

██████████,

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE KRISTIN E. BLUMER,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-MONT-OT-22-29029

DECISION

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STATEMENT OF THE CASE

On November 28, 2022, ██████████ and ██████████ (Parents),¹ by and through counsel, filed a Due Process Complaint (Complaint) on behalf of their child, ██████████ (Student) with the Office of Administrative Hearings (OAH), requesting a hearing to review the identification, evaluation, or placement of the Student by Montgomery County Public Schools (MCPS) under the Individuals with Disabilities Education Act (IDEA).²

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

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

On December 22, 2022, I conducted a remote pre-hearing conference (Conference). On January 26, February 3, 7-8, 10, and March 9-10, 2023, I held the hearing remotely.³ Michael J. Eig, Esquire, represented the Student and his Parents. Craig S. Meuser, Esquire, represented MCPS.

Under the applicable law, a decision in this case normally would be due by January 27, 2023, forty-five days after December 13, 2022, the date the parties agreed in writing to waive the resolution meeting.⁴ However, the parties requested hearing dates outside that timeframe.⁵ During the prehearing conference, the parties reviewed their calendars, noting the time needed to exchange documents and dates they were scheduled for other matters.⁶ Based on their schedule constraints, the parties jointly requested an extension of time to hold the hearing and issue the decision, agreeing that the earliest dates that the parties would be able to have all witnesses available, keep the hearing dates reasonably close together, and comply with subpoena procedures and the discovery rule, were January 26, February 3, 7-8, and 10, 2023.

³ By agreement of the parties, the hearing originally was scheduled to conclude on February 10, 2023. On February 8, 2023, the parties agreed to an additional date of February 16, 2023, but on February 10, 2023, the parties agreed to cancel the hearing date scheduled for February 16, 2023, and instead continue on March 9, 10, and 13, 2023. The additional days were scheduled in March because I was on scheduled leave from February 17-24, 2023 and Mr. Eig was out of town to present at a conference from approximately February 20-28, 2023. The hearing concluded on March 10, 2023. At the parties' request, I permitted each to submit a memorandum of points and authorities, without argument, by the close of business on March 13, 2023; each party timely submitted this memorandum as directed.

⁴ 34 C.F.R. §§ 300.510(b)(2), (c), 300.515(a); Educ. § 8-413(h); COMAR 13A.05.01.15C(14).

⁵ 34 C.F.R. § 300.515(c); Educ. § 8-413(h).

⁶ The Conference took place the day before MCPS' winter break began on December 23, 2022, which ended on January 2, 2023, with school resuming on January 3, 2023. Mr. Meuser noted that MCPS had scheduled a Central Individualized Education Program (CIEP) team meeting for the Student on January 20, 2023 and indicated that MCPS preferred to start the hearing after that meeting took place. Mr. Eig stated that the earliest dates in January that he was available for hearing were January 25 and 26, 2023, and indicated that he was available on February 3, 6, 7, and 8, 2023. I had specially assigned matters scheduled for January 25 and February 6, 2023. Mr. Eig had another matter scheduled for hearing on January 28, February 9-10, and 13-17, 2023, but indicated that his co-counsel in that matter may be able to cover that case on February 10 or 13, 2023; he requested additional time to identify which date would work with his schedule. I permitted Mr. Eig to email me no later than December 30, 2022 with a copy to Mr. Meuser identifying whether the last day of hearing would be February 10 or 13, 2023. On December 29, 2022, Mr. Meuser emailed me and stated that he and Mr. Eig had agreed upon February 10, 2023 as the fifth day of the hearing.

The regulations authorize me to grant a specific extension of time at the request of either party.⁷ Based on the availability of the parties, counsel, and witnesses, I found good cause to extend the timeline and schedule the hearing on the hearing dates selected by the parties; I agreed to issue my decision no later than thirty days after the conclusion of the hearing, which in this case would be by April 7, 2023.^{8, 9}

Procedure is governed by the contested case provisions of the Administrative Procedure Act; the Education Article; the Maryland State Department of Education (MSDE) procedural regulations; and the Rules of Procedure of the OAH.¹⁰

ISSUES

1. Did MCPS fail to offer the Student a free appropriate public education (FAPE) for the 2022-2023 school year by failing to propose an Individualized Education Program (IEP) designed to meet the Student's needs?

2. Did MCPS fail to offer the Student a FAPE for the 2022-2023 school year by failing to propose an appropriate placement for the Student?

3. If MCPS failed to offer the Student a FAPE for the 2022-2023 school year, was the placement of the Student at [REDACTED]¹¹ [REDACTED] ([REDACTED]) [REDACTED] ([REDACTED]) appropriate?

4. If the placement by the Parents of the Student at [REDACTED] is determined to be proper for the 2022-2023 school year, should MCPS fund the Student's tuition and related

⁷ 34 C.F.R. § 300.515(c).

⁸ *Id.* § 300.515(a); Educ. § 8-413(h).

⁹ The hearing concluded on March 10, 2023. The thirtieth day thereafter is Sunday, April 9, 2023, so the decision is due no later than Friday, April 7, 2023.

¹⁰ Educ. § 8-413(e)(1); Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 13A.05.01.15C; COMAR 28.02.01.

¹¹ The school's letterhead and other documents sometimes show the school's name as "[REDACTED]" and sometimes "[REDACTED]." I shall use the latter for consistency.

expenses associated with that placement of the Student at [REDACTED] / [REDACTED] for the 2022-2023 school year?

SUMMARY OF THE EVIDENCE

Exhibits

I have attached a complete Exhibit List as an Appendix.

Testimony

The Student's father testified and presented the following witnesses:

1. [REDACTED], Executive Director, [REDACTED], accepted as an expert in special education;
2. [REDACTED], Therapist, [REDACTED], accepted as an expert in social work;
3. [REDACTED], Residential Program Coordinator, [REDACTED]; and
4. [REDACTED], Administrator, [REDACTED] / [REDACTED], accepted as an expert in special education.

MCPS presented the following witnesses:

1. [REDACTED], MCPS School Psychologist, accepted as an expert in school psychology;
2. [REDACTED], MCPS Assistant School Administrator, accepted as an expert in special education;
3. [REDACTED], MCPS Resource Teacher for Special Education, accepted as an expert in special education;
4. [REDACTED], MCPS Instructional Specialist, accepted as an expert in special education and autism services;

5. [REDACTED], MCPS Special Education Instructional Specialist, accepted as an expert in special education;
6. [REDACTED], MCPS Behavioral Specialist, accepted as an expert in special education and behavioral supports; and
7. [REDACTED], Coordinator, MCPS Central Placement Unit, accepted as an expert in special education.

The Student's father, Mr. [REDACTED], and Ms. [REDACTED] testified in the Parents' rebuttal case.

FINDINGS OF FACT

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

Background

1. The Student turned fourteen years old in [REDACTED] 2022.
2. The Student has a history of impulsivity, attention difficulties, inability to regulate his emotions, social difficulties, and aggression.
3. The Student was diagnosed with attention deficit hyperactivity disorder (ADHD) and unspecified anxiety disorder in 2014.
4. The Student attended [REDACTED] Elementary School ([REDACTED]), an MCPS school, from kindergarten through fifth grade (2019-2020 school year).
5. The Student qualified for accommodations under Section 504¹² while at [REDACTED], starting in 2015.
6. The Student received private counseling and treatment from a psychologist and psychiatrist while attending [REDACTED] and took medication for his ADHD and impulsivity.

¹² Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. § 794 (2017).

7. The Student's mother was diagnosed with cancer in 2017 and was in and out of treatment through 2020. At the time of the hearing, she was in good health.

8. The Student refused to attend school in Spring 2019. Consequently, the Parents placed him in a day program at [REDACTED], where he got into a fight with another student; staff placed the Student in an inpatient program for five days as a result. The Student ultimately transitioned back to [REDACTED] and completed the school year.

9. On February 6, 2020, during the Student's fifth grade year, MCPS conducted a Functional Behavior Assessment (FBA) and identified the following concerning behaviors: (1) physical aggression (pushing, hitting, punching, kicking) and verbal aggression (threats, name-calling, explicit language), "with multiple events occurring quickly and in succession" and (2) physical manifestations of anxiety, such as stomach aches and vomiting.¹³

10. The FBA team identified that the Student was more likely to demonstrate aggression when he felt he was being treated unfairly, or during unstructured times when required to navigate crowds or negotiate with peers.

11. The FBA team identified that the Student was more likely to demonstrate physical manifestations of his anxiety when academic demands were high and perceived to be overwhelming, when he was performing independent work that required identification and prioritization of multiple tasks, and when there were changes or disruptions to routines.

Neuropsychological Evaluation of the Student

12. In the fall of 2019, [REDACTED], Ph. D., performed a neuropsychological evaluation of the Student.

13. The Student demonstrated cognitive strengths in the areas of verbal-linguistic intelligence, visual-spatial ability, and logical-mathematical intelligence.

¹³ MCPS 6, p. 4.

14. The Student demonstrated cognitive weaknesses in the areas of attention and executive functioning, and receptive and expressive language.

15. The Student's performance during testing indicated that he found the social demand of interaction with the examiners to be stressful.

16. The Student's "average to above average scores on tests of social perspective taking suggest strengths in this area that are not usually seen in children who struggle socially."¹⁴

17. The Student demonstrated "an extremely sensitive and easily triggered stress response" consistent with the diagnoses of generalized anxiety disorder and unspecified mood disorder.¹⁵ The Student did not meet the criteria for Disrupted Mood Dysregulation Disorder (DMDD) at the time of testing in the fall of 2019, because "he has not demonstrated chronic sadness, anger, or irritability for a year."¹⁶

18. Dr. [REDACTED] diagnosed the student with ADHD – combined presentation, generalized anxiety disorder, unspecified mood disorder, and Autism Spectrum Disorder (ASD).

19. The Student demonstrated "the restricted interests/repetitive behaviors criteria for autism, as he has a history of sensory sensitivity (e.g., sensitivity to noise, textures, and temperature), has demonstrated a series of very intense interests, and shows significant rigidity, as evidenced by trouble adjusting to change, transitions, and new situations."¹⁷

20. The Student met three social criteria related to ASD: (1) "significant impairment in nonverbal social communication, as he has marked difficulty reading social cues, judging social context, and determining socially appropriate behavior, which does not appear to be due entirely to impulsivity[;]" (2) "significant difficulty with social reciprocity" with respect to

¹⁴ *Id.*, p. 14.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* (emphasis omitted).

engaging in back-and-forth conversations; and (3) failing “to develop, maintain, and understand friendships” due “in part, to poor social judgment.”¹⁸

21. Dr. [REDACTED] recommended that the behavioral supports implemented under the Section 504 plan remain in place and noted that the Student may require “additional accommodations when the workload and level of academic stress increase as he advances in grade.”¹⁹ He further recommended that the Student continue on his prescribed medications and consider a trial of stimulant medication to “sustain attention and effort on challenging tasks.”²⁰ He supported the continuation of the Student’s psychotherapy and recommended that he engage with a therapist experienced in treating children with ASD. He also suggested that the Student could benefit from social skills instruction “that focuses on helping him learn to interact effectively and to develop friendships with same-age children.”²¹

22. Dr. [REDACTED] further recommended academic accommodations for the Student, including testing accommodations related to marking answers in testing booklets as opposed to separate sheets of paper, use of computer for tests involving writing, the ability to take breaks as needed, testing in a private room to minimize distractions, and a fifty percent extension of time on tests. Additional recommendations included allowing the Student to use the notes of a fellow student or the instructor’s outline in addition to his own notes, preferential seating, additional time to complete assignments, having assignments segmented with separate deadlines for each, and tutoring.

¹⁸ *Id.*, pp. 14-15.

¹⁹ *Id.*, p. 15.

²⁰ *Id.*

²¹ *Id.*, p. 16.

23. In February 2020, Dr. [REDACTED] drafted an addendum to his report and recommended that an IEP be developed for the Student “that specifies social, emotional, and behavioral goals” with autism as the disability classification.²²

The Student’s First IEP

24. MCPS conducted a Child Find meeting for the Student on May 28, 2020 and an initial IEP meeting for the Student on June 26, 2020 for the 2020-2021 school year.

25. The IEP team determined that the Student’s primary diagnosis establishing his eligibility for special education and related services was autism, ruling out ADHD as the primary diagnosis as not “as significantly impactful to result in an inability to receive FAPE.”²³

26. The IEP team also ruled out emotional disability (ED) as the primary diagnosis because the Student’s “overall presentation included fewer characteristics associated with” ED compared with autism.²⁴

27. The June 26, 2020 IEP identified two behavioral areas impacting the Student’s achievement and/or functional performance: (1) social emotional/behavioral; and (2) self-management.

