

5/3/2019

[REDACTED]

STUDENT

v.

PRINCE GEORGE'S COUNTY

PUBLIC SCHOOLS

* BEFORE GERALDINE A. KLAUBER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH NO.: MSDE-PGEO-OT-18-01010
* (Remand of OAH No.:
* MSDE-PGEO-OT-14-27568)

* * * * *

DECISION ON REMAND

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

STATEMENT OF THE CASE

On August 5, 2014, [REDACTED] and [REDACTED] (Parents) filed a Due Process Complaint with the Office of Administrative Hearings (the OAH), requesting a hearing to review the identification, evaluation, or placement of their son, [REDACTED] (the Student), by the Prince George's County Public Schools (PGCPS) under the Individuals with Disabilities Education Act (the IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017).¹

I conducted a due process hearing on September 29 and 30, 2014 and October 6, 2014. Michael Eig, Esquire, represented the Parents and Andrew Nussbaum, Esquire represented PGCPS.

¹ Unless otherwise indicated, all references to 20 U.S.C.A. are to the 2017 volume.

On November 3, 2014, I issued a Decision and on November 14, 2014 I issued an amended decision correcting only typographical errors. My decision ordered that the Parents' request for placement and reimbursement for tuition and expenses at [REDACTED] School ([REDACTED] School) for the 2014-2015 school year was denied. The Decision was issued within the time limit set forth in 34 C.F.R. § 300.515 (2016).²

The Parents appealed the Decision to the United States District Court for the District of Maryland (District Court). The District Court reversed my decision. The PGCPs appealed the ruling to the Court of Appeals for the Fourth Circuit. While the appeal was pending in the Court of Appeals for the Fourth Circuit, the Supreme Court issued its decision in *Endrew F. ex re. Joseph F. v. Douglas County School District RE-1*, -- U.S. ---, 137 S. Ct. 988 (2017).³ On December 8, 2017, the Court of Appeals for the Fourth Circuit vacated the judgment of the District Court by Order dated January 3, 2018, and remanded the case to the OAH. The Order states as follows:

In accordance with the December 8, 2017 ruling of the United States Court of Appeals for the Fourth Circuit, this case shall be remanded to the administrative judge for further proceedings consistent with the Fourth Circuit's Opinion, including a determination whether [REDACTED] has been denied a free appropriate public education under the standard set forth in *Endrew F. ex rel Joseph v. Douglas County District RE-1*, 137 S. Ct. 988 (2017).

On January 12, 2018, I conducted a telephonic prehearing conference with counsel with respect to the Fourth Circuit's remand. On January 26, 2018, I issued a Prehearing Conference Report which established a schedule for the remand proceeding. The parties thereafter submitted Memoranda and on April 9, 2018, I heard legal argument at the OAH in Hunt Valley, Maryland. Mr. Eig appeared on behalf of the Student, and Mr. Nussbaum appeared on behalf of PGCPs.

² Unless otherwise indicated, all references to 34 C.F.R. are to the 2016 volume.

³ On August 2, 2017, the United States Court of Appeals for the Tenth Circuit remanded the *Endrew F.* case to the United States District Court for the District of Colorado for further proceedings consistent with the Supreme Court's decision.

A special education hearing decision is normally due within forty-five days of the date the parties notified the OAH that they waived an otherwise mandatory resolution meeting or that the matter had not been resolved at the resolution meeting. 34 C.F.R. § 300.510(b) and (c); 34 C.F.R. § 300.515(a) and (c). The time for issuing the decision, therefore, had passed by the time the remand hearing concluded. The parties requested an extension of the forty-five-day limitation and I granted an extension for a specific period of time based on the parties' request that I issue a written decision within thirty days of the hearing, 20, 2018. 34 C.F.R. 300, 515(c). Md. Code Ann., Educ. § 8-413(h) (2014).

The legal authority for the hearing is IDEA, 20 U.S.C.A. § 1415(f) (2010); 34 C.F.R. § 300.511(a) (2014); Md. Code Ann., Educ. § 8-413(e)(1) (Supp. 2016); and Code of Maryland Regulations (COMAR) 13A.05.01.15C. Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act; the Maryland State Department of Education procedural regulations; and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 and Supp. 2016); COMAR 13A.05.01.15C, 28.02.01.

ISSUES

1. Was the Individualized Education Program (IEP) and placement developed by PGCPS for the 2014-2015 school year reasonably calculated to provide the Student with a free appropriate public education (FAPE)?
2. If there was a denial of FAPE for the 2014-2015 school year, was the Student's placement at the [REDACTED] School at the expense of PGCPS appropriate?

SUMMARY OF THE EVIDENCE

Exhibits

The parties stipulated to the admissibility of the opposing party's exhibits.

The following documents were admitted on behalf of the Parents:

- █ # 1 Request for Mediation/Due Process Hearing
- █ # 2 █ Associates Psychoeducational Evaluation, dated September 14, 2012
- █ # 3 PGCPS Notice of IEP, dated October 3, 2012
- █ # 4 PGCPS Prior Written Notice, dated October 17, 2012
- █ # 5 PGCPS Notice of Consent for Assessment, dated October 17, 2012
- █ # 6 PGCPS Specific Learning Disability Team Report
- █ # 7 PGCPS Notice of IEP Team Meeting
- █ # 8 IEP, dated November 14, 2012
- █ # 9 PGCPS Otis-Lennon School Ability Test Results, dated January 25, 2013
- █ # 10 PGCPS Standard Achievement Test Series, dated March 8, 2013
- █ # 11 Maryland School Assessment Home Report, dated spring 2013
- █ # 12 Letter to █ from Michael Eig, Esq., dated September 24, 2013
- █ # 13 Letter to Gail Viens, Esq. from Michael Eig, Esq., dated October 8, 2013
- █ # 14 Student Observation by █ dated October 10, 2013
- █ # 15 Letter to Michael Eig, Esq. from Parents, dated October 13, 2013

⁴ The Parents pre-marked the exhibits as █ the Student's initials.

- █ # 16 PGCPS IEP, dated October 15, 2013
- █ # 17 Neuropsychological Evaluations by Dr. █ dated October 22, 2013
- █ # 18 PGCPS Educational Assessment Report, dated November 13, 2013
- █ # 19 Letter to Gail Viens, Esq. from Michael J. Eig, Esq., dated November 18, 2013
- █ # 20 Letter to Gail Viens Esq. from Michael J. Eig, Esq., dated November 21, 2013
- █ # 21 Letter to Gail Viens Esq. from Michael J. Eig, Esq., dated December 9, 2013
- █ # 22 Email to █ and Michael Eig, Esq., dated December 9, 2013
- █ # 23 PGCPS Psychological Report, dated January 23, 2014
- █ # 24 Email to █ and Michael J. Eig Esq. from █ dated December 18, 2013
- █ # 25 Email to Parents from █ dated February 5, 2014
- █ # 26 Letter to Gail Viens, Esq. from Michael Eig, Esq., dated February 11, 2014
- █ # 27 Email to █ and Michael J. Eig, Esq. from █, dated February 24, 2014
- █ # 28 PGCPS IEP, dated February 26, 2014
- █ # 29 Email to █ and Michael J. Eig, Esq. from █ dated February 24, 2014
- █ # 30 Review of Draft IEP by █ dated March 3, 2014
- █ # 31 Email to █ and Michael J. Eig, Esq. from █ dated March 5, 2014

