exercise about circles he did not color the circles in an array of different shapes. (MCPS 47-12).

On an exercise for determining the price of bagels, despite accommodations and supplemental aids and services he did not correctly answer any of the questions. He could not

access the grade level standard of understanding the concept of a ratio. (MCPS-48-5). On an exercise about simple ratio relationships, he orally counted numbers correctly but did not “get” the ratio. Without a teacher-provided model of his first name, he was not able to write “██████.” (MCPS 48-6; ██████. Test.).

On an exercise about adding, subtracting, and multiplying decimals (a grade level assignment), despite the accommodations (key words underlined, equations provided, “read-to,” a calculator, and extended time), the Student could not answer any of the questions. Instead, he said, “go home,” “I love PE,” and “done,” phrases he says when instruction is too difficult. He punched random numbers into the calculator, threw it on the table, and pushed it away. (MCPS-49-7; ██████ Test.). Similar inability to access the grade level curriculum despite modifications is also evidenced in additional workpapers. *See* MCPS-49-8; MCPS-49-10; MCPS-49-13; MCPS-50-9; MCPS-51-2; MCPS-50-5; ██████ Test.). His response to iReady math intervention with face-to-face lessons was at the Kindergarten level. (MCPS-55; ██████ Test.). He was not able to access the curriculum despite attempts to teach him reach-back skills.

A teacher observed his adaptive behavior during an outdoor scavenger hunt science lesson: he could not keep up with other students as he tripped on rocks and almost walked into a tree. One time in class he lifted his COVID mask repeatedly to pick his nose, ignoring requests to stop. (MCPS-51-7).

His performance on English exercises reflects a similar inability to access the grade level curriculum despite modifications and the provision of supplemental aids and services. *E.g.* MCPS 53-5 (he could not punctuate dialogue) and MCPS 54-3 (on a narrative writing exercise he just typed the number one multiple times, did not write any words, and mistyped his first name). On an iReady reading intervention his responses were at a Kindergarten level. (MCPS-56; ██████ Test.).

On Orton-Gillingham reading/writing interventions, he wrote random letters and was not able to encode the target concepts. (MCPS-57-1). On an exercise for adding suffixes to words he could not write the words or identify the phonemes (units of sound in a language). (MCPS-57-6; ■■■ Test.). *See also* MCPS-62 (Spectrum Language Arts workpapers show Student at Kindergarten level for letter and number recognition). (■■■ Test.). His work samples, including from the 2022-2023 school year, for reading and math show that his instruction has been modified to align with his IEP goals in those areas rather than aligning with the higher seventh grade standards. The work samples also show that even with modifications and reach-back standards he could not access the grade-level, general education material.

The conclusion that the Student could not access grade-level material is reinforced by:

- the Student's present levels of academic achievement and functional performance (Section II of MCPS-20A, MCPS-20B, and MCPS-20C), which show he is at the pre-K or K level in reading and math,
- his teachers' reports (MCPS-21), showing he is consistently not accessing the grade level curriculum due to his academic deficits,
- his MAP scores on reading and math (MCPS-23), which were in the first percentile, and
- his state-wide assessment scores (MCPS-24), which were at level one, the lowest score in a scale of one to five.

In sum, the evidence shows by more than a preponderance that despite substantial modifications to his curriculum the Student, who is performing at the Pre-K or K level, is unable to access grade-level general education standards. The evidence satisfied Criterion 3.

MCPS Satisfied Criterion 4: The Student Requires Extensive, Direct, Repeated, and Individualized Instruction and Substantial Supports to Achieve Measurable Gains

The MSDE Guidance defines Criterion 4 as:

The student requires extensive, direct, individualized, and repeated instruction and substantial supports to achieve measurable gains in adapted and modified curriculum aligned with grade level content standards. The student's needs for extensive, individualized, repeated, and direct instruction is not temporary or transient. His or her need for substantial adaptations and supports in order to access and achieve linked grade and age-appropriate standards requires

substantially adapted materials and customized methods of accessing information in alternative ways to acquire, maintain, generalize, demonstrate, and transfer skills across multiple settings”

(MCPS-15-4).

The evidence supporting this criterion largely overlaps with the evidence showing that MCPS satisfied the first three criteria. The Student has *continuously* required specialized instruction and supports, as shown by Dr. [REDACTED]’s reports from 2016 and 2017, Ms. [REDACTED]’s recent evaluations, his work samples, IEP progress notes, and IEP Present Levels show that MCPS tried many different ways to enable him to meet grade level standards. Despite many interventions the Student cannot achieve measurable gains in the grade level, age-appropriate curriculum. I conclude that in addition to satisfying Criteria 1 through 3, MCPS also satisfied Criterion 4, the last criterion.