28. The social emotional/behavioral area noted that the Student’s “[e]motional regulation related to social interactions, especially during unstructured times is an area of concern.”²⁵

29. The Student’s “self-management related to planning and prioritizing tasks during independent work” was also an “area of concern.”²⁶

²² P. 3.

²³ MCPS 8, p. 3.

²⁴ *Id.*

²⁵ MCPS 8, p. 6.

²⁶ *Id.*

30. The IEP team found that the Student’s disability impacted his involvement in the general education curriculum because it affected “his ability to read social cues, to plan and prioritize tasks, to respond to changes in his routine, and to regulate his emotions. . . . [which] impacts his ability to build and maintain interpersonal relationships and to manage independent work.”²⁷

31. The IEP team identified the following supplementary aids, services, program modifications, and supports for the Student in the June 26, 2020 IEP:

- a. Strategies to “chunk” or prioritize independent tasks, including the use of checklists and charts, with explicitly defined tasks
- b. Routine for the Student to incorporate breaks during independent work and assessments, and allow the Student additional time to complete tasks, all with staff permission
- c. Daily scheduled check-ins with a teacher or counselor, to be combined with class instruction or a job, to avoid singling him out from other students or perceiving the action as a punishment
- d. Establishment of a process for the Student to access an adult during structured and unstructured times, with encouragement of the Student to ask for assistance when needed
- e. Providing the Student advance notice of known changes to routine to reduce anxiety and encourage flexibility
- f. Explicit instruction and frequent reminders of rules for structured times, unstructured times, and transitions
- g. Social skills training, such as verbal mediation instruction to develop perspective taking, active listening, verbal/visual cues, and self-awareness strategies focused on self-management, self-monitoring, and positive self-talk
- h. Encouragement and reinforcement of appropriate behavior in academic and non-academic settings
- i. Allowing extra time for movement between classes, including scheduling early transitions or creating a job for the Student that allows for early scheduled transitions
- j. Communication and coordination with outside providers

32. The June 26, 2020 IEP identified the following goals for the Student:

- a. The Student will demonstrate appropriate behavior when upset
- b. The Student will demonstrate appropriate behavior when an established routine is temporarily altered and when academic demands are highest

²⁷ *Id.*

33. The IEP team placed the Student in the general education setting for twenty-nine hours and five minutes of each week and outside of the general education setting for four hours and forty minutes each week, and found that all services were available at [REDACTED] Middle School ([REDACTED]), a MCPS school, the Student's home school.

34. The Student received services outside of the general education setting by attending a fifty-minute Resource class each day.

35. The IEP included a one-time thirty-minute check-in with the school counselor upon return to in-person instruction and thirty minutes of counseling with the school counselor weekly.

36. The IEP team determined that the Student was not eligible for extended school year (ESY) services.

Sixth Grade (School Year 2020-2021)

37. The Student enrolled in [REDACTED] for his sixth grade year.

38. Due to the ongoing COVID-19 pandemic closures, the Student attended school virtually from home from the fall of 2020 to the spring of 2021.

39. In the spring of 2021, the Student attended school on a hybrid model and switched between virtual and in-person instruction weekly.

40. On February 9, 2021, the Parents requested that the Student discontinue counseling services during distance learning. MCPS granted the request and noted that the Student would resume the weekly counseling sessions upon return to in-person learning.

41. Based on the February 6, 2020 FBA, MCPS also created a Behavioral Intervention Plan (BIP) for the Student for the 2020-2021 school year.

42. The strategies identified in the BIP aligned with the supplementary aids, services, program modifications, and supports for the Student in the June 26, 2020 IEP.

43. The IEP team determined that restraints and/or seclusion were not required as part of the BIP.

Seventh Grade (School Year 2021-2022)

44. The Student attended [REDACTED] in person for seventh grade.

45. On June 7, 2021, the IEP team met to develop the Student's IEP for seventh grade.

46. The June 7, 2021 IEP again identified autism as the primary disability.

47. The IEP team added social interaction skills as an area impacting the Student's academic achievement and/or functional performance, in addition to the social emotional/behavioral area and self-management area as previously identified.

48. In support of this addition, the IEP team noted that the Student was easily influenced by his peers and demonstrated "difficulty navigating the social structure of the middle school environment."²⁸ The Student "seeks positive and negative peer approval and attention that can lead to verbal and physical aggression."²⁹ The IEP further noted that the Student had difficulty in letting things go.

49. The IEP team determined that the Student continued to require a BIP and recommended that a FBA be conducted as soon as possible for the next school year, as one had not been conducted during the 2020-2021 school year while MCPS conducted distance learning due to COVID-19.

²⁸ MCPS 14, p. 8.

²⁹ *Id.*

50. The IEP team identified the following supplementary aids, services, program modifications, and supports for the Student in the June 7, 2021 IEP:

- a. Use of to-do lists and checklists for assignment completion
- b. Explicit repetition of directions in all courses
- c. Strategies to “chunk” or prioritize independent tasks, including the use of checklists and charts, with explicitly defined tasks
- d. Adult monitoring and proximity during transitions and unstructured activities during the school day
- e. Social skills instruction in the area of pro-social peer interactions
- f. Access to a trusted adult for problem-solving
- g. Communication from school to the Parents to share behavioral issues that arise during the day
- h. Routine for the Student to incorporate breaks during independent work and assessments, and allow the Student additional time to complete tasks, all with staff permission
- i. Daily scheduled check-ins with a teacher or counselor, to be combined with class instruction or a job, to avoid singling him out from other students or perceiving the action as a punishment
- j. Establishment of a process for the Student to access an adult during structured and unstructured times, with encouragement of the Student to ask for assistance when needed
- k. Providing the Student advance notice of known changes to routine to reduce anxiety and encourage flexibility
- l. Explicit instruction and frequent reminders of rules for structured times, unstructured times, and transitions
- m. Encouragement and reinforcement of appropriate behavior in academic and non-academic settings
- n. Allowing extra time for movement between classes, including scheduling early transitions or creating a job for the Student that allows for early scheduled transitions
- o. Communication and coordination with outside providers

51. The IEP team identified the following goals for the Student in the June 7, 2021 IEP:

- a. The Student will follow school rules and expectations during structured and unstructured times of the day
- b. The Student will use pro-social coping and social problem solving skills during structured and unstructured times of the day
- c. The Student will utilize listening and reflection skills to support meaningful, prosocial, and safe interactions with peers that align to the given social context
- d. The Student will shift attention from preferred to non-preferred tasks/activities, prioritize tasks, and complete long-term assignments

52. The IEP team placed the Student in the general education setting for twenty-nine hours and thirty-five minutes of each week and outside of the general education setting for four hours and ten minutes each week, and found that all services were available at [REDACTED], the Student's home school.

53. The IEP stated that the Student would be removed from the general education setting for a daily self-contained Resource class to address his executive functioning deficits. In the Resource class, a special education teacher works with students on executive functioning, review and reinforcement of curriculum, assistance with writing, or other tasks to provide academic support.

54. The IEP team determined that the Student was not eligible for ESY services.

55. At the IEP meeting on June 7, 2021, the Parents requested another meeting with the IEP team at the end of September to discuss the Student's progress in returning to full-time in-person instruction.

56. The requested meeting was scheduled for October 4, 2021, but rescheduled at the Parents' request, and occurred on October 28, 2021.

57. The Student's seventh grade IEP provided that the Student would attend counseling for thirty minutes weekly.

58. On October 1, 2021, the Student's mother emailed [REDACTED], MCPS Resource Teacher for Special Education, and stated that the Parents no longer wanted the Student to be in counseling.

59. At the IEP meeting on October 28, 2021, the counseling services were removed from the Student's IEP, based on that request.

60. In October 2021, as a result of the Student's escalating aggression and bullying, staff provided support and oversight of the Student during transitions between classes. Additionally, the Student reported to the front office at the end of the school day for supervision over his dismissal from school.

61. MCPS conducted a FBA of the Student on November 15, 2021 and identified verbal aggression, including stating intent to harm others, name-calling, explicit language, and rumination as concerning behaviors.

62. The FBA indicated that the Student was more likely to demonstrate verbal aggression during unstructured times, when engaged in independent work, or when there was no direct teacher instruction. The Student targeted one particular peer on whom he was fixated.

63. The IEP team found that the Student engaged in this behavior to gain peer attention, and that the Student persisted in the behavior until interrupted by an adult or intervening event.

64. No BIP was recommended as a result of the November FBA.

65. Between November 2021 and March 2022, the Student was suspended from school three times due to displays of aggression. The suspensions were not related to the Student's conduct in the classroom. He also participated in an in-school intervention on one occasion.

66. During an intake meeting before the Student's return to class after a suspension in November 2021, when asked about strategies that he could use to avoid repeating the incident, the Student responded that he could walk away or talk to an adult.

67. The Student fell behind in his core academic classes in quarter three due to the suspensions and some absences. His grades, normally As and Bs, fell to Cs and Ds. The Student

“did a great job independently to work on his missing assignments during Resource and Charge-Up (time for homework Tues-Fri). By the end of the quarter, [the Student] was able to bring his grades up back to his average of As and Bs.”³⁰

68. In December 2021, the school-based IEP team discussed placing the Student in a different Resource class through the [REDACTED] program.

69. The Resource class in the [REDACTED] program focuses more on social-emotional skills as opposed to providing academic supports.

70. On December 22, 2021, Ms. [REDACTED] reached out to the Parents and suggested switching the Student to the Resource class in the [REDACTED] program. The Parents declined the offer.

71. In March 2022, an updated FBA was conducted and a BIP was recommended.

72. The BIP, dated March 4, 2022, identified the Student’s verbal and physical aggression as the targeted behavior and recommended scheduling the Student to minimize interactions with specific peers in addition to supports already in place. The BIP also recommended that the Student be encouraged to engage in journal writing regarding his feelings and peer mediation to address his perceived injustices. The BIP noted that the Student should be given an opportunity to participate in a social skills group. The BIP included a crisis plan for when the Student engaged in physical aggression.

73. The IEP team convened on March 18, 2022. The Parents, through their educational consultant, [REDACTED], Executive Director, [REDACTED], requested that MCPS place the Student in the Asperger’s program at [REDACTED] Middle School ([REDACTED]), as the Student would be in co-taught and supported classes, with social skills instruction and a Resource class. The IEP team noted that the Student’s “physical behaviors

³⁰ P. 16, p. 2; MCPS 33, p. 2.

occur outside of the classroom setting and that [the Student] is able to access core academic instruction inside of a general education setting.”³¹

74. The IEP team determined the Student did not need small, self-contained classes for academics at that time, because there were no concerns about his academic performance in the general education environment. The IEP team agreed that the Student needed more staff support and supervision for unstructured time and transitions.

75. The March 18, 2022 IEP team meeting ended without reaching a decision regarding services, placement, and least restrictive environment (LRE), or addressing the request of the Parents and Mr. [REDACTED] to consider the Asperger’s program at [REDACTED] as the appropriate placement for the Student. The meeting ran longer than the allotted time and the school-based team members had other commitments, requiring them to conclude the meeting before those topics could be discussed.

76. On March 18, 2022, the IEP team scheduled a continuation of the meeting for March 21, 2022. The Parents declined, noting that “due to the adversarial tone of the last meeting, we now feel it necessary to bring an attorney to the next IEP meeting. We are meeting with the attorney this week and then we will be back in touch to schedule the next meeting.”³²

77. After the Parents and Mr. [REDACTED] requested placement of the Student in the Asperger’s program at [REDACTED] at the March 18, 2022, IEP meeting, Ms. [REDACTED] reached out to [REDACTED], MCPS Instructional Specialist with the autism unit regarding that request.

78. Ms. [REDACTED] completed an observation of the Student and offered the Parents the opportunity to attend an information session about the program or meet with them about it.

79. The Parents declined to further investigate the [REDACTED] program.

³¹ MCPS 28, p. 3.

³² MCPS 30, p. 3.

80. On March 30, 2022, the Student's mother emailed [REDACTED] staff, advising that the Student engaged in physical aggression at home the previous evening, including throwing a lamp and other items and pushing her several times. The Student was upset due to an unexpected cancellation of plans. The Student's mother took him to the emergency room, and the Student then calmed down; upon his return home that evening, the Student stated that he wanted to go to school the following day and went to bed.