- █ # 32 Letter from Gail Viens Esq. to Michael J. Eig, Esq., dated March 5, 2014
- █ # 33 PGCPS Talented and Gifted Program Acceptance Information, dated March 14, 2014
- █ # 34 Letter to Gail Viens, Esq. from Michael J. Eig, Esq., dated March 28, 2014
- █ # 35 Letter to Parents from █ dated April 17, 2014
- █ # 36 PGCPS Psychological Addendum, dated May 12, 2014
- █ # 37 Letter to Gail Viens Esq. from Michael J. Eig, Esq., dated May 16, 2014
- █ # 38 PGCPS Draft IEP, dated May 26, 2014
- █ # 39 Letter to █ from Michael J. Eig, Esq., dated May 30, 2014
- █ # 40 PGCPS Amended IEP, dated June 6, 2014
- █ # 41 PGCPS Prior Written Notice, dated June 6, 2014
- █ # 42 Letter to █ from Michael J. Eig, Esq., dated July 24, 2014
- █ # 43 Letter to █ from Michael J. Eig, Esq., dated August 5, 2014
- █ # 44 Letter to Gail Viens Esq. from Parents, dated August 11, 2014
- █ # 45 Letter to Andrew Nussbaum, Esq. to Michael J. Eig, Esq., dated August 29, 2014
- █ # 46 Classroom Diagnostics from the █ School, dated September 2014
- █ # 47 PGCPS Report Cards for 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 School Years
- █ # 48 IEP Progress Reports, dated January 2013-June 2014
- █ # 49 Curriculum Vitae of █
- █ # 50 Curriculum Vitae of Dr. █
- █ # 51 Curriculum Vitae of █
- █ # 52 Resume of █
- █ # 53 Curriculum Vitae of █ on behalf of PGCPS

The following documents were admitted on behalf of PGCPS

- PGCPS # 1 Curriculum Vitae of [REDACTED]
- PGCPS # 2 Curriculum Vitae of [REDACTED]
- PGCPS # 3 Curriculum Vitae of [REDACTED]
- PGCPS # 4 Curriculum Vitae of [REDACTED]
- PGCPS # 5 Curriculum Vitae of [REDACTED]
- PGCPS # 6 Curriculum Vitae of [REDACTED]
- PGCPS # 7 Curriculum Vitae of [REDACTED]
- PGCPS # 8 Curriculum Vitae of [REDACTED] Ph.D.
- PGCPS # 9 Curriculum Vitae of [REDACTED]
- PGCPS # 10 Curriculum Vitae of [REDACTED]
- PGCPS # 11 Curriculum Vitae of [REDACTED]
- PGCPS # 12 PGCPS Prior Written Notice, dated October 17, 2012
- PGCPS # 13 Specific Learning Disability Team Report, dated November 13, 2012
- PGCPS # 14 PGCPS Prior Written Notice, dated November 19, 2012
- PGCPS # 15 PGCPS Prior Written Notice, dated October 15, 2013
- PGCPS # 16 PGCPS Prior Written Notice, dated December 19, 2013
- PGCPS # 17 PGCPS Prior Written Notice, dated April 28, 2014
- PGCPS # 18 PGCPS Prior Written Notice, dated June 6, 2014
- PGCPS # 19 IEP, dated November 14, 2012
- PGCPS # 20 IEP, dated October 15, 2013
- PGCPS # 21 IEP, Amended June 6, 2014
- PGCPS # 22 School Instructional Team/Supplemental Services Team Action Plan

- PGCPS # 23 [REDACTED] Associates Psychoeducational Evaluation, dated September 14, 2012
- PGCPS # 24 Educational Assessment Report, dated November 13, 2013
- PGCPS # 25 Confidential Psychological Report, dated January 23, 2014
- PGCPS # 26 Confidential Psychological Addendum; dated May 12, 2014
- PGCPS # 27 Assistive Technology Assessment Report, dated November 4, 2013
- PGCPS # 28 Occupational Therapy Report, dated November 4, 2013
- PGCPS # 29 Speech Language Assessment Report, dated November 19, 2013
- PGCPS # 30 Progress Reports on IEP Goals
- PGCPS # 31 Report Cards for 2012-2013 and 2013-2014 school years
- PGCPS # 32 Maryland School Assessment Home Report 2013 and 2014 Results
- PGCPS # 33 PGCPS Ottis-Lennon School Ability Test Results, dated January 25, 2013
- PGCPS # 34 PGCPS Stanford Achievement Test Results, dated March 8, 2013
- PGCPS # 35 PGCPS Talented and Gifted Program documents

Testimony

The Parent, [REDACTED] testified and presented the following witnesses:

- [REDACTED] Director of [REDACTED] Education Group, admitted as an expert in special education with an emphasis on identifying and meeting the needs of twice exceptional students;
- [REDACTED] Director of Speech and Language Department at the [REDACTED] School, admitted as an expert in speech/language pathology;
- [REDACTED] Head of the Intermediate School at the [REDACTED] School, admitted as an expert in the administration of programs for learning disabled students;

- [REDACTED] Occupational Therapy Consultant at the [REDACTED] School, admitted as an expert in occupational therapy;
- Dr. [REDACTED] Neuropsychologist, admitted as an expert in neuropsychology;
- [REDACTED] Parent.⁵

The PGCPS presented the following witnesses:

- [REDACTED] General Education Classroom Teacher, [REDACTED] Elementary School;
- [REDACTED] Ed.D., Assistant Principal, [REDACTED] Elementary School;
- [REDACTED] PGCPS Assistive Technology Consultant, admitted as an expert in assistive technology;
- [REDACTED] Special Education Chair, [REDACTED] Elementary School, admitted as an expert in elementary school special education;
- [REDACTED] OTD, OTR/L, Occupational Therapist, admitted as an expert in occupational therapy;
- [REDACTED] Ph.D., PGCPS School Psychologist, admitted as an expert in school psychology;
- [REDACTED] PGCPS Special Education Instructional Specialist, admitted as an expert in special education and twice exceptional students;
- [REDACTED] PGCPS Special Education Instructional Specialist, admitted as an expert in elementary school special education.

⁵ In this decision, all references to the Parent pertain to the Parent witness.

FINDINGS OF FACT

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

1. The Student's date of birth is [REDACTED] 2004.
2. The Student attended his neighborhood school, [REDACTED] Elementary School ([REDACTED]ES), from kindergarten through fourth grade.
3. The Student is a twice exceptional student: he is gifted and has a learning disability.
4. The Student was identified by PGCPS as a student with a disability under the IDEA. He has a primary diagnosis of Specific Learning Disability and a secondary diagnosis of Other Health Impaired for Attention Deficit Hyperactivity Disorder.
5. The Student is gifted in his verbal comprehension and perceptual reasoning abilities. The Student has an IQ of 121 in those areas. (Tr. 80⁶).
6. The Student has an engaging personality and strong willpower when goal oriented. The Student always puts forth good effort in the classroom and wants to succeed. (PGCPS # 23).
7. In August or September 2012, when the Student was eight years old and in the third grade, [REDACTED] Ph.D., [REDACTED] Associates ([REDACTED]A), at the request of the Parents performed a psychoeducational assessment of the Student in order to determine if he had any learning disabilities or attention disorders. A report of the assessment was drafted on September 14, 2012. ([REDACTED] #2).