Having found MCPS showed all four [REDACTED] criteria have been satisfied, I will order that the Parents’ refusal to consent to [REDACTED] is overridden. MCPS may provide FAPE pursuant to the [REDACTED] standards and assessment, which it “reasonably calculated [would] enable [the Student] to make progress appropriate in light of [his] circumstances.” *Andrew F.*, 137 S.Ct. at 1002. The Student’s circumstances include his significant cognitive impairment and his need for [REDACTED] considering his current lack of progress and his deficits in academics and adaptive behavior. [REDACTED] instruction is not available at [REDACTED] but is available at the nearby [REDACTED] Middle School.

Under these circumstances, I further conclude that the Student’s placement in the [REDACTED] [REDACTED] program at [REDACTED], a comprehensive middle school providing at least some opportunities for inclusion for [REDACTED] students, is reasonably calculated to provide FAPE in the least restrictive environment. The IDEA provides:

To the maximum extent *appropriate*, children with disabilities, including children in public or private institutions or other care facilities, are educated with

children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs *only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.*

20 U.S.C.A. § 1412(a)(5)(A) (emphasis added).

The record in this case manifestly demonstrates that the Student is not making appropriate progress in the grade-level standards despite MCPS's provision of intensive, multi-faceted supplementary aids and services. Removal of a child from a regular educational environment may, as here, 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).

It would be inappropriate for MCPS to wait until the Student starts high school before beginning to educate him under the [REDACTED] standards. The IEP team's various strategies, interventions, and assessments have not led to appropriate progress and the general education curriculum is getting harder and harder for him to access. He is in great need of acquiring functional academic and adaptive skills that have eluded him at [REDACTED]. Waiting further before providing needed [REDACTED] instruction will only exacerbate his deficits in those areas. Considering his inability to access the general education curriculum, MCPS properly proposed [REDACTED], to comply with its obligation to provide the Student FAPE.

Andrew F. considered the extent to which courts should accord deference to educational programming decisions made by public school officials. The Court wrote that "deference is based on the application of expertise and the exercise of judgment by school authorities. ... A reviewing court may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make educational progress appropriate in light of his circumstances." 137 S. Ct. at 1001-02. A judge

“should be reluctant . . . to second-guess the judgment of education professionals.” *Tice v. Botetourt Cty. Sch. Bd.*, 908 F.2d 1200, 1207 (4th Cir. 1990).

I find MCPS’s explanation of its decision was both cogent as well as directly responsive to the Student’s unique circumstances. Therefore, I will not substitute my judgment for that of the MCPS educators. Moreover, even if I did not accord deference to the judgment of the MCPS educators, it is my independent judgment that MCPS’s proposed placement of the Student in the [REDACTED] Program at [REDACTED] would provide the Student FAPE in the least restrictive environment.

MCPS’s Recommendation for Placement of the Student at [REDACTED] Middle School in the [REDACTED] ([REDACTED]) [REDACTED] Program

As previously noted, MCPS proposed that the Student receive instruction under [REDACTED] assessments and standards in the [REDACTED] Program at [REDACTED]. (MCPS 12-1). [REDACTED] is a comprehensive MCPS middle school located close to [REDACTED]. [REDACTED] offers both the [REDACTED] program and the [REDACTED] ([REDACTED]) [REDACTED] program. [REDACTED] does not offer either [REDACTED] or [REDACTED]. As also previously noted, [REDACTED] program services “are designed for students with severe or profound intellectual disabilities and/or multiple disabilities.” (MCPS 17-2). Students in the [REDACTED] program typically have “significant needs in the areas of communication, personal management, behavior, and socialization.” (*Id.*). The [REDACTED] program emphasizes individual instruction, using [REDACTED] programming aligned with the curriculum in comprehensive schools and related community and work environments. However, the content may not fully represent grade-level content and may be substantially modified. (MCPS-15-10). The [REDACTED] program employs age-appropriate classes, heterogeneous groupings, peer interactions, specialized instruction, community-based instruction, and career readiness. “The goal of the program is to prepare students in transition to post-secondary opportunities upon graduation with a certificate from the school system.” (*Id.*).