81. The Student attended school on March 30, 2022 and completed the school day without incident.

82. On April 5, 2022, the Parents placed the Student at [REDACTED] [REDACTED] ([REDACTED]) in [REDACTED], [REDACTED].

83. Counsel for the Parents provided Notice to MCPS of this placement in a letter dated April 6, 2022, stating that the Parents "were forced to make the decision to quickly place him to avoid physical harm" to the Student.³³ The Parents requested that "MCPS place and fund [the Student] at [REDACTED]"³⁴

84. In a letter dated April 25, 2022, counsel for MCPS replied to the Parents' request for the Student's placement at and funding for [REDACTED], stating that an IEP meeting was scheduled for May 11, 2022, rendering the request premature.

85. The IEP team meeting continued on May 11, 2022. Due to the need for information from [REDACTED] regarding the Student's progress and the Student's annual review meeting due in June 2022, the team agreed to reconvene for the annual review.

³³ P. 17; MCPS 32.

³⁴ *Id.*

86. On May 24, 2022, the Student was discharged from [REDACTED]. In the discharge summary, [REDACTED], LCSW,³⁵ who was the Student's primary therapist at [REDACTED], recommended residential placement for the Student and stated that:

[t]he challenge for [the Student] is to use his communication and conflict resolution skills in the moment when flooded with strong emotions. This challenge is directly related to his diagnosis of Autism Spectrum Disorder and is further compounded by his Attention-Deficit Hyperactivity Disorder and his Generalized Anxiety diagnosis. [The Student's] rigid, all or nothing thinking patterns, and disconnect to his own feelings and how they reside in his body make it especially confusing for [the Student] in the moment of distress, confusion or even frustration. Additionally, [the Student's] ability to make strides in social and emotional understanding is impaired by his misunderstanding of social situations and nuances.^[36]

87. Ms. [REDACTED] recommended that the Student "continue in a structured therapeutic type of residential program that integrates [sic] therapy in the school day with academics, as his mood dysregulation creates an emotionally and physically unsafe environment for others and prevents him from engaging in academics, extracurricular and social activities."³⁷

88. The Parents placed the Student in the [REDACTED] program at [REDACTED] [REDACTED] approximately one week after the Student was discharged from [REDACTED].

89. On June 7, 2022, [REDACTED], Ph. D., a psychologist at [REDACTED], diagnosed the Student with DMDD.

90. On June 7, 2022, the IEP team met for the annual review of the Student's IEP. The IEP team reviewed the Student's discharge summary from [REDACTED] and proposed obtaining updated formal assessments of the Student; the Parents consented to the reevaluation. Additionally, through counsel, the Parents: (1) agreed to the extension of the annual review to obtain updated assessments; (2) agreed that the team was "not prepared to go in-depth with

³⁵ Licensed Clinical Social Worker.

³⁶ P. 20.

³⁷ *Id.*

regards to the contents of the IEP until there is new evaluation data”); and (3) requested referral to the Central IEP team by July 4, 2022.³⁸

91. On June 10, 2022, the Student was transferred from [REDACTED] to [REDACTED] [REDACTED] due to his escalating behavior.

92. On June 13, 2022, the Parents, through counsel, notified MCPS of the Student’s hospitalization.

93. On June 16, 2022, the Parents submitted paperwork to enroll the Student at [REDACTED] / [REDACTED]³⁹ in [REDACTED], [REDACTED].

94. On June 19, 2022, the Student was discharged from [REDACTED]. His discharge summary noted his psychiatric diagnoses as depressive disorder, ADHD, DMDD, generalized anxiety disorder, and ASD. [REDACTED] screened the Student for suicidal ideation and identified no risk of self-harm.

95. On June 20, 2022, the Parents placed the Student at [REDACTED].

96. On June 23, 2022, counsel for the Parents notified MCPS that the Student had been placed at [REDACTED] / [REDACTED], again noting that the Parents “were forced to make the decision to quickly place him to avoid physical harm” to the Student.⁴⁰ The Parents requested that “MCPS place and fund [the Student] at [REDACTED].”⁴¹

Eighth Grade (School Year 2022-2023)

97. The Parents placed the Student at [REDACTED] for eighth grade.

98. On July 1, 2022, Ms. [REDACTED] and [REDACTED], MCPS Special Education Instructional Specialist, issued an Educational Summary Report on the Student, including recommended

³⁸ P. 25; MCPS 39

³⁹ [REDACTED] is the residential component of the [REDACTED] program.

⁴⁰ P. 26

⁴¹ *Id.*

instructional accommodations to be considered by the IEP team. The school-based IEP team was unable to provide an updated assessment, because MCPS and [REDACTED] staff did not have access to the Student to conduct updated assessments.

99. On July 6, 2022, [REDACTED], MCPS School Psychologist, issued a report on her reevaluation of the Student and identified emotional disability as a comorbid disability to autism that required special education support and services.

100. On July 11, 2022, Mr. [REDACTED], Ms. [REDACTED], Ms. [REDACTED], and [REDACTED], MCPS Behavioral Specialist, met with [REDACTED], Therapist, [REDACTED], and [REDACTED], Residential Program Coordinator, [REDACTED], to obtain information about the [REDACTED] program/school relevant to the Student and to receive feedback on the Student's presentation at [REDACTED] to date for inclusion in the draft IEP to be discussed on July 13, 2022.

101. On July 13, 2022, the IEP team met to develop the Student's IEP for eighth grade.

102. The July 13, 2022 IEP identified emotional disability as the Student's primary disability.

103. The IEP explained the rationale for changing the primary disability from autism to emotional disability as follows:

[the Student's] Emotional Disability impacts his ability to manage his emotions and access his coping skills (especially when "flooded" with strong emotions), engage in expected social and interpersonal interactions (both verbally and physically) and school-safe behaviors, and shift his attention/engagement from preferred to less preferred activities. Additionally, his Autism impacts his flexible thinking, ability to read social cues, and accept changes in his daily routine. [The Student] also meets the criteria for ADHD. Despite strong academic skills, these social, emotional, and behavioral challenges impact his ability to access the general education setting (especially during unstructured times).⁴²

⁴² P. 32, p. 3; MCPS 48, p. 7.

104. The Parents disagreed with the change in the primary disability to emotional disability from autism. The Parents requested that the primary disability reflect multiple disabilities to include the Student's autism.

105. Because emotional disability and autism are in the same category of disability, the designation multiple disabilities was not available as an option for the IEP.

106. The IEP team added flexible thinking as an area impacting the Student's academic achievement and/or functional performance, as requested by Mr. [REDACTED] on behalf of the Parents.

107. In support of this addition, the IEP noted that when the Student was under stress, he displayed "rigid or inflexible patterns of behavior that seem odd, cannot get his mind off of something once he starts thinking about it, thinks or talks about the same thing over and over, and has more difficulty than others with changes in his routine."⁴³

108. The IEP added flexible thinking as a behavioral goal to be achieved through "direct instruction in flexibility and social skills, positive behavior support, clear expectations, and staff check-ins."⁴⁴

109. The IEP team indicated that the Student continued to require a BIP but did not recommend inclusion of physical restraint in the BIP.

110. The July 13, 2022 IEP identified the following supplementary aids, services, program modifications, and supports for the Student:

- a. Use of to-do lists and checklists for assignment completion
- b. Explicit repetition of directions in all courses
- c. Strategies to "chunk" or prioritize independent tasks, including the use of checklists and charts, with explicitly defined tasks
- d. Opportunities and space for reflection when in a heightened emotional state before engaging in problem solving with staff

⁴³ P. 32, p. 12; MCPS 48, p. 16.

⁴⁴ P. 32, p. 39; MCPS 48, p. 43.

- e. Clear and consistent boundaries throughout the instructional portion of the day
 - f. Adult monitoring and proximity during transitions and unstructured activities during the school day; also need adult support for safety, problem-solving, and implementing coping skills
 - g. Social skills instruction in the area of pro-social peer interactions
 - h. Access to a trusted adult for problem-solving
 - i. Communication from school to the Parents to share behavioral issues that arise during the day
 - j. Routine for the Student to incorporate breaks during independent work and assessments, and allow the Student additional time to complete tasks, all with staff permission
 - k. Daily scheduled check-ins with a teacher or counselor, to be combined with class instruction or a job, to avoid singling him out from other students or perceiving the action as a punishment
 - l. Encouragement of the Student to ask for assistance when needed and process for the Student to access an adult during structured and unstructured times
 - m. Providing the Student advance notice of known changes to routine to reduce anxiety and encourage flexibility
 - n. Explicit instruction and frequent reminders of rules for structured times, unstructured times, and transitions
 - o. Encouragement and reinforcement of appropriate behavior in academic and non-academic settings
 - p. Allowing extra time for movement between classes, including scheduling early transitions or creating a job for the Student that allows for early scheduled transitions
 - q. Communication and coordination with outside providers
111. The July 13, 2022 IEP identified the following goals for the Student:
- a. The Student will utilize listening and reflection skills to support meaningful, prosocial, and safe interactions with peers that align to the given social context
 - b. The Student will use pro-social problem solving skills, including perspective taking and inferencing skills to engage with peers and staff in socially expected interactions
 - c. The Student will follow school rules and expectations during structured and unstructured times of the day
 - d. The Student will use pro-social coping and social problem solving skills during structured and unstructured times of the day
 - e. The Student will use flexible thinking by applying learned strategies in situations that are unexpected
 - f. The Student will shift attention from preferred to non-preferred tasks/activities, prioritize tasks, and complete long-term assignments

112. The school-based IEP team agreed that the Student required smaller classes that were self-contained to support his social and emotional behaviors, which was included in the IEP's recommendation to remove the Student from the general education environment.

113. The Student was eligible for ESY services of forty-five minutes of group counseling twice monthly due to his "significant interfering behaviors."⁴⁵

114. The Parents rejected ESY services for the Student at the July 13, 2022 IEP meeting.

115. At the July 13, 2022 IEP meeting, the Parents' consultant, Mr. [REDACTED] requested: (1) changes to the Student's present levels; (2) that the IEP be updated to reflect the Student's recent physical and verbal behavior; and (3) that an identity development goal and related objectives be added to the IEP. The school-based IEP team members disagreed with the proposed changes to the present levels. They determined that more data was needed before addressing the Student's recent behavior. They also determined that the data did not support adding an identity development goal at that time.

116. At the July 13, 2022 IEP meeting, the IEP team reviewed the continuum of placements for the Student and ruled out MCPS programs in the general education setting for the Student. It referred the Student's case to the Central Placement Unit (CIEP) at the county's Board of Education.

117. At the July 13, 2022 IEP meeting, the IEP team recommended interim services and placement for the Student at [REDACTED] while his case was pending at the CIEP, which was comprised of special education supports in English and math in a general education class at [REDACTED], and self-contained classes for science, social studies, Resource, physical education, and electives through the [REDACTED] program at [REDACTED].

⁴⁵ P. 32, p. 34; MCPS 48, p. 38.

118. The [REDACTED] program at [REDACTED] offers a self-contained day for students who need academic, social-emotional, and/or behavioral support. Social workers and psychologists work with the Students in the [REDACTED] program to provide support and structure to the students during the school day. The [REDACTED] program includes a Resource class as well, which focuses more on social-emotional skills as opposed to providing academic supports.

119. The IEP provided thirty minutes of individual counseling twice monthly and forty-five minutes of group counseling twice monthly.

120. The CIEP team reconvened on August 23, 2022.

121. [REDACTED] staff attended the meeting virtually and provided anecdotal updates as to the Student's progress at [REDACTED] since his arrival in June. [REDACTED] also provided reports in advance of the meeting.

122. The CIEP team determined that the following data from [REDACTED] was needed:

- What classes he is currently taking and length of each class (schedule)
- Does he switch classes, staff, or stay with the same people and/or location during the school day?
- What is the student teacher ratio for each class? Are teachers general educations, special educations, or dual certified?
- Are they currently implementing an IEP?
- Grades/transcript from summer
- Academic progress reports
- Work samples, including a writing sample
- Any testing administered
- Behavioral data – Frequency, duration and intensity of the interfering or maladaptive behaviors
- Data regarding sexually explicit language, physical aggression disaggregated by class and residence
- Restraint data – with information about the behavior that precipitated the restraint and the location school or residence
- Bullying data – location of incidents school or residence
- Treatment plan
- Frequency and duration of “taking 5” from class^[46, 47]

⁴⁶ [REDACTED] staff explained that “taking 5” is a strategy that students at [REDACTED] may use to take a break from class.

⁴⁷ MCPS 51, p. 2; MCPS 52, pp. 3-4.

123. The CIEP team scheduled a meeting for September 16, 2022. On September 16, 2022, the Parents requested to cancel the meeting and it did not occur.

124. The CIEP team met on October 28, 2022. At that time, some of the requested data from [REDACTED] had still not been provided.

125. The CIEP team agreed to continue the meeting at the request of counsel for the Parents.

126. The CIEP team meeting scheduled for November 28, 2022 was canceled due to a power outage in Montgomery County caused by a plane crash.