⁶ Tr. is a reference to hearing transcript and the number that follows references the transcript page.

8. The September 2012 psychoeducational assessment revealed that the Student had superior verbal comprehension, superior perceptual reasoning or nonverbal reasoning and gifted verbal abstract thinking. (█#2).
9. The Student's general intellectual functioning was evaluated using the Wechsler Intelligence Scale for Children, Fourth Edition, (WISC-IV). On the Verbal Comprehension Index, or the ability to solve orally presented problems with words, the Student's composite score was 121 where the mean is 100, placing the Student in the superior range. His verbal intellectual potential was more developed than 92% of his peers. His Perceptual Reasoning Index or his ability to use visual information when reasoning or problem solving was measured in the superior range. He was more effective than 92% of his peers in this area as well. (█ # 2).
10. On the WISC- IV, the Student demonstrated weakness in basic working memory and visual motor processing speed. His score on the Working Memory Index was in the low average range or 21st percentile and his score on the processing speed index was in the 7th percentile. (█#2).
11. Dr. █ administered the Wechsler Individual Achievement Test, Third Edition (WIAT-III).⁷ The Student obtained average scores on the measures of single word reading, oral reading fluency, math calculation, spelling and speeded retrieval of simple multiplication facts (25th to 42nd percentile). The Student obtained scores in the low end of average range in reading comprehension, sentence composition and math problem solving (16th to 19th percentile). Alphabet writing fluency,

⁷ The test has a mean of 100 with a standard deviation of 15 and the average range is 90-109.

phonological awareness and decoding was below average (6th to 12th percentile). Speeded retrieval of simple subtraction and addition facts was in the low range (1st to 2nd percentile). (PGCPS # 23).

12. Dr. [REDACTED] recommended that PGCPS provide special education resource support and individual education goals for weak reading skills, delayed writing skill development, disorganization, poor assignment completion, below average math and weak study skills. ([REDACTED] #2).
13. Dr. [REDACTED] found that the Student will require assistance with organization and breaking down complex tasks into meaningful segments due to his significant deficits with processing oral and visual directions. ([REDACTED] #23).
14. Dr. [REDACTED] recommended that PGCPS provide Occupational Therapy (OT) and Speech/Language evaluations. ([REDACTED] #2).
15. The Student's first IEP was developed on November 14, 2012. The IEP included goals in math, writing and reading. The IEP provided for thirty minutes per week to address the reading goal, thirty minutes per week to address the math goal and thirty minutes per week to address the writing goal. ([REDACTED] #8).
16. The IEP in place at the end of the 2012-2013 school year was carried over to the 2013-2014 school year. ([REDACTED] # 8; PGCPS #19).
17. During the 2013-2014 school year, the Student had classes with his general education teacher for all major subjects, and all his activities were with general education students. A teacher's aide and a paraprofessional were in the classroom along with the general educator. ([REDACTED] #8; PGCPS #19).

18. During the 2013-2014 school year the Student's special education teacher provided the Student with more services than what were called for in the IEP. The special education teacher pulled the Student out of the general education classroom to provide him with forty-five to fifty minutes of instruction on reading, writing and math. The instruction was provided with several other students, the number of which varied. (Tr. 401- 402).
19. During the 2013-2014 school year, in the general education setting, the Student continued to exhibit difficulty with organizational skills, making appropriate choices when faced with a frustrating situation and he often required numerous prompts to sustain his attention in order to complete assignments.
20. During the 2013-2014 school year, the Student had difficulty keeping up with his peers in reading and struggled to work independently. (Tr. 336).
21. During 2013-2014 school year, the Student did not enjoy math instruction and had a poor attitude toward that subject area. (Tr. 335).
22. During the 2013-2014 school year, the Student had three incidents during math class where he became frustrated and upset with not being able to understand the tasks. The Student had to leave the classroom for brief periods of time in order to cool down and gather himself. [REDACTED] ES had arranged for the Student to visit the Assistant Principal on these occasions when he felt overwhelmed.
23. On September 25, 2013, at the suggestion of their attorney, the Parents hired an educational consultant, [REDACTED] to help delineate educational services and an educational placement for the Student. (Tr. 214).

24. Mr. [REDACTED] reviewed all of the Student's educational records and on October 10, 2013, Mr. [REDACTED] observed the Student in the classroom for approximately one hour. Mr. [REDACTED] never observed the Student reading and never spoke to the Student. (Tr. 90, 92 and 93).
25. Based on his record review and classroom observations, Mr. [REDACTED] recommended that PGCPS do further academic testing of the Student to ascertain how he is doing in reading, writing and math. He also recommended that Occupational Therapy and Speech evaluations be performed. He recommended that the Student be identified as Talented and Gifted (TAG) and goals be added to the IEP for reading, organization, task completion, study skills and emotional issues. [REDACTED] #14).
26. On October 15, 2013, an IEP team meeting was held. At the meeting, the IEP Team determined that additional information was needed regarding the Student's current level of academic functioning. The Parents consented to have the Student administered the Woodcock Johnson Test of Achievement- III (WCJ-III) test of Achievement and the Test of Written Language-Fourth Edition (TOWL-4). Any changes to the IEP were deferred. (PGCPS #20).
27. On October 30, November 11 and November 13, 2013, [REDACTED] PGCPS Special Education Instructional Specialist, performed an educational assessment of the Student, which included an observation of the Student in the classroom as well as testing. She administered the Student the WCJ-III and the TOWL-4. ([REDACTED] # 18).

28. On the WCJ-III, a norm-referenced test used to compare the performance of a student with peer performance, the Student's scores were as follows:⁸

CLUSTER/TEST	RAW ⁹	AE ¹⁰	SS ¹¹ (68% BAND) ¹²	GE ¹³
ORAL LANGUAGE	-	8-7	95 (88-102)	3.3
ORAL EXPRESSION	-	8-3	94 (89-99)	2.9
BRIEF ACHIEVEMENT	-	9-5	102 (99-105)	4.1
TOTAL ACHIEVEMENT	-	8-6	90 (88-93)	3.2
BROAD READING	-	8-3	90 (85-94)	3.0
BROAD MATH	-	8-9	94 (90-97)	3.4
BROAD WRITTEN LANGUAGE	-	8-6	93 (89-96)	3.2
BRIEF READING ¹⁴	-	9-1	99 (96-101)	3.7
BASIC READING SKILLS	-	9-9	104 (102-107)	4.4
READING COMP	-	8-5	93 (90-96)	3.1
BRIEF MATH	-	9-1	98 (94-101)	3.7
MATH CALC SKILLS	-	8-2	84 (79-89)	2.9
BRIEF WRITING	-	8-9	96 (93-100)	3.4
WRITTEN EXPRESSION	-	8-1	90 (85-94)	2.8

⁸ The bottom eight tests starting with letter word identification are the individual subtests that measure the skill.