Ms. [REDACTED] testified that as between the [REDACTED] and [REDACTED] [REDACTED] programs, [REDACTED] is appropriate for the Student. [REDACTED] focuses more than [REDACTED] on developing independent life skills, following a routine, navigating the school building, toileting, communication (including if a student is not feeling well), and safety skills (not putting a fork in the microwave, turning off the stove, etc.). [REDACTED] is for students with mild or moderate intellectual disability. [REDACTED] is for students with severe or profound intellectual disability. The Student has been assessed as severely intellectually disabled. Students in [REDACTED] are able to navigate the school building with support in the hallway but are able to use their locker. The Student needs a higher level of support, which [REDACTED] would provide.

[REDACTED] teaches math to develop practical skills like using money. [REDACTED] students have more life skill needs. In [REDACTED], the Student would still receive academic instruction, but it would be aligned to practical skills like following directions, communicating, and navigating the community. Ms. [REDACTED] testified that in the [REDACTED] track, the pace of instruction would slow down, provide multiple entry points, and focus on key components instead of the entire breadth of the general education curriculum. While [REDACTED] is more restrictive than [REDACTED], it is not the most restrictive [REDACTED] program. The other [REDACTED] programs MCPS offers are for students for autism or serious behavioral issues. MCPS rejected these programs because the Student is not autistic and does not demonstrate serious behavioral issues.

Both [REDACTED] and [REDACTED] have opportunities for inclusion. [REDACTED] students are included for lunch, electives, special events, and some transitioning from room to room. [REDACTED] students, however, have flexible schedules, and inclusive opportunities for science and social studies. Ms. [REDACTED] explained that the IEP team determined that the [REDACTED] [REDACTED] program is the most appropriate programming considering the Student's current profile. At each annual review or more frequently, however, the Student could be moved from [REDACTED] to [REDACTED], as both are housed at [REDACTED]

■■■■. He might also participate in a split situation between ■■■■ and ■■■■. (■■■■ Test.). While the majority of ■■■■ students stay in ■■■■, students have been moved from ■■■■ and back to grade-level instruction.

Students who receive certificates of completion are not automatically foreclosed from college or community college, but may need to take non-credit bearing courses if they do not have SAT scores. They cannot go directly from high school to a four year college or the military, but with a certificate they can participate in vocational training, job coaching, trade school, or sheltered employment.

Ms. ■■■■, the MCPS school psychologist, concurred in the recommendation for ■■■■. She has evaluated students in both the ■■■■ and ■■■■ ■■■■ programs. She observed both the ■■■■ and ■■■■ programs at ■■■■. She observed the ■■■■ students using visual schedules, learning functional reading about the weather, days of the week, and how one would dress. They were working on material that is functional. There was a high teacher-to-student ratio and many visuals were made part of the instruction.

She assessed the Student's cognitive disability as severe, based on the extensive amount of support he needs in academics and adaptive functioning. She noted that typical IQ scores for ■■■■ students fall in the 60s, while the Student's score was 40. Ms. ■■■■ explained further that ■■■■ students do not require the level of support the Student needs to function independently in school. They can get to the bathroom, use laptops, play a game like UNO, move from classroom to classroom independently, write simple sentences and follow a recipe. ■■■■ would be more appropriate for the Student's current level of functioning than ■■■■. She noted that both ■■■■ and ■■■■ students receive phonics and sight word instruction.

Dr. [REDACTED] strenuously disagreed with the recommendation for [REDACTED] programming at [REDACTED]. She asserted the Student has been misdiagnosed as cognitively and intellectually disabled. She testified he does not need to focus on acquiring life skills. She testified he is totally different from [REDACTED] or [REDACTED] students. She said [REDACTED] and [REDACTED] students only learn one page of sight words. The Student, she testified, can read complex medical books. She argued the MCPS witnesses have insufficient information about [REDACTED] and [REDACTED]. She argued that the Student should remain in the general education setting.

I was persuaded that MCPS's evidence outweighs that of the Parent and conclude that placement of the Student at [REDACTED] in the [REDACTED] [REDACTED] program would offer the Student FAPE in the least restrictive environment.

Contentions Raised in the October 13, 2022 Response to the Due Process Complaint

For completeness, I next address in turn each point raised in the Response filed by the Student's former attorney, Mr. Steedman, before he withdrew as counsel of record in this matter. The Parent incorporated the Response in her closing argument.

The evidence does not support the Response's contention that "[t]he Student is capable of learning grade-level material with appropriate instruction." (Response, ¶ 2). The record shows he is capable of learning, but not at grade level at this time.

The record does not show that he "should be able to remain on track to receive a Maryland High School Diploma." (Response, ¶ 3). To the contrary, the evidence shows the Student is at a frustration level on the diploma track and his frustration will likely increase as the middle school and high school general education standards escalate to higher levels of difficulty, he will likely be unable to meet.