127. On November 28, 2022, the Parents filed the Complaint.

128. The CIEP team scheduled a meeting for December 21, 2022. On December 13, 2022, MCPS requested to cancel the meeting and it did not occur.

129. The CIEP team convened on January 20, 2023. The Parents and Mr. [REDACTED] attended, along with [REDACTED], Administrator, [REDACTED] / [REDACTED] Ms. [REDACTED], and [REDACTED] [REDACTED] from [REDACTED]. The CIEP team ruled out MCPS programs in a comprehensive school setting due to the determination that the Student needed “a small supportive environment with a high level of mental health support.”⁴⁸

130. The CIEP team proposed placement of the Student at a public separate day school with a referral to the [REDACTED] ([REDACTED])⁴⁹ as “the public option that could address the IEP goals and provide an appropriate educational benefit in a less restrictive but highly structured day special education program with daily social, behavioral, and emotional supports.”

⁴⁸ MCPS 68.

⁴⁹ [REDACTED]. See [REDACTED]

131. The CIEP team proposed continuing interim services and placement at [REDACTED] as previously identified at the July 13, 2022 IEP meeting.

132. The CIEP team rejected the Parents' request for residential placement because "the presenting data and agreed-upon goals and objectives and supplementary aides [sic] and services can be implemented within a less restrictive environment and enable [the Student] to make educational progress."⁵⁰

133. The January 20, 2023 IEP incorporated data and anecdotal reports from [REDACTED] regarding the Student's progress.

134. The supplementary aids, services, program modifications, and supports, as well as the goals in the January 20, 2023 IEP are virtually the same as those in the July 13, 2022 IEP; except the CIEP team proposed removing the school counselor from the supplementary aids, services, program modifications, and supports because [REDACTED] develops mental health treatment plans for students after admission.

135. The Student is still residing at [REDACTED] and attending [REDACTED] as of the dates of the hearing.

DISCUSSION⁵¹

BURDEN OF PROOF

The standard of proof in this case is a preponderance of the evidence.⁵² To prove an assertion or a claim by a preponderance of the evidence means to show that it is "more likely so

⁵⁰ MCPS 68.

⁵¹ My findings, analysis, and legal conclusions are based upon consideration of all of the parties' arguments and the credible evidence of record. All testimonial and documentary evidence was considered and given the weight it was due, regardless of whether it has been recited, cited, referenced, or expressly set forth in the Decision. *See, e.g., Mid-Atl. Power Supply Ass'n v. Md. Pub. Serv. Comm'n*, 143 Md. App. 419, 442 (2002) (emphasizing that "[t]he Commission was free to accept or reject any witness's testimony" and "the mere failure of the Commission to mention a witness's testimony" does not mean that the Commission "did not consider that witness's testimony").

⁵² *See* 20 U.S.C.A. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3); COMAR 28.02.01.21K(1).

than not so” when all the evidence is considered.⁵³ The burden of proof rests on the party seeking relief.⁵⁴ In this case, the Parents and Student are seeking relief and bear the burden of proof to show that the challenged actions by MCPS did not meet the requirements of the law and that the Parents’ proposed remedy of private placement of the Student at [REDACTED], at public expense, is the appropriate remedy.

For the reasons that follow, I find the Parents have not met this burden, and conclude that MCPS offered the Student a FAPE for the 2022-2023 school year, with an IEP recommending a self-contained day program that was reasonably calculated to meet the Student’s unique needs in the LRE; that the delay in the identification of an appropriate placement for the 2022-2023 school year did not cause the Student to suffer a loss of educational opportunity; and therefore, that the Parents are not entitled to reimbursement for their unilateral placement of the Student at [REDACTED].

APPLICABLE LAW

FAPE

The identification, evaluation, and placement of students in special education are governed by the IDEA.⁵⁵ The IDEA requires “that all children with disabilities have available to them a [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living.”⁵⁶

To be eligible for special education and related services under the IDEA, a student must meet the definition of a “child with a disability” as set forth in section 1401(3) of the U.S.C. and the applicable federal regulations. The statute provides as follows:

⁵³ *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

⁵⁴ *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005).

⁵⁵ 20 U.S.C. §§ 1400-1482; 34 C.F.R. pt. 300; Educ. §§ 8-401 through 8-417; COMAR 13A.05.01.

⁵⁶ 20 U.S.C. § 1400(d)(1)(A); *see also* Educ. § 8-403.

(A) In General

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

(i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) who, by reason thereof, needs special education and related services.^[57]

The Supreme Court addressed the FAPE requirement in *Board of Education of the Hendrick Hudson Central School District v. Rowley*,⁵⁸ holding that FAPE is satisfied if a school district provides “specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.”⁵⁹ The Court identified a two-part inquiry to analyze whether a local education agency satisfied its obligation to provide FAPE: first, whether there has been compliance with the procedures set forth in the IDEA; and second, whether the IEP, as developed through the required procedures, is reasonably calculated to enable the child to receive some educational benefit.⁶⁰

The *Rowley* Court found, because special education and related services must meet the state’s educational standards, that the scope of the benefit required by the IDEA is an IEP reasonably calculated to permit the student to meet the state’s educational standards; that is, generally, to pass from grade to grade, on grade level.⁶¹

In 2017, the Supreme Court revisited the meaning of a FAPE, holding that for an educational agency to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a student to make progress appropriate in light of the student’s

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

⁵⁸ 458 U.S. 176 (1982).

⁵⁹ *Rowley*, 458 U.S. at 201 (footnote omitted).

⁶⁰ *Id.* at 206-07.

⁶¹ *Rowley*, 458 U.S. at 204; 20 U.S.C. § 1401(9).

circumstances.⁶² Consideration of the student’s particular circumstances is key to this analysis; the Court emphasized in *Andrew F.* that the “adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.”⁶³

The Supreme Court set forth a “general approach” to determining whether a school has met its obligation under the IDEA. While *Rowley* declined to articulate an overarching standard to evaluate the adequacy of the education provided under the Act, the decision and the statutory language point to a general approach: to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.⁶⁴

The “reasonably calculated” qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. The IDEA contemplates that this fact-intensive exercise will involve consideration not only of the expertise of school officials, but also the input of the child’s parents or guardians. Any review of an IEP must include the recognition that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.⁶⁵ The Supreme Court stated:

[t]he IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement. This reflects the broad purpose of the IDEA, an ‘ambitious’ piece of legislation enacted ‘in response to Congress’ perception that a majority of handicapped children in the United States ‘were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to ‘drop out.’’ A substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act.⁶⁶

⁶² *Andrew F. v. Douglas Cnty. Sch. Dist.*, 137 S. Ct. 988 (2017).

⁶³ *Andrew F.*, 136 S. Ct. at 1001.

⁶⁴ *Andrew F.*, 137 S.Ct. at 998-999.

⁶⁵ *Id.*, at 999

⁶⁶ *Id.*, at 999 (quoting *Rowley*, 458 U.S. at 179).

A focus on the particular student is at the core of the IDEA, and so, it is unsurprising that the Court concluded that the progress contemplated by the IEP must be appropriate in light of the particular student's circumstances. "The instruction offered must be '*specially* designed' to meet a child's '*unique* needs' through an '*[i]*ndividualized education program."⁶⁷ The Court expressly rejected the Tenth Circuit's interpretation of what constitutes some benefit:

[w]hen all is said and done, a student offered an educational program providing "merely more than *de minimis*" progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to 'sitting idly . . . awaiting the time when they were old enough to 'drop out.'" The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.⁶⁸

Directly adopting language from *Rowley*, and expressly stating that it was not making any "attempt to elaborate on what 'appropriate' progress will look like from case to case," the *Andrew F.* court instructs that the "absence of a bright-line rule . . . should not be mistaken for 'an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.'"⁶⁹ At the same time, the *Andrew F.* court wrote that in determining the extent to which deference should be accorded to educational programming decisions made by public school authorities, "[a] reviewing court may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances."⁷⁰

⁶⁷ *Id.*, at 999 (citations omitted; emphasis in original).

⁶⁸ *Id.* at 1001 (citation omitted).

⁶⁹ *Id.* (quoting *Rowley*, 458 U.S. at 206).

⁷⁰ *Id.* at 1002.

Ultimately, a disabled student’s “educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.”⁷¹ Moreover, the IEP must be reasonably calculated to allow him to advance from grade to grade, if that is a “reasonable prospect.”⁷²

The IEP

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

- (i) the strengths of the child;
- (ii) the concerns of the Parents for enhancing the education of their child;
- (iii) the results of the initial evaluation or most recent evaluation of the child;
and
- (iv) the academic, developmental, and functional needs of the child.⁷³

Among other things, the IEP describes a student’s current educational performance, explains how the student’s disability affects a student’s involvement and progress in the general curriculum, sets forth annual goals and short-term objectives for improvements in that performance, describes the specifically-designed instruction and services that will assist the student in meeting those objectives, describes program modifications and supports for school personnel that will be provided for the student to advance appropriately toward attaining the annual goals, and indicates the extent to which the child will be able to participate in regular educational programs.⁷⁴

⁷¹ *Id.* at 1000.

⁷² *Id.*

⁷³ 20 U.S.C. § 1414(d)(3)(A).

⁷⁴ 20 U.S.C. § 1414(d)(1)(A)(i)(I)-(V); COMAR 13A.05.01.09A.

IEP teams must consider the student's evolving needs when developing their educational programs. The student's IEP must include "[a] statement of the child's present levels of academic achievement and functional performance, including . . . [h]ow the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for non-disabled children)"⁷⁵ If a child's behavior impedes his or her learning or that of others, the IEP team must consider, if appropriate, the use of positive behavioral interventions, strategies and supports to address that behavior.⁷⁶ A public agency is responsible for ensuring that the IEP is reviewed at least annually to determine whether the annual goals for the child are being achieved and to consider whether the IEP needs revision.⁷⁷ However, a "school district is only required to continue developing IEPs for a disabled child no longer attending its schools when a prior year's IEP for the child is under administrative or judicial review."⁷⁸

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.⁷⁹

LRE

In addition to the IDEA's requirement that a disabled child receive educational benefit, the child must be placed in the "least restrictive environment" to achieve a FAPE, meaning that, ordinarily, disabled and non-disabled students should, when feasible, be educated in the same

⁷⁵ 34 C.F.R. § 300.320(a)(1)(i).

⁷⁶ *Id.* § 300.324(a)(2)(i).

⁷⁷ *Id.* § 300.324(b)(1).

⁷⁸ *M.M. v. Sch. Dist. of Greenville Cnty.* 303 F.3d 523, 536 (4th Cir. 2002).

⁷⁹ 20 U.S.C. § 1414(d)(1)(A)(i)(II), (IV), (VI).

classroom.⁸⁰ Indeed, mainstreaming children with disabilities with non-disabled peers is generally preferred, if the disabled student can achieve educational benefit in the mainstreamed program.⁸¹ At a minimum, the statute calls for school systems to place children in the “least restrictive environment” consistent with their educational needs.⁸² Placing disabled children into regular school programs may not be appropriate for every disabled child, and removal of a child from a regular educational environment may be necessary when the nature or severity of a child’s disability is such that education in a regular classroom cannot be achieved.

Because including children with disabilities in regular school programs may not be appropriate for every child with a disability, the IDEA requires public agencies like the MCPS to offer a continuum of alternative placements that meet the needs of children with disabilities.⁸³ The continuum must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, and make provision for supplementary services to be provided in conjunction with regular class placement.⁸⁴

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.⁸⁵ In such a case, a FAPE might require placement of a child in a nonpublic school setting that would be fully funded by the child’s public school district.

Unilateral Placement

Parents may be entitled to retroactive reimbursement from the state for tuition and expenses for a child unilaterally placed in a private school if it is later determined that the school

⁸⁰ 20 U.S.C. § 1412(a)(5); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117.

⁸¹ *DeVries v. Fairfax Cnty. Sch. Bd.*, 882 F.2d 876, 878-79 (4th Cir. 1989).

⁸² 20 U.S.C. § 1412(a)(5)(A).

⁸³ 34 C.F.R. § 300.115.

⁸⁴ *Id.* § 300.115(b); COMAR 13A.05.01.10B(1).