⁹ Raw score is the number of test items answered correctly- converted to a Standard Score for meaningful interpretation.

¹⁰ AE denotes age equivalent. The first digit refers to years and the second digit refers to months.

¹¹ According to the expert witness testimony of Ms. [REDACTED] Standard Scores are based on national norms by the exact age of the student. Scores from 80-89 were considered in the low average range, scores from 90-110 were considered in the average range, scores from 110-119 were considered high average. (Tr. pages 631-632)

¹² Ms. [REDACTED] explained that the 68 percent band is the confidence interval that if the student is given the test multiple times, one can be confident that 68 percent of the time the score will fall within that range.

¹³ GE denotes grade equivalent.

¹⁴ Brief reading is not based on time and is based on skill and application of the skill.

ACADEMIC SKILLS	-	9-1	99 (96-101)	3.8
ACADEMIC FLUENCY	-	7-8	67 (57-77)	1.7
ACADEMIC APPS	-	8-10	96 (93-99)	3.8
ACADEMIC KNOWLEDGE	-	9-10	105 (99-110)	4.5
LETTER WORD IDENTIFICATION	49	9-6	103 (100-106)	4.2
READING FLUENCY	18	7-5	53 (32-75)	≤K.0
STORY RECALL	-	9-8	102 (95-109)	4.3
UNDERSTANDING DIRECTIONS	-	8-3	93 (84-101)	2.9
CALCULATION	13	8-7	91 (85-97)	3.2
MATH FLUENCY	24	7-3	74 (70-78)	1.9
SPELLING	31	9-1	99 (95-103)	3.7
WRITING FLUENCY	10	8-1	87 (80-95)	2.7
PASSAGE COMPREHENSION	25	8-4	94 (90-97)	2.9
APPLIED PROBLEMS	34	9-6	103 (98-107)	4.2
WRITING SAMPLES	9-c	8-2	93 (89-98)	2.9
STORY RECALLED-DELAYED	-	7-7	94 (85-102)	2.3
WORD ATTACK	23	10-4	106 (102-109)	5.0
PICTURE VOCABULARY	21	7-10	92 (87-97)	2.5
READING VOCABULARY	-	8-6	96 (93-98)	3.2

29. On the WCJ- III, the Student had average global scores. Fluency tests speed and accuracy and is a measure of what the student can accomplish when compared to nondisabled peers within a given time frame. The Student's academic fluency was in the below average range. He scored below average in reading fluency, writing fluency and math fluency. (█ #18).
30. At the request of the Student's IEP team, on October 25 and 29, 2013, █
█ PGCPS Assistive Technology Consultant, conducted an assistive technology assessment of the Student. Based on her assessment, Ms. █
█ recommended the Student receive assistance to address issues including handwriting and reading. To assist with handwriting, the Student was assigned a Portable Electronic Keyboard (PEK) with the features of word prediction. The PEK also has many built-in supports to assist the Student with his difficulties with organization. (PGCPS #27; Tr. 297)
31. In the fall of 2013, Mr. █ referred the Parents to Dr. █ a neuropsychologist, for an evaluation that focused on the Student's executive functioning and social emotional status.
32. On October 22, 2013, Dr. █ administered a Developmental Neuropsychological Assessment (NEPSY) to assess his executive functioning.
33. Dr. █ assessed the Student as having difficulties in planning and organization. The test further revealed significant weakness in working memory, which manifests in the Student's difficulty following directions and completing tasks that require multi-steps. (█ #17).

34. To assess the Student's emotional issues, Dr. [REDACTED] administered the Student the Behavior Assessment Scale for Children-2 (BASC-2) and the Screen for Anxiety and Related Disorders (SCARED). The Parents were also given the BASC-2 and the SCARED, as well as the Behavior Rating Inventory of Executive Function (BRIEF). The Student's teachers were given the BASC-2 and the BRIEF.¹⁵ ([REDACTED] #17).
35. The results of the SCARED indicated that the Student has an anxiety disorder and some school avoidance issues. The Student's BASC-2 results indicated that he was not at risk for anxiety and attitude toward school fell below the at-risk level. The Parent's score on the BASC-2, reflecting their perception of the Student's anxiety, was higher than the Student's perception. ([REDACTED] #17; Tr. 486-487; Tr. 520).
36. Dr. [REDACTED] recommended that the Student receive his classroom instruction in a small classroom setting with a low student-to-teacher ratio with children who are bright but also have significant executive and learning deficits. (Tr. 490-491)
37. On December 19, 2013, an IEP meeting was held in order to review the assistive technology, occupational therapy and the assessments. No changes were made to the IEP and it was suggested that the school keep data in terms of reducing the student to teacher ratio. (PGCPS # 16; Tr. 625).
38. On January 23, 2014, the PGCPS School Psychologist, Dr. [REDACTED] performed an assessment of the Student as part of the IEP team's effort to determine the appropriateness of the Student's current placement. (PGCPS #25).

¹⁵ There is not a teacher version of the SCARED.

39. Dr. [REDACTED] s assessment included two observations of the Student in the classroom. One observation occurred during math class and one occurred during language arts. In math class, Dr. [REDACTED] observed the Student stop working when he did not understand the task. The Student did not self-advocate and ask for help. (Tr. 538).
40. On January 23, 2014, Dr. [REDACTED] administered the Wechsler Intelligence Scales for Children-III (WISC -III).¹⁶ The Student had a verbal comprehension score of 106, a working memory score of 97 and processing speed score of 73. (PGCPS # 25; Tr. 539).
41. Dr. [REDACTED] performed an assessment of the Student's memory and learning skills through the California Verbal Learning Test for Children, which reflected that he had not learned the information as efficiently as other children. (PGCPS #25; Tr. 550).
42. Dr. [REDACTED] administered the fluid reasoning subtest from the WCJ-III and concluded that the Student's abstract fluid reasoning was in the average range.
43. Dr. [REDACTED] concluded that the Student was compensating for some of his processing deficits by over-relying on memorization. The Student was doing more sight reading and was memorizing as much as he could, which is not as efficient. (Tr. 552).

¹⁶ The WISC-III is a measure of intelligence in the age range of 6-16 and consists of subtests in two scales - verbal scale and performance scale.

44. On the Maryland School Assessment Spring 2013, the Student scored a 462 in reading proficiency, which is advanced proficiency and indicates that on that particular test the Student scored as an above grade-level reader. (PGCPS #32, Tr. 344).
45. On the Maryland School Assessment Spring 2014, the Student scored a 392 in reading proficiency, which is proficient and indicates that on that particular test the Student scored on grade level. (PGCPS #32; Tr. 344).
46. On the Maryland School Assessment Spring 2013, the Student scored a 423 in math proficiency, which is proficient and indicates that on that particular test the Student scored on grade level. (PGCPS #32; Tr. 344).
47. On the Maryland School Assessment Spring 2014, the Student scored a 392 in math proficiency, which is proficient and indicates that on that particular test the Student scored on grade level. (PGCPS #32; Tr. 344).
48. During the 2013-2014 school year, the Maryland State Schools adopted the Common Core state curriculum and schools were no longer teaching to the Maryland State curriculum that the Maryland State Assessment (MSA) measures. The test in the spring of 2014 had represented information that the curriculum in the school did not have. Students did not receive as much preparation time for the spring 2014 MSA as they had received for the spring 2013 MSA tests. Scores on the 2014 MSA dropped state wide. (Tr. 382, 668).
49. On the 2013-2014 Mandatory Unit System Test (MUST), the Student earned an above average score on the Reading/Language Arts and on the Math assessment he earned an average score. (PGCPS #21; Tr. 348).