The record does not show that “[a]t 12 years of age, it is too early to make the decision to transfer the Student to the Maryland [REDACTED] (‘[REDACTED]’).” (Response, ¶ 4). I find that delaying [REDACTED] programming further will only exacerbate the Student’s academic and adaptive functioning deficits and would deny FAPE.

The record does not show that “[t]he Student should be able to remain with his non-disabled peers in the General Education Environment.” (Response, ¶ 5). To provide FAPE he needs to be educated pursuant to [REDACTED] instructional standards that are unavailable at [REDACTED] but are provided at [REDACTED] where, moreover, he would experience at least some level of inclusion with non-disabled peers.

The Response’s bald allegation that “MCPS did not follow procedures under the [IDEA]” lacks evidentiary support and does not identify any violation of the IDEA’s procedural requirements. (Response, ¶ 6).

The Response asserts that “MCPS failed to provide adequate instruction to the Student in accordance with the IDEA.” (Response, ¶ 7). But this is *not* a case in which parents or a student filed a due process complaint against MCPS for allegedly not providing adequate instruction or FAPE. Here, MCPS has filed a due process complaint to override the Parents’ refusal to consent to [REDACTED]. The issue here is whether—viewed prospectively, not retrospectively—MCPS may now offer FAPE to the Student under [REDACTED] standards and assessments.

The record does not support the Response’s claim that “MCPS failed to adequately implement the Student’s [IEP].” (Response, ¶ 8). No such failure was identified. In fact, the Parents refused to consent to the IEP’s recommended [REDACTED] placement.

The record does not support the Response’s assertion that “[t]he [REDACTED] and [REDACTED] programs recommended by MCPS are not the Least Restrictive Environment”) is not supported by the evidence or the law. (Response, ¶ 9). I have found that under the Student’s particular

circumstances, MCPS's proposed placement at [REDACTED] for the [REDACTED] program is reasonably calculated to provide FAPE in the least restrictive alternative.

There is no evidence to support the Response's claim that "MCPS has acted in bad faith." (Response, ¶ 10).

The record does not support the Response's assertion that "MCPS improperly administered an assessment to the Student without receiving parental consent." (Response, ¶ 11). This claim was not developed at the hearing. The evidence does not identify any assessment that MCPS improperly administered without parental consent.

The Response's assertion that the proposed [REDACTED] placement "does not offer special education services in the Least Restrictive Environment as required by IDEA and Maryland law" is repetitive and fails. I have found for the reasons set forth above that the [REDACTED] [REDACTED] program MCPS offered is appropriate under the IDEA and Maryland law. (Response, ¶ 12).

Lastly, the Response requests, in the alternative, "a finding that the recommendations made by MCPS are not reasonably calculated to provide a [FAPE] in the least restrictive environment in accordance with the IDEA." (Response, p. 2 (last unnumbered paragraph)). I do not so find. On the contrary, my finding is that under the circumstances of this case MCPS's recommendations *are* reasonably calculated to provide FAPE in the least restrictive environment.

Conclusion

I found all of the witnesses who testified to be credible, in that they each believed in the truth of their testimony. Thus, I focused the analysis on which witnesses and other evidence I found to be more *persuasive*. See *J.P. ex rel. Peterson v. Cnty. Sch. Bd. of Hanover Cnty.*, 516 F.3d 254, 259 (4th Cir. 2008) (finding it proper for an ALJ to accept all witnesses as credible and still find one party's evidence more persuasive than the other's).

For the reasons stated in this decision I conclude that MCPS established overwhelmingly, through voluminous objective as well as subjective evidence, including psychological testing, state and district-wide assessments, classroom observations, teacher reports, report cards, the Student's workpapers, speech and language assessments, and reading interventions, that the Student is eligible for—and needs to be—educated under [REDACTED] assessments and standards if he is to receive FAPE.

I further conclude that considering the Student's circumstances, including his lack of appropriate progress at [REDACTED] and [REDACTED]'s lack of an [REDACTED] program, MCPS's proposed placement of the Student at [REDACTED] for its [REDACTED] program would offer the Student FAPE in the least restrictive environment. I acknowledge the Parent's dismay over the Student's proposed removal from the diploma track. Her testimony was sincere and intense. But as explained above, MCSP's evidence was more persuasive than the Parent's heartfelt, subjective testimony, her videos, and her other evidence.