⁸⁵ COMAR 13A.05.01.10A(2).

system failed to comply with its statutory duties and that the unilateral private placement provided an appropriate education.⁸⁶ The issue of reimbursement for unilateral placement was expanded in *Florence County School District Four v. Carter*,⁸⁷ where the Court held that placement in a private school not approved by the state is not a bar under the IDEA. Parents may recover the cost of private education only if (1) the school system failed to provide a FAPE; (2) the private education services obtained by the parent were appropriate to the child's needs; and (3) overall, equity favors reimbursement.⁸⁸

THE POSITIONS OF THE PARTIES

The Parents argue that MCPS denied the Student a FAPE by failing to provide him with an appropriate IEP and placement for the 2022-2023 school year. As a result, the Parents maintain it was necessary for them to unilaterally place the Student at [REDACTED], a residential treatment center in [REDACTED], in order for him to benefit from an educational program that could meet his needs. The Parents seek reimbursement for tuition and related expenses for the Student's enrollment at [REDACTED] for the 2022-2023 school year and placement of the Student at [REDACTED] for the 2022-2023 school year.

MCPS argues that the IEP developed for the Student for the 2022-2023 school year is reasonably calculated to enable the Student to make progress appropriately in light of his unique circumstances. The school system further asserts that the delays in the development of the IEP and the identification of placement recommendations do not amount to procedural violations under the IDEA, but even if they do, those delays do not result in the denial of a FAPE for the Student. MCPS avers that the Parents have not proven that the Student requires residential placement in order to access an academic curriculum or to achieve academic progress.

⁸⁶ *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985).

⁸⁷ 510 U.S. 7 (1993).

⁸⁸ *Carter*, 510 U.S. at 12-13.

ANALYSIS⁸⁹

As a threshold matter, I note that the Complaint in this matter was filed on November 28, 2022. It is undisputed that a CIEP meeting took place on January 20, 2023, at which time the CIEP referred the Student to ██████ for the 2022-2023 school year. The Parents did not file or seek leave to file an amended complaint⁹⁰ regarding the outcome of that meeting; however, they introduced testimony about ██████ during their case in chief, and counsel for the Parents cross-examined MCPS witnesses about ██████ in the first four days of the hearing.

On the fifth day of the hearing, counsel for the Parents objected to a MCPS witness' testimony about ██████ on direct examination, citing 34 C.F.R § 300.511(d), which governs the subject matter of due process hearings and states that “[t]he party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under § 300.508(b)^[1], unless the other party agrees otherwise.” I overruled the objection, finding that the Parents opened the door with respect to the referral to ██████ prior to this point in the proceedings.

In this decision, I have considered the CIEP team's referral to ██████ in the analysis of whether MCPS failed to offer the Student a FAPE for the 2022-2023 school year, since the evidence was initially presented by the Parents, and the CIEP team consideration of the Student's placement options was ongoing when the Parents filed the due process complaint.

The Parents' assertion that the IEP failed to offer the Student a FAPE for the 2022-2023 school year relies on two premises: (1) the Student requires placement in a residential setting for

⁸⁹ While the due process complaint in this matter alleges failures by MCPS and seeks remedies solely related to the 2022-2023 school year, the parties presented evidence and testimony relating to the Student's progression in prior school years. I find it relevant and appropriate to refer to that history for context in this decision. However, I render no findings or conclusions as to the actions of MCPS for any school year prior to 2022-2023.

⁹⁰ 34 C.F.R. § 300.508(d)(3).

his education; and (2) MCPS failed to recommend a placement for the Student for the 2022-2023 school year.

Residential Placement is Not Necessary for the Student to Make Academic Progress

Residential placement is governed by 34 C.F.R. § 300.104, which states that “[i]f placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.” The determination as to whether a student needs services beyond the regular school day to receive any educational benefit is dependent on the particular facts of a case.⁹¹

Generally, if services provided in a residential facility are necessary for a student to make educational progress, then residential placement is required to provide the student with a FAPE; however, residential placement is not warranted when the residential placement merely “enhances an *otherwise sufficient* day program.”⁹² Even though mental health issues can interfere with academic progress, the IDEA does not make public school systems responsible for residential placements that primarily address mental health issues.⁹³ The evidence established that the Student did not require a residential placement in order to access the curriculum, receive educational benefit, and make progress.

The Student’s Behavior at Home

The Parents’ decision to remove the Student from ██████ was not based on any concern regarding the Student’s academic achievement or his ability to access the curriculum. The Student’s father testified that at the end of fifth grade, the Student’s behavior at home was

⁹¹ *Burke County Board of Educ. v. Denton*, 895 F.2d 973, 980 (4th Cir. 1990).

⁹² *Denton*, 895 F.2d at 890, quoting *Abrahamson v. Hershman*, 701 F.2d 223, 227 (3rd Cir. 1983) (emphasis in original); see also *Shaw v. Weast*, 364 Fed. App’x 47 (4th Cir. 2010).

⁹³ *A.H. v. Arlington Sch. Bd.*, 2021 WL 1269896 (E.D. Va. 2021) (citations omitted).

challenging. The Student sometimes displayed aggression towards his siblings, especially his brother, who is approximately five-and-one-half years younger than the Student. If the family's schedule changed on short notice, the Student's behavior would worsen, and he would run towards someone or throw and break things. The Student's father noted that the Student's aggression arises during unstructured times, such as transitioning between classes and at lunch time, as well as at home.

The Student's father explained that the Student's aggressive behaviors escalated in early 2022, the latter half of seventh grade at [REDACTED]. He noted that the Student ran away twice in that timeframe and that he and the Student's mother were concerned that he would do so again. The Parents were concerned about statements that the Student made to the effect that if he was suspended again, he would not want to live if he could not go to school. The Parents removed knives and scissors from the home. Additionally, the Student would make statements about killing his brother and would chase and hit his mother. The Student's father stated that the Parents advised [REDACTED] staff about the problems that they were having with the Student at home; he noted that the Parents felt unsupported by [REDACTED] staff.

On March 30, 2022, the Student's mother emailed [REDACTED] staff about an incident the evening before in which the Student pushed her and broke things in the home. [REDACTED], MCPS Assistant School Administrator, and Ms. [REDACTED] each recalled being notified by the Student's mother on March 30, 2022 about the incident that occurred at home the previous evening. Neither had any recollection of being notified by the Parents regarding any other problems or danger created by the Student at home. Ms. [REDACTED] stated that she would most likely remember that type of information if she had received it. Ms. [REDACTED] noted that the Student attended and completed the school day on March 30, 2022 without incident. Neither teacher

reported behavior problems in the classroom and the record fails to show any impact on the Student's ability to make academic progress based on his behavior in the home.

The Parents' Removal of the Student from [REDACTED]

After the incident on March 29, 2022, the Parents decided that it would be best for the Student's safety as well as the safety of the rest of the family to send him to [REDACTED], as the Parents no longer felt that they could manage him at home. The Student's father stated that the Student's psychologist and psychiatrist supported their decision to send the Student to [REDACTED]. The Parents' decision to place the Student at [REDACTED] was not related to the Student's academic performance or his ability to access the curriculum at [REDACTED]. The Parents did not raise objections to the development of the Student's IEP during this time. On May 24, 2022, the Student was discharged from [REDACTED].

After the Student was discharged from [REDACTED], his Parents moved him to [REDACTED]. His treatment team identified a diagnosis of DMDD, which was communicated to the Parents on June 7, 2022. The record before me contains no further information regarding the Student's academic or behavioral presentation at [REDACTED], other than the reference that he was admitted to [REDACTED] on an inpatient basis on June 10, 2022 due to a significant escalation of his behavior. The Student was released from [REDACTED] on June 19, 2022 and spent one night at home with his father before flying to [REDACTED] on June 20, 2022. MCPS was not involved in any decisions regarding academic planning at [REDACTED] or [REDACTED] and the Parents do not complain about MCPS' development of the Student's IEP or the Student's access to the curriculum during this period.

The Request for Residential Placement at [REDACTED] [REDACTED]

The Parents enrolled the Student at [REDACTED] [REDACTED] and subsequently requested that MCPS consider this residential placement as the appropriate placement for the Student. The Student's father believes that the Student is making progress at [REDACTED]. In support of his contention that [REDACTED] [REDACTED] is an appropriate placement, he explained that the Student now takes greater accountability for his actions and behaviors when they discuss incidents that have occurred. However, none of the current data and information has ever supported a need for residential placement in order for the Student to access the curriculum, receive academic benefit, or make progress. The Student has not required services to receive educational benefit beyond those provided during the regular school day under his IEP.

Information Considered by the IEP Team

Due to the Parents' notice of their decision to unilaterally place the Student at [REDACTED], the IEP team considered recent data and the continuum of placements when it met to develop the Student's IEP. Ms. [REDACTED] explained that when a student's behavior changes, it is important to look at current data to obtain an accurate assessment of the student's presentation to determine present levels and next steps for that student; therefore, reevaluations and reassessments of the Student were needed. Ms. [REDACTED] noted that because the Student's behaviors changed after he left [REDACTED], the team felt it necessary to complete updated evaluations and assessments to determine how best to help the Student. His behaviors escalated in February and March 2022 and continued to escalate after he left [REDACTED].

MCPS did not have data regarding the Student's academic progress since being removed from [REDACTED]; therefore, Ms. [REDACTED] and Ms. [REDACTED] generated an Educational Summary Report based on existing information within MCPS on July 1, 2022. Based on all available data, they

recommended instructional accommodation and supplemental aids and services that would meet the Student's specific needs. This recommendation did not include a residential placement as there was no indication of a need for services beyond the regular school day.

Ms. [REDACTED], MCPS school psychologist, testified as to her findings regarding the reevaluation of the Student that she conducted and detailed in her report dated July 6, 2022. She explained that the Student's problematic behaviors were not occurring in the classroom; instead, they took place during unstructured time, such as transitions between classes in the hallways, during lunchtime and dismissal, and while performing independent work without teacher instruction. She explained that during a conflict with a peer, or when the Student perceived an injustice, he displayed aggression towards his peer and perseverated on his perceptions of some wrongdoing. She stated that when the Student was caught up in those thoughts, he could not implement problem-solving strategies to address the conflict. Ms. [REDACTED] pointed out that, at [REDACTED], the adult supervision of the Student in the hallways during transitions was a measure to avoid the Student falling into these behaviors.

Between the June 7, 2022 IEP meeting and the issuance of her report on July 6, 2022, Ms. [REDACTED] also obtained rating scales from three of the Student's teachers at [REDACTED] and from the Parents, as part of the Behavior Assessment System for Children, Third Edition (BASC-III). The BASC-III results indicated that aggression and adaptability were problematic behaviors for the Student; the Parents' ratings indicated additional concerns about internalizing problems, anxiety, depression, and complaints of physical problems related to his anxiety.

I credit Ms. [REDACTED]'s testimony regarding the impact of the Student's emotional disability on his behavior. Her explanation of why the Student struggles and her recommendations as to how to address his disabilities was based on her own observations of the

Student, as a member of the IEP team who met with the Student, and a well-reasoned, thoughtful approach to addressing his behaviors based on data accumulated over his years at [REDACTED].

The IEP team also considered the Student's discharge summary from [REDACTED] and information from [REDACTED]. On July 11, 2022, several MCPS team members had a conference call with Ms. [REDACTED], the student's therapist at [REDACTED], and Mr. [REDACTED], the [REDACTED] program coordinator; this information was shared with other members of the IEP team at the July 13, 2022 IEP meeting. The MCPS team members who participated in the conversation perceived that the [REDACTED] staff's anecdotal reports on the Student's behaviors indicated that he was more aggressive than prior to his departure from [REDACTED]. Ms. [REDACTED] opined that in a more restrictive setting, there should be more support in place to assist the Student. Ms. [REDACTED] testified that it is typical for students' unwanted behaviors to increase upon introduction to a new environment, but that usually they decrease thereafter. They concluded that the interventions were not working.

At the IEP meeting on July 13, 2022, the IEP team changed the primary disability from autism to emotional disability. As a rationale for this change, Ms. [REDACTED] testified that, in addition to autism, the IEP team properly considered the Student's emotional condition and its impact on his progress. She explained that the Student's emotional response to conflict is an area in which support is needed to help the Student learn and implement coping strategies and understand how his behavior impacted others and himself. Ms. [REDACTED] supported changing the Student's primary disability to emotional disability, based on her review of the information presented at the July 13, 2022 IEP meeting, including Ms. [REDACTED]'s report and the discharge paperwork from [REDACTED] indicating the diagnosis of DMDD.

Ms. [REDACTED] and Ms. [REDACTED] also agreed with the change to the Student's primary disability because the Student's emotional disabilities primarily impact his behavior; he is unable

to regulate his emotions and cope with his feelings of frustration and anger that occur in response to social situations, which interferes with his ability to problem-solve from an emotional standpoint. Ms. [REDACTED] concurred that the Student's autism is also impacting him, but not to the exclusion of the other diagnoses. She agreed with Dr. [REDACTED]'s diagnosis of the Student as having mild autism. However, she testified that in the classroom setting, the Student did not present with challenges, such as difficulty engaging with peers or participating in activities verbally or cooperatively, that are characteristic of students with autism.