50. As of March 14, 2014, based on the Student's scoring on the WISC-III in verbal comprehension and perceptual reasoning, the Student was accepted into the PGCPS TAG program for the 2014-2015 school year. (█ #33).
51. If the Student had attended █ES for the 2014-2015 school year, he would have received his special education services in a classroom with twenty-eight other students, all of whom are identified as TAG. (Tr. 420, 686).
52. TAG services are not considered specialized instruction and are not incorporated into an IEP. TAG services are general education services with opportunities for academic rigor. (Tr. 644).
53. An IEP meeting was held on April 28, 2014, Dr. █ shared his additional report and all of Mr. █'s suggestions for the IEP were reviewed.
54. Following the April 28, 2014 meeting, the IEP team determined that it needed to further assess the Student's level of reading comprehension and self-esteem. (PGCPS #17).
55. On May 12, 2014, Dr. █ administered the Gray Oral Reading Tests- 5th Edition (GORT) in order to gauge the Student's level of reading comprehension. The results of the test indicated that the Student was "able to read the stories at an average Rate and with Average accuracy, resulting in an average reading Fluency score." The Student's comprehension score also fell within the average range at the 50th percentile. The Reading Fluency and Reading Comprehension scores were combined and yielded an average Oral Reading Index falling at the 50th percentile. (PGCPS #26).

56. On May 12, 2014, Dr. [REDACTED] administered the Piers Harris Children's Self Concept Scale to try and assess the Student's self-esteem with the educational process. The test results were average with one low average score relating to intellectual and school status where the Student did not view himself as doing really well in the academic realm. The tests further indicated no anxiety in relation to school. (PGCPS #26; Tr. 562).
57. On May 30, 2014,¹⁷ the final IEP meeting was held and the team finished discussing the IEP in terms of incorporating Mr. [REDACTED]'s recommendations. The IEP team also discussed using the co-teaching model with the Student. (PGCPS #21; Tr. 678).
58. The May 30, 2014 IEP team discussed what TAG services would be offered. The IEP provides for the Student to receive his instruction in a classroom with his intellectual peers and receive support and accommodations for his areas of weakness, including executive functioning weaknesses. (PGCPS #21).
59. The IEP provides for the Student to receive 45 minutes of special education instruction each day for math and reading-language and 30 minutes four times per week for science and social studies. (PGCPS #21).
60. The IEP contains goals in Math Calculation, Math Problem Solving, Written Language Mechanics, Written Language Expression and Behavioral Self-Management. (PGCPS #21).

¹⁷ The IEP was amended on June 6, 2014 to address an omission in the documentation regarding answers to questions pertaining to Extended School Year (ESY) services. The substance of the IEP was not changed.

61. The IEP does not include any reading goals. The IEP team determined that although the Student had weaknesses in reading fluency, reading fluency was not impacting his comprehension. The data considered by the IEP team indicated that the Student did not have any issues with decoding and his comprehension of what he was reading was at grade level. (Tr. 688-689).
62. The IEP provides for the following accommodations in the classroom: assistive technology includes a PEK. Presentation accommodations include visual cues to bring his focus back to task and notes and outlines to help with organization and to provide reminders for next steps. Response accommodations include, scribe and electronic word processors. Accommodations in the form materials and devices used to solve or organize problems include: Respond on Test Book, Monitor Test Response, Mathematics Tools and Calculation Devices, Spelling and Grammar devices and Graphic Organizer. Timing and Scheduling accommodations include extended time and multiple/frequent breaks and reduction in distractions. (PGCPS #21).
63. The IEP includes instructional supports for the Student, including verbal praise and positive comments to reinforce his effort and persistence. The Student will be allowed to use manipulatives to assist with problem solving; repetition of directions, monitoring of independent work, use of organizational aids, provide assistance with organization, limit amount to be copied from board, check for understanding, provide checklist/written steps, use of visual/physical guides, allow use of highlights, altered modified assignments, and provide opportunities/tools for movement. (PGCPS #21).

64. The IEP provides for the Student to have a dedicated aide in order to reduce the student/teacher ratio and assist the classroom teacher with implementing supplementary aids, modifications, and supports contained in the IEP. (PGCPS #21).
65. The IEP provides for the Student to receive consultative occupational therapy services in order to ensure that the [REDACTED] ES staff knows how to implement occupational supplemental aids, modification and supports. (PGCPS #21).
66. The IEP provides for a 30-minute per week psychology consult for the Student and/or his teachers to build understanding of self-monitoring strategies. (PGCPS #21).
67. The Student began attending the [REDACTED] School at the beginning of the 2014-2015 school year. All students who attend the [REDACTED] School have some form of educational disability, primarily language based learning disabilities. (Tr. 154).
68. On September 19, 2014, the [REDACTED] School Administered the Student the WCJ –III with the following results: ([REDACTED] #54).

CLUSTER/TEST	RAW ¹⁸	AE	SS (68% BAND) ¹⁹	GE
BRIEF ACHIEVEMENT	-	9-3	93 (90-95)	3.9
BROAD READING	-	9-2	92 (90-95)	3.8
BROAD MATH	-	7-11	73 (69-76)	2.6
BROAD WRITTEN LANGUAGE	-	7-9	75 (70-79)	2.4
BRIEF READING	-	9-7	96 (94-98)	4.2

¹⁸ Raw score is the number of test items answered correctly- converted to a Standard Score for meaningful interpretation.

¹⁹ Ms. [REDACTED] explained that the 68 percent band is the confidence interval that if the student is given the test multiple times, one can be confident that 68 percent of the time the score will fall within that range.