CONCLUSIONS OF LAW

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

1. MCPS's proposed placement of the Student in an [REDACTED] [REDACTED] ([REDACTED]) program that does not issue or provide credits toward a Maryland high school diploma but rather provides a certificate and identifies him for the alternative education assessments aligned with the State's alternative curriculum, would offer the Student a FAPE in the least restrictive environment and is otherwise appropriate under the IDEA and Maryland law. Md. Code Ann., Educ. § 8-405(g)(3); Individuals with Disabilities Education Act, 20 U.S.C.A. §§ 1400-1482 (2017); 34 C.F.R. § 300.100 (2021); 34 C.F.R. § 300.503 (2021); 34 C.F.R. § 300.507; COMAR 13A.05.01.09A(1)(g); *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S.

386, 137 S. Ct. 988 (2017); *Maryland Guidance for IEP Teams on Participation Decisions for the Alternate Assessments*, April 1, 2019; and

2. MCPS's proposed placement of the Student in the [REDACTED] ([REDACTED]) [REDACTED] program is reasonably calculated to enable the Student to make progress appropriate in light of the child's circumstances and to provide the Student a FAPE in the least restrictive environment, in accordance with the IDEA. Individuals with Disabilities Education Act, 20 U.S.C.A. §§ 1400-1482 (2017); Md. Code Ann., Educ. § 8-405(g)(3); 34 C.F.R. § 300.100 (2021); COMAR 13A.05.01.09A(1)(g); *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 137 S. Ct. 988 (2017); *Maryland Guidance for IEP Teams on Participation Decisions for the Alternate Assessments*, April 1, 2019.

ORDER

I **ORDER** that:

1. MCPS may enroll the Student in an alternative education program that does not issue or provide credits toward a Maryland high school diploma, and identify him for the alternative education assessments aligned with the State's alternative curriculum, which will override the Parents' refusal to give consent to MCPS under section 8-405(g)(3) of the Education Article of the Maryland Code; and

2. MCPS may place the Student in the [REDACTED] ([REDACTED]) [REDACTED] [REDACTED] ([REDACTED]) program at [REDACTED] Middle School.

April 5, 2023
Date Decision Mailed

Robert B. Levin
Administrative Law Judge

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#203840

REVIEW RIGHTS

A party aggrieved by this final decision may file an appeal within 120 days of the issuance of this decision with the Circuit Court for Baltimore City, if the Student resides in Baltimore City; with the circuit court for the county where the Student resides; or with the United States District Court for the District of Maryland. Md. Code Ann., Educ. § 8-413(j) (2022). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence.

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

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

Copies Mailed and/or Emailed To:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**MONTGOMERY COUNTY
PUBLIC SCHOOLS**

v.

**[REDACTED],
STUDENT**

**BEFORE ROBERT B. LEVIN,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH NO.: MSDE-MONT-OT-22-23961**

APPENDIX¹

I admitted the following exhibits offered by MCPS:

- MCPS-1 Prior Written Notice, 4/27/2021
- MCPS-2 Alternate Appendix A: Participation Criteria and Checklist, 4/27/2021
- MCPS-3 Prior Written Notice, 6/3/2021 meeting
- MCPS-4 Prior Written Notice, 7/12/2021 meeting
- MCPS-5 Prior Written Notice, 11/15/2021
- MCPS-6 Prior Written Notice, 2/8/2022 meeting
- MCPS-7 MCPS Intellectual Disability Multidisciplinary Evaluation Form, 2/8/2022
- MCPS-8 Prior Written Notice, 5/17/2022
- MCPS-9 Prior Written Notice, 6/3/2022 meeting
- MCPS-10 Alternate Appendix A: Participation Criteria and Checklist, 6/3/2022 and Appendix D, 6/3/2022
- MCPS-11 Emails between Parent, Parent Attorney, and MCPS, 6/9/2022 to 6/21/2022
- MCPS-12 Prior Written Notice, 9/8/2022 meeting
- MCPS-13 Prior Written Notice, 11/11/2022 meeting

¹ MCPS's and the Parent's exhibits are in the format provided by that party.