Ms. [REDACTED] opined that the Student's level of emotional dysregulation is more significant than what one would expect from a student with autism. Ms. [REDACTED], Ms. [REDACTED], Ms. [REDACTED], and Ms. [REDACTED] agreed. Each testified that the Student possesses skills related to social nuances; he knows who to target, when to target them, and the reason why he is targeting them; this awareness drives his behaviors. Ms. [REDACTED] described the Student's behavior towards peers as "provocative" and "socially inappropriate." She explained that he understands nuances in social settings and therefore, how to "arrange" a situation in a way that he prefers. Ms. [REDACTED] and Ms. [REDACTED] explained that this level of sophistication is uncommon in some autistic children, who generally lack the ability to read social cues and are socially unaware. Ms. [REDACTED] found that the Student knew when he could do certain things to avoid consequences and that he knew how to use social situations to his advantage, which is not a typical hallmark for students with autism. Ms. [REDACTED] stated that the Student's level of social sophistication, including targeting specific peers, is significant to his emotional disability.

The IEP team added four goals to the Student's IEP at the July 13, 2022 IEP meeting; Ms. [REDACTED] testified that the Parents and Mr. [REDACTED] agreed with the additions and the IEP team incorporated some of the recommendations of the Parents and Mr. [REDACTED]. Ms. [REDACTED] opined

that the supplementary aids, services, program modifications, supports, and the goals in the Student's July 13, 2022 IEP addressed both the Student's autism and his emotional disability. Ms. [REDACTED] agreed that the July 13, 2022 IEP addressed the Student's deficits related to autism in addition to his emotional disability, noting that the IEP drives the programming and services, not any particular diagnosis. Ms. [REDACTED] characterized the Student's IEP as "highly individualized" to address his complex profile, not just his autism diagnosis.

MCPS witnesses each concluded that, at that time, the Student needed a fully self-contained program with therapeutic services embedded within it. None of MCPS witnesses agreed that the Student required a residential placement in order to access the curriculum and receive educational benefit. Ms. [REDACTED] agreed that the more restrictive setting of a self-contained day program was appropriate for the Student to address the increase in frequency of his aggressive behaviors in social settings. Ms. [REDACTED] did not believe that the Student required services that are provided in a residential facility to make educational progress. She stated that she did not see a benefit conferred upon the Student from the residential component of the [REDACTED] program.

Ms. [REDACTED] opined that the Student did not require residential placement in order to make educational progress; in her view, the Student needs onsite counseling or mental health services to support his ability to regulate throughout the school day to make progress pursuant to his IEP. Ms. [REDACTED] explained that integration of therapy into the academic setting, as recommended in the July 13, 2022 IEP, provides the opportunity to teach the Student appropriate conflict-resolution skills and reinforce the application of those skill in moments of difficulty. It also provides the opportunity to generalize those skills throughout the school day to help the Student maintain good behavior.

Both Ms. [REDACTED] and [REDACTED], Coordinator, MCPS Central Placement Unit, noted that MCPS cannot address concerns at home that are impacting a student; the school system is required to focus on what is educationally necessary. Mr. [REDACTED] opined that nothing in the Student's profile required residential placement. He explained that the Parents' concerns for safety in the home due to the Student's rapid deterioration does not warrant residential placement from a special education perspective.

Parent Input Regarding Residential Placement

The Parents' evidence also does not support a conclusion that, due to the Student's disabilities, he requires a residential setting to access his educational curriculum. No witness for the Parents provided concrete, definitive reasons as to why they believed that residential placement was required to ensure the Student's access to the learning process. The Student's father testified that his son's behavior has not affected his performance in the classroom throughout the Student's schooling, including at [REDACTED]. The Student does well in the classroom due to the structure and rules, where communications and expectations are clear and consistent. He described his son as an intelligent person who wants to learn, noting that, while suspended from [REDACTED], the Student strongly disliked missing class and worried about falling behind on his schoolwork.

The Student's father acknowledged that the Student has faced challenges at [REDACTED] and characterized the progress in this residential placement as sometimes "five steps forward and four steps backwards." Further, the Student's father stated that the Student will finish eighth grade at [REDACTED], as the Parents believe it would be difficult to transition the Student during the school year. He explained that he does not believe the Student will be ready to be at home with the family after this year and that the Parents are considering their options for boarding schools

for the Student's future schooling. The Student's father testified that he did not believe the Student would have benefitted from returning to [REDACTED] but did not provide any cogent reasons for this opinion.

Mr. [REDACTED] initially opined in testimony that, while the Student was enrolled at [REDACTED], his diagnoses did not affect his progress. However, he reported at the January 20, 2023 IEP meeting that the "challenges" that the Student has during the day "have all impacted his learning."⁹⁴ This opinion was not supported by the record or other witnesses' testimony, including the Student's father. As already stated, the Student's father disagreed with Mr. [REDACTED]'s latter opinion, and reported that the Student's diagnoses have not affected his performance in the classroom throughout the Student's schooling, including at [REDACTED].

I am not persuaded by Mr. [REDACTED]'s opinions and testimony in support of residential placement for the Student. Mr. [REDACTED] stated that he agreed with Ms. [REDACTED]' recommendation for residential placement upon the Student's discharge from [REDACTED] due to the Student's escalating aggression. Beyond that statement, he did not offer significant or meaningful analysis as to why that recommendation is appropriate for the Student. He is not certified to perform educational or psychological assessments. Mr. [REDACTED] has never met or spoken with the Student. He did not observe the Student in class; a member of his staff conducted the evaluation. His opinions are based on his review of documents and records, as well as conversations with the Parents, and staff and administrators at the schools attended by the Student. He provided no specific rationale for his conclusions. Although he disagreed with the IEP team's decision to switch the Student's primary disability to emotional disability from autism in July 2022, he provided no meaningful basis for this disagreement, relying instead on a generalized explanation

⁹⁴ MCPS 69, p. 17.

that the Student should not be viewed through the lens of a student with an emotional disability, which is “different.”

The Parents relied on testimony, much of it anecdotal, that the Student is “doing well” at [REDACTED] and has made progress, despite some setbacks, in support of their position that the Student requires residential placement. The Student’s father measured his progress as it relates to the Student’s ability to take accountability for his bad behavior in their conversations. This therapeutic progress is certainly meaningful to the Parents regarding their overall perceptions of their child; however, the Parents did not establish that the programs and services offered by a residential facility had any relation to the Student’s academic progress.

The Parents have not established, through the Student’s enrollment at [REDACTED], nor by any expert opinion, that a residential setting is required to permit the Student to access the academic curriculum, receive educational benefit, or make progress. In fact, his academic performance at [REDACTED] further generally underscores the fact that the Student is able to access academic instruction and make progress, despite interruptions caused by his disability, just like he did when he was enrolled at [REDACTED].

Additionally, the Student’s father made it clear that the Parents never intended to change the Student’s placement during the 2022-2023 school year. The Student’s father stated that he believed it would be disruptive to the Student to pull him out of [REDACTED] and place him elsewhere before he finishes eighth grade at [REDACTED]. The Student’s father acknowledged that he maintains concerns about how the Student would behave at home if he were to return. I am sympathetic to the Parents with respect to their struggles with the Student’s behavior at home. However, they have not met their burden to establish that the level of the Student’s disability requires residential placement for him to receive educational benefit or make progress.

I found MCPS witnesses' testimony more persuasive regarding the specific needs of the Student and the impact on his ability to access the curriculum. I am persuaded by the testimony of MCPS witnesses regarding the Student's disability, his diagnoses, how those diagnoses affect the Student's presentation and behavior, and the strategies and services needed to address the Student's presentation and behavior. I conclude that the July 13, 2022 IEP was reasonably calculated to enable the Student to make progress in light of his unique circumstances and that MCPS offered the Student a FAPE for the 2022-2023 school year.

I further find that a fully self-contained day program is the least restrictive environment in which the Student can receive a FAPE. [REDACTED] is a more restrictive placement than that proposed by the IEP, and the IEP team considered the continuum based on the Student's circumstances and the LRE in reaching its recommendation for the Student for the 2022-2023 school year. While the application of the least restrictive environment requirement does not mandate incremental adjustments along the continuum of a student's academic setting, the spirit of the requirement required MCPS to consider less restrictive environments.

MCPS' Placement Recommendation for the Student for the 2022-2023 School Year

On July 13, 2022, the school-based IEP team recommended a fully self-contained day program due to the increased frequency of the Student's behaviors and resulting updated present levels. However, because the proposed services in the IEP could not be implemented in a general education setting, the school-based IEP team referred the Student's case to CIEP for consideration of an appropriate placement.

The July 13, 2022 IEP developed by the school-based team included a plan for interim services and placement to be provided to the Student while his case was pending at CIEP to address the goals of the IEP. Ms. [REDACTED] and Ms. [REDACTED], along with [REDACTED] staff, identified the

services that could be provided to the Student in the interim. They evaluated the options for self-contained classes and added components related to mental health supports available at [REDACTED], both individually and in a group setting. In developing the interim services and placement, the school-based team sought information regarding the Student's unique needs at the time of the development of the IEP. While the Student was at [REDACTED], several members of the school-based team spoke with Ms. [REDACTED], who indicated that the Student was experiencing social problems and was "flooded with emotions" three or four times daily, resulting in verbal aggression.⁹⁵ Ms. [REDACTED] had indicated that there were no concerns about the Student's academic progress, but noted that the Student often challenged concepts and ideas in class that led to push back from peers, resulting in an emotional outburst from the Student. Ms. [REDACTED] testified that the information Ms. [REDACTED] provided to them in the call about the Student's behavior concerned her, because his behaviors seemed to be escalating.

The interim services and placement called for the Student to attend [REDACTED], where he would be placed in two general education classes, advanced English and geometry, each with special education co-teaching. Those two classes, at the appropriate level for the Student, were not offered in the self-contained program. Ms. [REDACTED] explained that the Student's placement in advanced English was appropriate for him, given his academic achievement in those areas. She explained that the rigor of advanced classes offers the students in the class less downtime, requiring greater focus on the instruction and classroom activity. MCPS witnesses agreed that the Student's problematic behaviors do not occur when he is academically engaged, and that it would academically benefit the Student to attend those classes in the general education setting as part of the interim placement.

⁹⁵ P. 18, p. 2.

The interim placement also indicated that, outside of advanced English and geometry, the balance of the Student's day would be spent in the [REDACTED] program, which is self-contained, so that he did not have to transition in the hallway between classes. The classes in the self-contained program included science, social studies, physical education/health, electives, and the Resource class, which focused on social-emotional skills. The interim placement included counseling and mental health services at [REDACTED] outside of the general education environment. The MCPS witnesses agreed that the goals of the IEP would be addressed by the interim services and placement. I conclude that the interim services and placement in the July 13, 2022 IEP provided the Student with a FAPE.

Delays in the CIEP Process

The Parents disputed that the interim services and placement at [REDACTED] identified at the July 13, 2022 IEP meeting, and the referral to [REDACTED] in the IEP, as amended on January 20, 2023, were a "placement" as required by the IDEA. The Student's father testified that he did not know where his son would attend school if the Parents decided to bring the Student back from [REDACTED] during this school year. Mr. [REDACTED] testified that the lack of a placement for the Student for the 2022-2023 school year was a failure on the part of MCPS, because the Student needed interventions, support, and safety during that time.

The IEP team finalized the Student's IEP on July 13, 2022 without a recommendation for the Student's placement. The CIEP team then met on multiple dates between July 13, 2022, and January 20, 2023 to consider an appropriate placement based on the Student's unique circumstances as informed by current data. Based on this circumstance, the Parents argue that MCPS failed to provide a placement for the Student. For the following reasons, I conclude that

MCPS acted reasonably under the circumstances and the delay did not result in a failure to provide FAPE to the Student.

The existence of a procedural violation does not necessarily establish the presence of a substantive one. In *MM ex rel. DM v. School District of Greenville County*, 303 F.3d 523 (4th Cir. 2002), the court explained:

It is clear that, under the IDEA, the failure of a school district to have a final IEP in place at the beginning of the school year is a procedural defect. When such a procedural defect exists, we are obliged to assess whether it resulted in the loss of an educational opportunity for the disabled child, or whether, on the other hand, it was a mere technical contravention of the IDEA. *Gadsby v. Grasmick*, 109 F.3d 940, 956 (4th Cir.1997) (“[T]o the extent that the procedural violations did not actually interfere with the provision of a free appropriate public education, these violations are not sufficient to support a finding that an agency failed to provide a free appropriate public education.”). If a disabled child received (or was offered) a FAPE in spite of a technical violation of the IDEA, the school district has fulfilled its statutory obligations.⁹⁶

The CIEP team convened on August 23, 2022. Staff from ██████ attended the meeting. Some information on the Student’s progress had been provided by ██████ and was addressed anecdotally by the ██████ personnel present at the meeting. However, the CIEP team did not have any academic progress reports for the Student from his time at ██████, ██████, ██████ ██████, or ██████, nor did the team have any baseline assessment information for the Student from ██████. The team did not have any reports from ██████ regarding the Student’s engagement in bullying, the use of physical restraints upon the Student, or his progress in therapy or counseling. Ms. ██████ explained that this data was needed to determine whether the Student needed the level of supports and interventions provided in the residential placement requested by the Parents.