BASIC READING SKILLS	-	9-11	99 (97-101)	4.6
BRIEF MATH	-	8-1	76 (71-81)	2.8
MATH CALC SKILLS	-	7-4	59 (53-64)	2.0
BRIEF WRITING	-	8-3	87 (84-91)	2.9
WRITTEN EXPRESSION	-	7-3	66 (59-73)	1.9
ACADEMIC SKILLS	-	8-10	88 (86-91)	3.5
ACADEMIC FLUENCY	-	7-1	61 (55-67)	1.8
ACADEMIC APPS	-	8-4	84 (80-87)	3.0
ACADEMIC KNOWLEDGE	-	9-9	97 (92-102)	4.4
LETTER WORD IDENTIFICATION	52	10-2	100 (98-102)	4.8
READING FLUENCY	23	7-8	77 (72-83)	2.4
CALCULATION	9	7-6	65 (59-71)	2.2
MATH FLUENCY	19	6-11	66 (63-69)	1.6
SPELLING	30	8-9	91 (89-96)	3.4
WRITING FLUENCY	2	6-5	56 (45-67)	1.1
PASSAGE COMPREHENSION	26	8-7	91 (87-95)	3.2
APPLIED PROBLEMS	31	8-7	87 (83-91)	3.3
WRITING SAMPLES	7-c	7-8	83 (77-88)	2.4
WORD ATTACK	21	9-7	98 (95-100)	4.3
ACADEMIC KNOWLEDGE	-	9-9	97 (92-102)	4.4

69. In the fall of 2014, the [REDACTED] School administered the Quality of Reading Inventory (QRI), an informal, non-normed reading assessment where the student reads a passage and answers a series of questions and is asked to do a retell of the story. The passages have different grade levels associated with them. The Student was assessed at a grade level of 3.5. ([REDACTED] #46; Tr. 141).
70. In the fall of 2014, the [REDACTED] School administered the Wilson Assessment of Decoding and Encoding (WADE). The results indicated that the Student's Sound Knowledge was 45 percent, Real Words was 90 percent and Nonsense words were 60 percent. ([REDACTED] #46).
71. At the [REDACTED] School, the Student is in a homeroom class of thirteen students with a classroom teacher, a classroom assistant and a graduate intern. The Student receives integrated occupational therapy services in the classroom. (Tr. 157).

DISCUSSION

The Parents are seeking reimbursement for their unilateral placement of the Student at the [REDACTED] School for the 2014-2015 school year. Because the Parents are the party seeking relief, they bear the burden of proof. *Schaffer ex. rel. Schaffer v. Weast*, 56 U.S. 49, 56-58 (2005) ("The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief.") The burden of proof is by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217(2014).

The identification, assessment and placement of students in special education is governed by the IDEA, 20 U.S.C.A. §§ 1400-1487, 34 C.F.R. Part 300, Md. Code Ann., Educ. §§ 8-401 through 8-417 (2014 and Supp. 2016), and COMAR 13A.05.01. The IDEA provides that all children with disabilities have the right to a FAPE. 20 U.S.C.A. § 1412(a)(1).

FAPE is statutorily defined as “special education and related services” that are provided “in conformity with the individualized education program required under section 1414(d)” of the IDEA. 20 U.S.C. § 1401(9).

In 1982, the Supreme Court issued the decision of *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982). The Court described FAPE as follows:

Implicit in the congressional purpose of providing access to [FAPE] is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child. . . . We therefore conclude that the “basic floor of opportunity” provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.

Id. at 200-01. See also *In re Conklin*, 946 F.2d 306, 313 (4th Cir. 1991).

In March 2017, the U.S. Supreme Court’s (the Court) unanimous decision in *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 993 (2017) again addressed the standard for determining whether an IEP is sufficient to confer educational benefit on a child with a disability. The Court overturned the Tenth Circuit’s decision that the student, a child with a diagnosis of autism, was only entitled to an educational program that was calculated to provide “merely more than de minimis” educational benefit. The Court in *Endrew F.* clarified that although there is no bright-line rule or formula to determine whether an IEP provides a FAPE, a school must offer an IEP that is reasonably calculated to enable a child to make progress in light of the child’s circumstances. *Endrew F.*, 137 S.Ct. at 1001. The *Endrew F.* Court emphatically noted that the standard is a “markedly more demanding than the ‘merely more than *de minimus* test’ applied by the Tenth Circuit.” *Id.* at 1000. As the Court stated, “[t]he goals may differ, but every child should have the chance to meet challenging objectives.” *Id.* The Court rejected a more expansive interpretation of the FAPE standard, one that promises a student with a disability will be

provided with “opportunities to achieve academic success, attain self-sufficiency, and contribute to society that are substantially equal to the opportunities afforded children without disabilities.”

Id. This decision reflects my application of the *Andrew F.* standard to the previously determined Findings of Fact and credibility determinations of my decision rendered on November 14, 2014.

Background

The Student has a complex educational profile in that he is talented and gifted and also learning disabled, what is now known as twice exceptional. He has been diagnosed with a Reading Disorder (dyslexia), Central Auditory Processing Disorder, and Attention Deficit/Hyperactivity Disorder (ADHD). The Student has general intellectual and reasoning skills in the superior range, but he has some significant weaknesses in attention, executive functioning and processing speed. The executive functioning and processing speed difficulties are pervasive across all curriculum areas. The Student is charismatic and friendly with a strong desire to learn and succeed in school. Coupled with the learning issues are some emotional issues, which the Parents contend are rooted in his academic frustration and manifest in displays of anxiety and poor self-esteem.

The Student has attended [REDACTED] ES since kindergarten and during the second grade he began to exhibit more trouble focusing in school. As a result, the Parents arranged for a neuropsychological evaluation through [REDACTED] Ed. S, and [REDACTED], PH.D., of [REDACTED] Associates ([REDACTED] A). As part of the evaluation, in August and September 2012, [REDACTED] A administered to the Student standardized measures, including the WISC-IV and the WIAT- III. The WISC-IV revealed that he had superior verbal comprehension, superior perceptual reasoning or nonverbal reasoning and gifted verbal abstract thinking. The WISC-IV also revealed deficits in basic working memory and visual motor processing speed.

On the WIAT- III, the Student obtained average scores on the measures of single word reading, oral reading fluency, math calculation, spelling and speeded retrieval of simple multiplication facts (25th to 42nd percentile). The Student obtained scores in the low end of average range in reading comprehension, sentence composition and math problem solving (16th to 19th percentile). Alphabet writing fluency, phonological awareness and decoding was below average (6th to 12th percentile). Speeded retrieval of simple subtraction and addition facts was in the low range (1st to 2nd percentile). The assessment indicated weaknesses in auditory attention, distractibility, impaired processing of directions and deficits with prolonged visual processing skills.

PGCPS accepted the report and in October 2012, PGCPS found the Student eligible for special education as a student with a Specific Learning Disability. PGCPS provided the Student with an IEP beginning in November 2012, which was carried over into the 2013-2014 school year. The IEP included goals in math, written language expression and reading. The IEP provided for thirty minutes per week to address the reading goal, thirty minutes per week to address the math goal and thirty minutes per week to address the writing goal. The services were provided to the Student on a pull-out basis, outside of the general education classroom.

According to the Parents, the Student continued to struggle academically and was exhibiting frustration at the end of the third grade which carried over into the first few weeks of the fourth grade. At the beginning of the fourth grade they consulted an attorney, Mr. Eig, who recommended that they hire an educational consultant to help make recommendations regarding supports and services for the Student. In September 2013, the Parents hired [REDACTED], an expert in special education and twice exceptional students, to help determine the appropriate

services and educational placement for the Student. After a review of the Student's records and an observation of the Student in October 2013 at [REDACTED] ES, Mr. [REDACTED] recommended that the Student have occupational therapy and speech evaluations and undergo testing to assess current performance in reading, writing and math. He further recommended that the Student have a neuropsychological evaluation, particularly for his executive functional and social-emotional status.