- MCPS-14 Maryland State Department of Education, Technical Assistance Bulletin #17-02 Parental Consent Under Maryland Law, 7/24/2019
- MCPS-15 Maryland State Department of Education, Guidance for IEP Teams: Participation Decisions for the Alternate Assessments and Instruction Using Alternate Standards, 4/1/2019
- MCPS-16 MCPS On Track for Graduation, Class of 2027 First year ninth grade: 2023-2024, MCPS Graduation Requirements at a Glance
- MCPS-17 MCPS Programs and Services Locations for Special Education Students 2022-2023- [REDACTED] and [REDACTED] Program
- MCPS-18 IEP, 6/3/2022- Amended 9/8/2022
- MCPS-19 IEP, Amended 11/11/2022
- MCPS-20 IEP goals and objectives pages and IEP progress reports from the 4/27/2021 IEP
- MCPS-20A IEP, 4/27/2021
- MCPS-20B July 2021 Amendment of 4/27/2021 IEP
- MCPS-20C November 2021 Amendment of 4/27/2021 IEP
- MCPS-21 IEP Meeting Teacher Reports, dated between 5/23/2022 and 5/26/2022 and between 10/13/2022 and 10/20/2022
- MCPS-22 MCPS Report to Parents on Student Progress, Grades 6-8, 11/13/2022 and 6/23/2022
- MCPS-23 MAP Growth Student Progress Report, Fall 2022-2023
- MCPS-24 PARCC/MCAP ELA and Math Scores for 2018-2019
- MCPS-25 Burns and Roe Informal Reading Inventory, 8/31/2022 and December 2021
- MCPS-26 MCPS Intellectual Disability Multidisciplinary Evaluation Forms
- MCPS-27 Math Work Sample End of Unit 2 Assessment, 11/12/2022
- MCPS-28 Figurative Language and Poetic Devices Quiz, 11/18/2022
- MCPS-29 Photosynthesis & Respiration Quiz, February 2022, 6th Grade

MCPS-30	MCPS, Report of School Psychologist-Reevaluation, 1/31/2022
MCPS-31	MCPS Report of School Psychologist-Reevaluation Report, 9/10/2017
MCPS-32	MCPS Report of School Psychologist-Reevaluation Report, 6/7/2017
MCPS-33	[REDACTED], Confidential Report of Psychological Assessment, July 2016
MCPS-34	MCPS, Report of School Psychologist-Initial Psychological Assessment for Reevaluation Determination, 6/7/2016
MCPS-35	MCPS Educational Assessment Report, 1/28/2022
MCPS-36	MCPS Educational Status Report, 1/29/2018
MCPS-37	MCPS Informal Educational Assessment Report, 5/30/2017
MCPS-38	not offered
MCPS-39	not offered
MCPS-40	not offered
MCPS-41	WIDA Access for ELLs English Language Proficiency Test, Individual Student Report 2022
MCPS-42	MCPS Report of Speech-Language Reassessment, 12/22/2021
MCPS-43	not offered
MCPS-44	not offered
MCPS-45	not offered
MCPS-46	MCPS Math- Lesson 6: Area of Parallelogram, November 2021
MCPS-47	MCPS Math- Learning Check #2: Division-What Fraction of a Group? 1/27/2021
MCPS-48	MCPS Math-Learning Check – Lesson 2 Table of Equivalent Ratios, 10/9/2021 and 11/9/2021
MCPS-49	MCPS Math- Mid-Unit Assessment – Arithmetic in Base Ten, 2/17/2022
MCPS-50	MCPS Science- Habitat Restoration Project Research, 10/7/2021

MCPS-51	MCPS Science- Biotic & Abiotic Scavenger Hunt, 9/24/2021
MCPS-52	MCPS English, 9/27/2022
MCPS-53	MCPS English- How to Punctuate Dialogue, 9/24/2021
MCPS-54	MCPS English- EWP Narrative Response Sheet, 10/14/2022
MCPS-55	Math Intervention (iReady) work samples, 2022-2023
MCPS-56	Reading Comprehension Intervention (iReady) work samples, 2022-2023
MCPS-57	Orton Gillingham dictation work samples, November and December 2022
MCPS-58	Visual schedule 2022-2023
MCPS-59	Daily toileting schedule, 2022-2023
MCPS-60	Student's resource class job summary, 2022-2023
MCPS-61	Picture 9/28/2021
MCPS-62	Spectrum Language Arts – Focused Practice for Language Arts Mastery, Kindergarten level 2022-2023
MCPS-63	Reading and Math Work samples, 2022-2023
MCPS-64	MCPS Observation Report, [REDACTED], 11/11/2021
MCPS-65	MCPS Observation Report, [REDACTED], 12/19/2022
MCPS-66	not offered
MCPS-67	Emails between Parent and MCPS, 5/3/2021 and 2/17/2022
MCPS-68	not offered
MCPS-69	not offered
MCPS-70	not offered
MCPS-71	not offered
MCPS-72	MCPS Alternate Appendix A: Participation Criteria and Checklist, 5/6/2020