⁹⁶ *MM ex rel. DM v. Sch. Dist. of Greenville Cnty.*, 303 F.3d at 533-34; see also *T.B. Jr. by and through T.B., Sr. v. Prince George’s Cnty. Bd. of Educ.*, 897 F. 3d 566, 573 (4th Cir. 2018).

MCPS witnesses noted that the data provided by [REDACTED] to date did not separate incidents at the residence from incidents at school. At the meeting, MCPS witnesses perceived that the Student's behavior problems were occurring in the residence, and that those problems were then spilling over into the school setting; however, additional data was needed to distinguish between incidents occurring in school and those occurring at the residence. Ms. [REDACTED] testified that the Parents and Mr. [REDACTED] did not object to those requests. At the annual review IEP meeting on June 7, 2022, the IEP team extended the time to conduct the required annual review in order to compile needed data from the Student's outside placements since April 2022; additionally, the team requested updated educational assessments and a psychological evaluation of the Student.

Ms. [REDACTED] and Ms. [REDACTED] were responsible for the educational assessment of the Student, but they could not conduct it because he was placed outside of MCPS. Ms. [REDACTED] attempted to see the Student when he was at [REDACTED] but was unable to do so; he then went to [REDACTED]. Additionally, at that time, MCPS did not have any data regarding the Student's academic progress from the programs attended by the Student since the Parents removed him from [REDACTED].

Ms. [REDACTED] supported the IEP team's decision to obtain updated assessments of the Student in the process of developing the Student's IEP for the 2022-2023 school year. Like Ms. [REDACTED] and Ms. [REDACTED], she, too, was unable to conduct face-to-face assessments of the Student for cognitive updates and the social-emotional perspective because he was in [REDACTED].

The next CIEP meeting was scheduled for September 16, 2022. As of September 7, 2022, the CIEP team had received academic progress reports and the treatment plan from [REDACTED]; they had received partial information relating to student/teacher ratios, teacher backgrounds, behavioral data, data regarding physical aggression (which was not disaggregated between school and residence), and restraint data. No information had been received in response to the

requests regarding the Student's classes/schedule, whether he was switching between classes during the day, whether an IEP was being implemented, summer grades, work samples, whether any tests had been administered, information on bullying incidents, or frequency and duration of "taking 5" from classes.

At the October 28, 2022 CIEP meeting, some of the requested data from [REDACTED] had still not been provided. The meeting was continued to another date at the request of the Parents' attorney; Ms. [REDACTED] documented that information in the Prior Written Notice (PWN)⁹⁷ for the meeting and testified that neither the Parents, nor anyone on behalf of the Parents, contacted her objecting to that description in the PWN after it was issued.

Ms. [REDACTED] explained that [REDACTED] provided most of the requested information between September and November, but it was not always easy to evaluate the data; some of the information did not align with other information and resulted in some confusion and difficulty in interpretation. Ms. [REDACTED] noted that the CIEP team received incident reports from the summer through the middle of October; they knew that additional incidents occurred thereafter but did not receive any incident reports. Ms. [REDACTED] noted that when the data from [REDACTED] did not separate out conduct in the residence from conduct in the classroom, the lack of context as to the environment in which the behavior occurred made it difficult for the CIEP team to identify appropriate strategies to intervene.

At the January 20, 2023 CIEP meeting, based on the current data and information, including input by the Parents and [REDACTED], the CIEP team continued to rule out MCPS programs in a comprehensive school setting, and referred the Student to [REDACTED] as "the public option that could address the IEP goals and provide an appropriate educational benefit in a less restrictive but highly structured day special education program with daily social, behavioral, and emotional

⁹⁷ MCPS 52, p. 13.

supports.”⁹⁸ The CIEP team continued to propose the interim services and placement for the Student as previously identified at the July 13, 2022 IEP meeting, as students must comply with admission procedures before enrollment at [REDACTED].⁹⁹

MCPS staff acknowledged the delays that occurred between July 2022 and January 2023. Ms. [REDACTED] testified that the parental placement of the Student outside of MCPS, starting in April 2022, slowed down the ability of MCPS to move through the IEP process. She noted that as of the August 2022 CIEP meeting, MCPS had no data for the Student from April to August 2022 from any provider. MCPS witnesses consistently noted that the reported changes and escalation of the Student’s behavior after he left [REDACTED] required them to obtain additional data from those providers to accurately update his present levels, which then impacted the identification of supplementary aids, services, program modifications and supports, as well as goals, before determining LRE and placement. Ms. [REDACTED] testified that MCPS does not “jump around” in the IEP process. Mr. [REDACTED] stated that at the time of the August 2022 CIEP meeting, the Parents had requested residential placement; in his view, MCPS could not respond to that request with the data that they had at that time. He explained that the development of the IEP is driven by the current data, and MCPS did not have current information in the latter half of 2022. He noted that there was no objection from Parents to the additional requests for data.

While I find that there was a delay in the IEP development process with respect to placement, I find that the delay did not amount to a procedural error, because the Student did not suffer a loss of educational opportunity. The IEP in this case was finalized by the school-based IEP team on July 13, 2022 and amended by the CIEP team on January 20, 2023, which was after the start of the 2022-2023 school year. The evidence is clear that the August 23, 2022 and

⁹⁸ MCPS 68, p. 2.

⁹⁹ COMAR 10.21.06.03.

October 28, 2022 meetings were postponed because MCPS requested additional information from the Student's current placement; the Parents did not object to those delays. Additionally, the September meeting was canceled at the Parents' request, the November meeting was canceled due to circumstances beyond anyone's control, and the December meeting was canceled at the request of MCPS. However, there is no fault that can be placed on MCPS for the process being delayed.¹⁰⁰ As of the date of the hearing, the Student's referral to ██████¹⁰¹ had stalled because he was not available for an interview upon the advice of his therapist at ██████. MCPS could go no further.

On June 23, 2022, the Parents informed MCPS that the Student was enrolled at ██████.¹⁰² Indeed, the Student remains actively enrolled at ██████. Not only was this the Parents' desired placement, but the Parents have also presented no evidence that the Student lost educational opportunities while enrolled at ██████ since June 2022. Accordingly, I find MCPS committed no substantive violation as a result of the delay.

██████ / ██████ *Does Not Provide the Student with a FAPE*

Even if MCPS failed to provide a FAPE, the Parents have failed to establish that the ██████ / ██████ program was appropriate or provided the Student with a FAPE. At ██████, the Student is one of approximately forty students. He is enrolled in classes with students who

¹⁰⁰ Compare *Kitchelt ex. rel. Kitchelt v. Weast*, 341 F. Supp.2d 553, 557 (D. Md. 2004) (finding the delay in developing the IEP was wholly the fault of MCPS).

¹⁰¹ The Parents further argued that the referral to ██████ is not a placement, because CIEP cannot place a student at ██████. Upon referral by MCPS, the Parents were required to apply to ██████ on the Student's behalf. See COMAR 10.21.06.04. The Student's father testified in rebuttal that the Parents completed the application and interviewed with team members. See *id.* ██████ requested to interview the Student. See COMAR 10.21.06.04C. However, this interview did not occur because Ms. ██████ the Student's therapist at ██████, determined that an interview with ██████ would be "completely detrimental to [the Student's] treatment" at ██████. (P. 57.) At the time of the conclusion of the hearing, ██████ had not interviewed the Student. In the meantime, the interim services and placement, as previously addressed, provide the Student with a FAPE for the 2022-2023 school year.

¹⁰² *Grim v. Rhinebeck Cent. Sch. Dist.*, 346 F.3d 377, 382 (2d Cir. 2003) (finding no prejudice where the student remained in the private placement "for all the years at issue, and there is no suggestion in the record that the [parents] would have altered their placement decision had their challenges to the IEP been resolved in a more timely fashion.").

are not his peers in terms of age or cognitive ability. Some students at [REDACTED] are alternative learning outcome students, meaning they are not on a diploma track; those students are not taught separately from diploma-track students. The Student started his eighth grade year at [REDACTED] in a pre-algebra class, despite the fact that he earned As and Bs in a high-school level algebra class at [REDACTED] prior to his departure. In the first quarter of the 2022-2023 school year, the Student earned a C+ in pre-algebra at [REDACTED]. The Student skipped that class often and expressed frustration at the placement in it; in one instance, he told the teacher that he should not be in that class for math. [REDACTED] transferred the Student to geometry on October 31, 2022.

At [REDACTED], the Student rotates between six different classrooms daily, when transitions have historically been a trigger for problem behaviors. The average student-teacher ratio at [REDACTED] is 6:1 but can go up to 8:1. Only two teachers at [REDACTED] have a master's degree in special education; the majority of the teachers have bachelor's degrees in their related subject matter area. The data from [REDACTED] indicates that the Student frequently uses the "take 5" break strategy and does not return to class. Classes are fifty minutes long; the data from [REDACTED] provided in November 2022 indicates that the Student "might be in class for anywhere from 10-30 minutes before he would leave class. Most often he would not return. Meaning [sic] he missed from 15-35 minutes."¹⁰³

[REDACTED] is unable to provide on-site mental health support services for the Student. The Student's therapist, Ms. [REDACTED], is not located at [REDACTED]; she is a short drive from the school. If the Student needs mental health support, she may be able to respond to [REDACTED] if she is available, but she acknowledged that she is often so busy that she cannot go to [REDACTED] during the day. There are no staff members present during the school day at [REDACTED] who are mental health specialists.

¹⁰³ P. 46, pp. 3-4.

Finally, the testimony and evidence demonstrates that the Student's incidents of aggression at [REDACTED] / [REDACTED] have increased. [REDACTED] provided incident reports detailing ten incidents in which the Student demonstrated verbal or physical aggression between June and October 2022; staff used physical restraints upon the Student in six of those incidents. Additionally, the Student threatened to jump off the roof of a [REDACTED] building in January 2023. I am unpersuaded that the Student's placement at [REDACTED] / [REDACTED] offers the Student a FAPE.

Summary

The analysis of whether a Parents' private placement choice is proper is required only if the IEP proposed by the local education agency results in the denial of a FAPE.¹⁰⁴ I have concluded in this case, for the reasons set forth above, that the IEP offered by MCPS provides the Student a FAPE. Therefore, under *Carter* and *Burlington*, the issue of whether the Student's placement at [REDACTED] is proper is not required to be addressed further in this decision. As MCPS did not deny the Student a FAPE, the Parents' claim for reimbursement of tuition, costs, and expenses associated with the Student's unilateral placement at [REDACTED] is denied.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the IEP and placement proposed by MCPS for the 2022-2023 school year was reasonably calculated to offer the Student a FAPE in the LRE. 20 U.S.C.A. § 1415(f)(3)(E)(ii) (2017); 34 C.F.R. § 300.148 (2021); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49 (2005); *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017); *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *MM ex rel. DM v. Sch. Dist. of Greenville Cnty.*, 303 F.3d. 523 (4th Cir. 2002).

¹⁰⁴ *Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993); *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985).

I further conclude as matter of law that the delay in the IEP development process with respect to placement did not amount to a procedural error, because the Student did not suffer a loss of educational opportunity. *MM ex rel. DM v. Sch. Dist. of Greenville Cnty.*, 303 F.3d. 523 (4th Cir. 2002).

I further conclude as a matter of law that the Parents failed to establish that they are entitled to reimbursement for tuition and expenses at [REDACTED] [REDACTED]

[REDACTED]. *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993).

ORDER

I **ORDER** that the Parent's request for placement and reimbursement for tuition and expenses at [REDACTED] [REDACTED] for the 2022-2023 school year is

DENIED.

April 7, 2023
Date Decision Issued

Kristin E. Blumer
Administrative Law Judge

KEB/sh
#203144

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]

██████████,
STUDENT

v.