In October 2013, Dr. [REDACTED] performed a private neuropsychological evaluation. [REDACTED] a PGCPs Special Educational Instructional Specialist, performed an Educational Assessment in October and November 2013. PGCPs professionals also conducted Assistive Technology, Occupational Therapy and Speech/Language assessments in November 2013. On January 23, 2014, the school psychologist, Dr. [REDACTED] performed an assessment of the Student as part of the IEP team's effort to determine the appropriateness of the Student's current placement. All of the assessments were shared with the IEP team and the IEP team continued to work towards developing the Student's IEP at meetings held on December 19, 2013 and April 28, 2013. At the April 28, 2013 meeting it was decided that an additional assessment was needed regarding the Student's current reading level and his emotional status. On May 12, 2014, Dr. [REDACTED] performed the additional testing to address those concerns.

On May 30, 2014, an IEP meeting was held where the Student's final IEP was developed. The IEP proposed that the Student receive his special education services in a classroom with twenty-eight other students, all of whom were identified as TAG. The Student would be co-taught by a general education teacher and a special education teacher. The classroom would also have a paraprofessional for the Student. The Student would receive forty-five minutes of special education instruction each day during math and reading-language and thirty minutes four times

per week during science and social studies. The IEP included goals for math calculation and problem solving, written language mechanics and expression as well as behavioral goals for self-management and attention. Despite the request by the Parents and their experts, the IEP did not include any goals in reading, fluency or study skills.

The Parents disagreed with the proposed IEP and continued placement at ██████ ES for the remainder of the school year and unilaterally enrolled the Student at the ██████ School for the 2014-2015 school year.

Student's Progress during 2013-2014 school year

The Parents contend that the Student did not make academic or emotional progress at ██████ ES during the 2013-2014 school year. The Parents assert that continuing placement of the Student at ██████ ES with the IEP developed for the 2014-2015 school year is inappropriate in light of the Student's unique circumstances and denies the Student FAPE. They assert they are entitled to reimbursement of the ██████ School tuition for the 2014-2015 school year because of PGCP's failure to offer the Student FAPE.

PGCP's denies the Student's purported lack of progress while at ██████ ES and asserts the IEP developed for the Student is appropriate with respect to accommodations, services and supports. According to PGCP's, the Student's IEP developed for the 2014-2015 school year addresses the Student's individual circumstances, incorporated the Parents' input and is designed to achieve the directives of IDEA, which include allowing the child to receive appropriate educational benefit and to make educational progress, and allowing the child to do these things in an environment that, where practical, includes his non-disabled peers.

Progress during 2013-2014 school year

The parties disagree about whether the Student made academic and social progress while attending ██████ ES and a significant amount of time during the hearing was spent discussing the Student's academic, emotional, and social progress during the 2013-2014 school year. A number of different means of measuring academic progress were discussed as were the interpretations of the Student's progress according to those measures.

The parties agree that the Student's achievement of his IEP goals can be one means of measuring his progress. The IEP is the vehicle through which special education services are delivered and must include "[a] statement of the child's present levels of academic achievement and functional performance, including" and, specifically, "[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 nondisabled children)." 34 C.F.R. § 300.320(1). At least once a year, IEP teams must review the IEP to determine whether the annual goals for the child are being achieved. 34 C.F.R. § 300.320(a)(2)(i). In fact, both the federal and Maryland regulations require an IEP Team to meet and revise, as appropriate, the IEP to address lack of progress. 34 C.F.R. § 300.324(b). COMAR 13A.05.01.09(B)(3). Thus, the achievement of IEP goals can be very informative as to a child's progress.

The Parents contend that the Student's failure to master any goals on his IEP during the 2013-2014 school year is incontrovertible evidence that the Student failed to make any meaningful progress while attending ██████ ES. In support of this assertion, the Parents refer to the IEP documents. The Student's Monthly IEP Progress Notes, sent home to the Parents for the period of August 2013 through June 5, 2014²⁰, all reflect, without exception, that the Student was making sufficient progress to meet his goals, but had not mastered any of them. (█████ #48, pages

²⁰ The record did not include a Progress Note for November 2013.

4-16). Similarly, all of the Student's quarterly progress reports on the IEP goals reflect that the Student was making sufficient progress to meet those goals. None of the reports indicate that he mastered the goals.

Despite the documentation, the Student's special education teacher, Ms. [REDACTED] testified that in fact the Student achieved every goal. She testified that the mastery of the goals was reflected on the progress reports through assessments from the general education classroom and the special education instruction. According to Ms. [REDACTED] she was responsible for the failure to reflect goal achievement on the quarterly reports because the default language in the computer program is "making sufficient progress" and she did not click on the correct "drop down" box. She confirmed that she did not bother to notify the Parents that the Student had mastered the goals because her "thinking and understanding" was that although he had mastered the goals, he "still does need service in those areas." (Tr. 430).

I previously accepted Ms. [REDACTED]'s testimony that the IEP progress notes and the data contained therein document progress made by the Student on the goals, but I did not determine whether the Student had actually mastered the goals. I relied on the legal premise that a Student's failure to master IEP goals in and of itself is not dispositive of whether FAPE had been provided. *Cavanaugh v. Grasmick*, 75 F. Supp.2d 446 (D. Md. 1999). Now, reconsidering the Progress Notes and Ms. [REDACTED]'s testimony in light of the *Andrew F.* decision, I find the Progress Reports document the Student's accomplishments via classwork, assessments and observations; however, the Progress Notes do not support the assertion that all the goals and objectives were achieved in one year's time. In assessing a student's progress on IEP goals/objectives, the student's cognitive capabilities must be taken into consideration. The failure to achieve all goals for a student with superior cognitive ability in certain areas, such as this Student, may be

evidence of progress that is not markedly more than merely *de minimus* as required under the standard set forth in *Andrew F.* Whether or not this Student's progress in light of his cognitive abilities was more than trivial or *de minimus* will only be established after examining the other available measures of progress.²¹

There is no dispute between the parties that educational progress can in fact be measured through means other than achievement of the IEP goals. As pointed out in PGCP's argument, qualitative data as well as quantitative data are appropriate measurements. *Parenteau v. Prescott Unified School District*, 51 IDELR 213 (D. Arizona 2008). PGCP relies upon testimony from those teachers who had hands-on experience with the Student, as well as the educators who performed assessments, to support its position that the Student made more than *de minimus* progress.

Ms. [REDACTED] the Student's fourth grade general education teacher, and Ms. [REDACTED] the special education instructor, both provided anecdotal evidence of the Student's academic progress. Ms. [REDACTED] made the broad statement that the Student made academic progress throughout the fourth grade in all of his academic areas. Ms. [REDACTED] explained how she arrived at her assessment regarding the Student's progress in writing. She explained that at the beginning of the school year, the Student's thoughts were scattered and he was not able to produce the amount of work that one would expect from a fourth grader. He could not routinely produce full sentences; on those occasions when he could, the sentence structure was incorrect and was filled with grammatical errors. The progress she witnessed was the Student's ability at the end of the year to complete a paragraph independently. Despite this assessment of progress made, she acknowledged that at the end of the year the Student was still struggling and not writing at grade

²¹ Even if the Student had achieved all of his goals, as Ms. [REDACTED] stated, that then begs the question whether those goals were sufficiently challenging and ambitious to constitute progress in light of the Student's abilities.

level. Similarly, Ms. [REDACTED] testified that the Student made progress in writing as he went from writing one to two sentences in the beginning of the year to writing one to two paragraphs at the end of the year.