MCPS-73 not offered
MCPS-74 not offered
MCPS-75 not offered
MCPS-76 not offered
MCPS-77 not offered
MCPS-78 Resume of [REDACTED]
MCPS-79 Resume of [REDACTED]
MCPS-80 Resume of [REDACTED]

I admitted the following exhibits offered by the Parent:

- P-1 Report of School Psychologist-Reevaluation, 1/11/2022 (a duplicate of MCPS-30)
- P-2 Email chain between Parent and [REDACTED], et al., May 3, 2021 – February 17, 2022
- P-3 WIDA Individual Student report 2022
- P-4 IEP, 6/3/2022
- P-5 Prior Written Notice, 6/6/2022
- P-6 not admitted²
- P-7 IEP, 9/8/2022
- P-8 IEP Meeting Teacher Reports, undated, marked printed 10/13/2022
- P-9 IEP Meeting Teacher reports, undated, marked printed 10/14/2022 at 1:28 p.m.
- P-10 IEP Meeting Teacher reports, undated, marked printed 10/14/2022 at 8:10 a.m.
- P-12 IEP Meeting Teacher reports, undated, marked printed 10/20/2022
- P-13 IEP Meeting Teacher reports, undated, marked printed 10/24/2022
- P-14 MAP Student Progress Report, Fall 2022-2023

² This exhibit was not admitted because it consisted of one page only of a two-page exhibit already admitted as MCPS-25.

- P-15 Draft IEP, undated
- P-16 Progress Report on IEP Goals (IEP Meeting Date: 6/3/2022)
- P-17 Prior Written Notice, 11/15/2022
- P-18 One-page excerpt from medical text on Diabetes mellitus, undatedP-20
- P-19A – 19D Emails between Dr [REDACTED] and [REDACTED], et al., 8/30/2017, 9/28/2018, 1/31/2022, and 1/30/2022
- P. 20 – [REDACTED]'s Medical Reading Videos Hemoptysis, January 21, 2023
- P. 21 – [REDACTED]'s Medical Reading Videos “Diabetes Mellitus”
January 7 , 2023
- P. 22 – [REDACTED]'s 8th Grade Spectrum Reading Comprehension Videos
 - a. – [REDACTED] 8th Grade Spectrum Reading Comprehension Part 1
June 14 , 2022
 - b. – [REDACTED] 8th Grade Reading Comprehension Part 2
June 16 , 2022
 - c. – [REDACTED]'s 8th Grade Spectrum Reading Comprehension 3
June 2 , 2022
 - d. – [REDACTED]'s 8th Grade Reading Comprehension 4
June 2 , 2022
 - e. – [REDACTED] 8th Grade Spectrum Reading Comprehension Part 5
June 14 , 2022
- P. 23 - [REDACTED]'s 1st Grade Reading Comprehension Videos
 - a. – [REDACTED] first grade reading comprehension 1
February 10 , 2018
 - b. – [REDACTED] first grade reading comprehension 2
March 24 ,2018
 - c. – [REDACTED] first grade reading comprehension 3
April 13, 2018
 - d. – [REDACTED] first grade reading comprehension 4
May 7, 2018
 - e. – [REDACTED] first grade reading comprehension 5
May 22 , 2018
 - f. – [REDACTED] first grade reading comprehension 6
June 2 , 2018
 - g. – [REDACTED] first grade reading comprehension 7
June 16 , 2018
 - h. – [REDACTED] first grade reading comprehension 8
June 26 , 2018

- i. – [REDACTED] first grade reading comprehension 9
June 29 , 2018
- j. – [REDACTED] first grade reading comprehension 10
July 7 , 2018
- k. – [REDACTED] first grade reading comprehension 11
January 19 , 2018
- l. – [REDACTED] first grade reading comprehension 12
March 10 , 2018
- m. – [REDACTED] first grade reading comprehension 13
could not find the video in the phone
- n. – [REDACTED] first grade reading comprehension 14
May 4 , 2018

P. 24 - [REDACTED]'s 2nd Grade Reading Comprehension Videos

- a. – [REDACTED] second grade reading comprehension 1
September 13 , 2018
- b. – [REDACTED] second grade reading comprehension 2
September 21 , 2018
- c. – [REDACTED] second grade reading comprehension 3
October 5 , 2018
- d. – [REDACTED] second grade reading comprehension 4
October 12 , 2018
- e.
 - 1. – [REDACTED] second grade reading comprehension 5a
November 3 , 2018
 - 2. – [REDACTED] second grade reading comprehension 5b
November 3 , 2018
 - 3. – [REDACTED] second grade reading comprehension 5c
November 7 , 2018
 - 4. – [REDACTED] second grade reading comprehension 5d
November 7 , 2018
- f. – [REDACTED] second grade reading comprehension 6
November 27 , 2018
- g. – [REDACTED] second grade reading comprehension 7
December 13 , 2018
- h.
 - 1. – [REDACTED] second grade reading comprehension 8a
January 7 , 2019
 - 2. – [REDACTED] second grade reading comprehension 8b
January 7 , 2019
- i.
 - 1. – [REDACTED] second grade reading comprehension 9a
February 2 , 2019
 - 2. – [REDACTED] second grade reading comprehension 9b
January 30 , 2019