MONTGOMERY COUNTY
PUBLIC SCHOOLS

BEFORE KRISTIN E. BLUMER,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-MONT-OT-22-29029

FILE EXHIBIT LIST

I admitted the following exhibits offered the Parents, unless otherwise noted:

- P. 1: Request for Mediation/Due Process Hearing, received November 28, 2022
- P. 2: Neuropsychological Evaluation, October 11, 2019
- P. 3: Addendum to Neuropsychological Evaluation, February 21, 2020
- P. 4: Emails between parents and MCPS staff, various dates
- P. 5: Letter to Parents from Dr. ██████████, Principal, ██████████ Middle School, November 15, 2021
- P. 6: MCPS Functional Behavior Assessment Summary Report, November 15, 2021
- P. 7: *not admitted*
- P. 8: Draft MCPS IEP, December 2021
- P. 9: ██████████, Observation Report, February 11, 2022
- P. 10: Letter to Parents from Dr. ██████████, Principal, ██████████ Middle School, March 2, 2022
- P. 11: MCPS Teacher Reports, March 2, 2022
- P. 12: MCPS Behavioral Intervention Plan, March 4, 2022
- P. 13: ██████████, Reaction to draft IEP, March 14, 2022
- P. 14: Report, Dr. ██████████, March 17, 2022

- P. 15: MCPS Prior Written Notice, March 22, 2022
- P. 16: Progress Report on IEP Goals, April 1, 2022
- P. 17: Letter to Dr. [REDACTED] from Michael J. Eig, Esq., April 6, 2022; Letter to Michael J. Eig, Esq. from Emily B. Rachlin, Esq., April 25, 2022
- P. 18: [REDACTED], Conference Summary, April 18, 2022
- P. 19: [REDACTED], Reaction to draft IEP, May 9, 2022
- P. 20: [REDACTED], Discharge Summary, May 24, 2022
- P. 21: [REDACTED], Reaction to draft IEP, June 1, 2022
- P. 22: Email to Parents from [REDACTED], Ph.D., June 7, 2022
- P. 23: Letter to Stacy Reid Swain, Esq., from Michael J. Eig, Esq., June 13, 2022
- P. 24: [REDACTED], Discharge Summary, June 19, 2022
- P. 25: MCPS Prior Written Notice, June 21, 2022
- P. 26: Letter to Stacy Reid Swain, Esq., from Michael J. Eig, Esq., June 23, 2022
- P. 27: MCPS Report Card for Student, June 23, 2022
- P. 28: [REDACTED], Reaction to draft IEP, June 28, 2022
- P. 29: MPCPS Educational Summary Report, July 1, 2022
- P. 30: MCPS Report of School Psychologist, July 6, 2022
- P. 31: [REDACTED], Meeting Report, July 11, 2022
- P. 32: MCPS IEP, July 13, 2022
- P. 32A: [REDACTED], IEP Meeting Report, July 13, 2022
- P. 33: [REDACTED], Master Treatment Plan, July 18, 2022
- P. 34: MCPS Prior Written Notice, July 20, 2022, printed July 21, 2022; MCPS Prior Written Notice, July 20, 2022, printed August 9, 2022

- P. 35: [REDACTED], Report Card for period ending August 19, 2022, report date November 4, 2022
- P. 36: [REDACTED], Reaction to updated IEP, July 25, 2022
- P. 37: [REDACTED], Education Report, School Year 2022-2023, June to August 2022
- P. 38: [REDACTED], Behavior Data, June to August 2022
- P. 39: [REDACTED], Goals Update, September 2022
- P. 40: [REDACTED], Daily Behavior Data, June to September 2022
- P. 41: [REDACTED], Education Report, School Year 2022-2023, September 2022
- P. 42: [REDACTED], Student Work Samples, various dates
- P. 43: [REDACTED], Incident Reports, various dates
- P. 44: Email to Michael J. Eig, Esq., from [REDACTED], [REDACTED], [REDACTED], October 28, 2022
- P. 45: [REDACTED], [REDACTED], Daily Behavior Data, July to December 2022
- P. 46: [REDACTED], Requested Documents and Information, undated
- P. 47: [REDACTED], [REDACTED], Student Class Schedule, November 4, 2022
- P. 48: [REDACTED], [REDACTED], Report Card for period ending October 28, 2022, report date November 4, 2022
- P. 49: [REDACTED], [REDACTED], Program Description, Revised September 2022; [REDACTED], [REDACTED], Class Descriptions, Revised November 1, 2022
- P. 50: [REDACTED], Master Treatment Plan, November 17, 2022
- P. 51: [REDACTED], [REDACTED], Education Report, School Year 2022-2023, December 2022

- P. 52: Resume, [REDACTED], undated
- P. 53: Resume, [REDACTED], undated
- P. 54: Resume, [REDACTED], undated
- P. 55: Resume, [REDACTED], undated
- P. 56A: *not admitted*
- P. 56: Email between Parents and MCPS staff, various dates
- P. 57: Memorandum to [REDACTED] from [REDACTED], [REDACTED],
[REDACTED], March 7, 2023
- P. 58: Letter to [REDACTED] from the Student's father and [REDACTED],
February 8, 2023

I admitted the following exhibits offered MCPS, unless otherwise noted:

- MCPS 1: MCPS Report Card for Student, grade 6, June 23, 2021; MCPS Report Card for Student, grade 5, undated; MCPS Report Card for Student, grade 7, June 23, 2022
- MCPS 2: MCPS Parent Interview/Questionnaire, May 20, 2014; MCPS Section 504 Progress and Accommodation Review Worksheet, November 27, 2018; MCPS Section 504 Eligibility, November 21, 2019
- MCPS 3: *not offered*
- MCPS 4: MCPS Parent Interview/Questionnaire, May 26, 2020
- MCPS 5: MCPS Educational Management Team Summary, February 6, 2020; MCPS Educational History, May 21, 2020
- MCPS 6: MCPS Functional Behavior Assessment Summary Report, February 6, 2020; MCPS Behavioral Intervention Plan, June 26, 2020
- MCPS 7: MCPS Prior Written Notice, May 28, 2020; MCPS Prior Written Notice, June 26, 2020
- MCPS 8: MCPS IEP, June 26, 2020
- MCPS 9: MCPS Prior Written Notice, September 12, 2020
- MCPS 10: MCPS Prior Written Notice, February 17, 2021

- MCPS 11: MCPS Parent Report, May 27, 2021
- MCPS 12: MCPS Teacher Reports, printed May 3, 2021
- MCPS 13: MCPS Prior Written Notice, June 8, 2021
- MCPS 14: MCPS Amended IEP, June 7, 2021
- MCPS 15: Email from the Student's mother to [REDACTED], October 1, 2021
- MCPS 16: MCPS Notice of IEP Team Meeting, October 4, 2021; MCPS Five-day Disclosure Notice of Documents Provided to Parent/Guardian for Review at IEP Meeting, October 4, 2021; MCPS Prior Written Notice, November 2, 2021; MCPS Teacher Reports, various dates
- MCPS 17: MCPS Out-of-School Suspension Intake Meeting, November 17, 2021
- MCPS 18: *not offered*
- MCPS 19: Emails between MCPS staff, various dates; Table of Anecdotal Observations, various dates
- MCPS 20: Emails between the Student's parents and MCPS staff, various dates
- MCPS 21: MCPS Transition Support Schedule, February 2022
- MCPS 22: MCPS Functional Behavior Assessment Summary Report, March 4, 2022
- MCPS 23: MCPS Behavioral Intervention Plan, March 4, 2022
- MCPS 24: Emails between the Student's parents and MCPS staff, March 8, 2022
- MCPS 25: MCPS Five-day Disclosure Notice of Documents Provided to Parent/Guardian for Review at IEP Meeting, March 8, 2022; MCPS Teacher Reports, printed March 2, 2022; MCPS draft IEP, undated; MCPS Functional Behavior Assessment Summary Report, printed March 8, 2022; MCPS Behavioral Intervention Plan, March 4, 2022
- MCPS 26: Class Observation Notes, [REDACTED], March 10, 2022
- MCPS 27: [REDACTED], Reaction to draft IEP, March 14, 2022

- MCPS 28: MCPS Five-day Verification Notice of Documents Provided after an IEP Meeting, March 25, 2022; MCPS Prior Written Notice, March 22, 2022; MCPS draft IEP, undated
- MCPS 29: Emails between the Student's parents and MCPS staff, various dates
- MCPS 30: MCPS Notice of IEP Team Meeting, March 18, 2022; Emails between the Student's parents and MCPS staff, various dates; MCPS Notice of IEP Team Meeting, April 22, 2022; MCPS Five-day Disclosure Notice of Documents Provided to Parent/Guardian for Review at IEP Meeting, May 4, 2022
- MCPS 31: Emails between the Student's parents and MCPS staff, March 30, 2022
- MCPS 32: Letter to Dr. [REDACTED] from Michael J. Eig, Esq., April 6, 2022
- MCPS 33: Progress Report on IEP Goals, April 1, 2022
- MCPS 34: MCPS Five-day Verification Notice of Documents Provided after an IEP Meeting, May 19, 2022; MCPS Prior Written Notice, May 18, 2022; MCPS Amended IEP, May 11, 2022
- MCPS 35: Email to the Student's parents from [REDACTED], May 31, 2022
- MCPS 36: Emails between the Student's parents and MCPS staff, various dates
- MCPS 37: Meeting Notes, [REDACTED], June 2022
- MCPS 39: [REDACTED], Enrollment Documents, June 16, 2022
- MCPS 39: MCPS Prior Written Notice, June 21, 2022
- MCPS 40: MCPS Notice of IEP Team Meeting, June 29, 2022
- MCPS 41: Emails between counsel for the Student's parents, the Student's parents, and MCPS staff, July 1, 2022; [REDACTED], Discharge Summary, June 19, 2022
- MCPS 42: MPCS Educational Summary Report, July 1, 2022
- MCPS 43: MCPS Report of School Psychologist, July 6, 2022
- MCPS 44: Email to the Student's parents and counsel, July 8, 2022
- MCPS 45: Meeting Notes, [REDACTED], July 11, 2022

- MCPS 46: Emails between [REDACTED] and [REDACTED], various dates; MCPS draft IEP, June 6, 2022
- MCPS 47: MCPS Emotional Disability Multidisciplinary Evaluation Form, July 13, 2022
- MCPS 48: MCPS Five-day Verification Notice of Documents Provided after an IEP Meeting, July 21, 2022; MCPS Prior Written Notice, July 20, 2022; MCPS IEP, July 13, 2022
- MCPS 49: IEP Meeting Notes, [REDACTED], various dates
- MCPS 50: MCPS Prior Written Notice, revised July 29, 2022
- MCPS 51: MCPS Prior Written Notice, August 23, 2022
- MCPS 52: Emails between the Student's parents, counsel, and MCPS staff, various dates; MCPS Prior Written Notice, October 28, 2022; Emails between the Student's parents, counsel, [REDACTED] / [REDACTED] staff, and MCPS staff, various dates
- MCPS 53: MCPS draft IEP, September 2022
- MCPS 54: [REDACTED], Behavior Data, June to August 2022
- MCPS 55: [REDACTED], Incident Report, June 22, 2022; [REDACTED], Incident Report, June 23, 2022; [REDACTED], Incident Report, June 24, 2022; [REDACTED], Incident Report, June 26, 2022; [REDACTED], Incident Report, July 7, 2022; [REDACTED], Incident Report, July 6, 2022; [REDACTED], Incident Report, July 6, 2022; [REDACTED], Incident Report, July 11, 2022; [REDACTED], Incident Report, July 13, 2022; [REDACTED], Incident Report, July 13, 2022; [REDACTED], Incident Report, July 14, 2022; [REDACTED], Incident Report, July 21, 2022; [REDACTED], Incident Report, July 26, 2022; [REDACTED], Incident Report, August 21, 2022; [REDACTED], Incident Report, September 6, 2022; [REDACTED], Incident Report, October 24, 2022; [REDACTED], Incident Report, October 25, 2022
- MCPS 56: Emails between [REDACTED] and [REDACTED], October 26, 2022
- MCPS 57: MCPS Notice of IEP Team Meeting, December 5, 2022
- MCPS 58: MCPS draft IEP, January 2023

- MCPS 59: Resume, [REDACTED], undated
- MCPS 60: Resume, [REDACTED], undated
- MCPS 61: Resume, [REDACTED], undated
- MCPS 62: Resume, [REDACTED], undated
- MCPS 63: Resume, [REDACTED], undated
- MCPS 64: Resume, [REDACTED], undated
- MCPS 65: Resume, [REDACTED], undated
- MCPS 66: Resume, [REDACTED], undated
- MCPS 67: Resume, [REDACTED], undated
- MCPS 68: MCPS Prior Written Notice, January 20, 2023
- MCPS 69: MCPS draft/amended IEP, January 27, 2023