- j.
 - 1. – ██████ second grade reading comprehension 10a
February 18 , 2019
 - 2. – ██████ second grade reading comprehension 10b
February 18 , 2019
- k. – ██████ second grade reading comprehension 11
March 22 , 2019
- P. 25 - ██████'s 3rd Grade Reading Comprehension Videos
 - a. – ██████'s 3rd Grade Reading Comprehension Video 1
November 30 , 2019
 - b. – ██████'s 3rd Grade Reading Comprehension Video 2
November 4 , 2019
 - c. – ██████'s 3rd Grade Reading Comprehension Video 3
September 21 , 2019
 - d. – ██████'s 3rd Grade Reading Comprehension Video 4
September 21 , 2019
 - e. – ██████'s 3rd Grade Reading Comprehension Video 5
September 19 , 2019
 - f. – ██████'s 3rd Grade Reading Comprehension Video 6
August 22 , 2019
- P. 26 – ██████'s 4th Grade Reading Comprehension video
February 25 , 2020
- P. 27 – ██████'s 6th Grade Spelling Videos
November 10 , 2021
- P. 28 - ██████'s Outdoor Activities (Golf cart riding and roller coaster rides)³
 - a. – May 23, 2022
 - b. – May 23 , 2022
 - c. – May 23, 2022
 - d. – May 30 , 2022
 - e. – May 10 , 2022
 - f. – August 20 , 2022
 - g. – August 20 , 2022
 - h. – August 20 , 2022
 - i. – August 20 , 2022
 - j. – August 20 , 2022
 - k. – August 20 , 2022
 - l. – August 20 , 2022
 - m. – August 20 , 2022

³ P-28 includes six pages of hard copy photographs in addition to the videos identified above that are part of P-28.

P. 29 - ██████'s 1st Grade Phonics Reading Videos

- a. – ██████ Driving Video
June 12, 2021
- b. – ██████ Driving Video
June 20, 2021
- c. – ██████ Roller Coaster Ride 1
June 12, 2021
- d. – ██████ Roller Coaster Ride 2
June 12, 2021
- e. – ██████ Water Slide
June 20, 2021

P. 30 - ██████'s 1st Grade Phonics Reading Videos

- a. – ██████'s 1st grade phonics reading video
January 5, 2018
- b. – ██████'s 1st grade phonics reading video
January 5, 2018

P-31 – Email from Dr. ██████ to Wayne Steedman, 5/5/2021

P-32A – 32B – Email from ██████ to Dr. ██████, et al., 5/20/2021 (P-31A), and from ██████ to Dr. ██████, et al., 5/16/2022

P-33 – [Empty file at the Dropbox link for P-33]

P-34A – 34D - Emails from Dr. ██████ to ██████, et al. (P-34A); from Dr. ██████ to ██████, et al., 5/4/2021 (P-34B); from Dr. ██████ to ██████, et al., 5/2/2023; from Dr. ██████ to ██████ et al., 5/2/2021(P-34C); and from Dr. ██████ to ██████, et al., 5/3/2021

P-35A – 35F – Emails from Dr. ██████ to ██████, et al., 11/2/2022 (P-35A); from MCPS Service Now to Dr. ██████, 10/4/2022) (P-35B); from Dr. ██████ to ██████, et al., 6/21/2022 (P-35C); from ██████ to Dr. ██████, 2/8/2022) (P-35D); from Dr. ██████ to ██████, et al., 2/7/2022) (P-35E) and ; from Dr. ██████ to ██████ et al., 2/14/2022 (P-35F)

P-37⁴ Article, “Teaching Word Recognition to Children with Intellectual Disabilities,” by Michael J. Maiorano and Marie Tejero Hughes, published in 4 International Education Research, Vol. 4, No. 2 (2016)

P-38 [Empty file with no content at Dropbox link marked P-38]

P-39 [Empty file with no content at Dropbox link marked P-39]

⁴ The Parent did not submit an exhibit marked P-36.