Both Ms. [REDACTED] and Ms. [REDACTED] were of the opinion the Student made progress in reading as well. All PGCSC educators agreed that the Student's reading fluency skills are very weak, but that weakness did not impact his reading comprehension. The IEP Progress Notes of November 7, 2013 support this, reflecting a score of 10 out of 10 on two classroom vocabulary assessments and 9 out of 10 on two additional vocabulary assessments. The January 30, 2014 entry notes progress in reading and lists scores of 9 out of 10 on the text feature assessment, Coyote School News Quiz and 10 out of 10 on vocabulary assessment. The Progress Notes further indicate that he was able to paraphrase what he read and able to use simple graphic organizers. According to Ms. [REDACTED] in the beginning of the year the Student took a very long time to read brief passages, but by the end of the school year she saw "significant improvement." Her statement was qualified by noting the Student, however, was not quite where the other students were.

Ms. [REDACTED] testified the Student made progress in math, one of his weakest areas. Ms. [REDACTED]' testimony regarding his progress consisted strictly of the broad statement that towards the end of the school year he made improvements in the area of math. She provided no testimony in support of this statement other than the Student liked to use "tricks and things" to help him get through some problems. (Tr. 407). Ms. [REDACTED] acknowledged that the Student had difficulty with multi-step problems and his computation skills were below the average fourth grader. She further testified that his high comprehension abilities assisted him in getting by.

In addition to the anecdotal evidence of the Student's progress, the Student's diagnostic test results provide objective indicia of his progress.

The Parents contend that the standardized test results support their assertion that the Student did not make progress at ■■■ ES. The Parents point to the Maryland School Assessment scores in the spring of 2013 and 2014. On the 2013 assessment, the Student scored 462 in the reading proficiency, which is advanced proficiency and above grade level. On the 2014 assessment, the Student scored a 392 in reading proficiency which, while proficient, is a distinct decline from his previous result. The Parents also refer to the WCJ-III test results administered in November 2013, the beginning of fourth grade, as compared to the WCJ-III results in the fall of 2014, the beginning of his fifth grade year at the ■■■ School. During the hearing, the September 2014 WCJ-III test results from the ■■■ School were admitted over the objection of PCGPS. In overruling the objection, I noted the objection went to the weight to be afforded the test results and their relevance. I believe these test results, when combined with all of the other data, provide additional relevant data regarding the depth of the Student's academic progress. The Parents point specifically to the Student's drop in scores in math and writing. The Student's Broad Math standard score dropped from a 94 in the spring of 2013 to a 73 in the fall of 2014; Brief Math dropped from 98 to 76; Math Calculation dropped from a 85 to a 59; Math fluency dropped from a 74 in 2013 to a 66 in 2014. On the Broad Written Language cluster, the score dropped from a 93 to a 75; Brief Writing dropped from 96 to 87.

I have considered and carefully reviewed the entire record and analyzed the Student's progress as reflected on the IEP Progress Notes, the diagnostic test results and the teachers' data and observations. For the reasons now discussed, I must conclude that the Student's progress while at ■■■ ES, in light of his unique circumstances as a twice exceptional student with well

above average cognitive ability, fell short of what should be expected in order for the Student to have received FAPE.

PGCPS educators' descriptions of the Student's progress were broad, general, and subjective statements supported with very little data. Ms. [REDACTED] stated that the Student mastered his goals as reflected on the IEP progress notes, yet she failed to point to any specifics on the IEP Progress Notes that actually reflected mastery. Ms. [REDACTED] testified that the Student achieved his goals, but conceded that she based that conclusion based on what she had been told and not her own assessment of the IEP Progress Notes. She also spoke generally of the Student's progress without much specific detail. Her statement that the Student "got better in math" is not a meaningful assessment of progress.

The teachers' assessments are not in line with a majority of the diagnostic test results, which reflect the Student did not make significant progress during the 2013-2014 school year. The Maryland School Assessments reflect what can be described as a precipitous drop in one year, particularly in math and writing. PGCPS educators stated that the drop in scores was across the board in Maryland and attributed the overall drop to the introduction of the Common Core curriculum and students not receiving as much preparation for the test. While that may be responsible for some drop, the Student's drop was so great that I doubt the introduction of the Common Core was wholly responsible for the Student's decline in scores. Furthermore, additional test results support the conclusion of some academic decline. The test results reflect that in the third grade, the Student was reading on grade level, yet after a year of special education he still tested on the third grade level as reflected by the Gray Oral and Gray Silent reading tests administered by Dr. [REDACTED] in May 2014. Additionally, the WCJ-III scores between October 2013 and September 2014 reflect that Student's scores on Written Expression dropped

from 90 to 66; Spelling dropped from 99 to 91; Writing Samples dropped from 93 to 83; Writing Fluency dropped from 87 to 56. These scores reflect a drop from average ranges to low and very low-average ranges. The scores seem in line with Ms. [REDACTED]'s statement that towards the end of the year the Student was still "struggling in writing. I didn't feel at all he was on grade level in writing." She said the Student progressed from "only being able to complete a few phrases and incomplete sentences in the beginning of the year to completing a paragraph at the end of the year."

What is notably missing from PGCPs educators' assessments of the Student's progress is acknowledgment and consideration of the Student's individual circumstance of being twice exceptional, his cognitive strengths and his desire to succeed in the classroom. The Student's intellectual functioning was evaluated using the WISC-V, the results of which placed the Student in the superior range in verbal intellectual potential and perceptual reasoning. Mr. [REDACTED] who was testified as an expert in special education with an emphasis on identifying and meeting the needs of twice-exceptional students, testified that based upon his review of the Student's educational records, he identified the Student as "an incredibly bright student" who is "able to see things creatively and differently" and "capable of a high level of learning." (Tr.30, 36). Not only does the Student have high cognitive potential, but it is undisputed the Student always puts forth good effort in the classroom, has a desire to succeed and has strong willpower when goal-oriented. With this profile, one would expect the Student's progress, when given appropriate special education services, to be obvious. As Mr. [REDACTED] explained, when a student is close to or even a year behind grade level in reading, writing or math it may not be a huge concern for students thought of as average students, but for gifted students it is a significant concern because it is very discrepant with the cognitive abilities of the student. To support his point, Mr.

██████████ referred to the Woodcock Johnson -III Tests of Achievement administered to the Student in the fall of 2013 when the Student was in the fourth grade. He emphasized that the academic fluency overall score of 67 is extremely low at the first grade level and the reading fluency score of 53, similarly very low, below kindergarten level. Mr. ██████████ testified that for a child such as the Student, in the 92nd percentile cognitively the discrepancy is indicative of areas of need not being addressed. Twice-exceptional students are often able to compensate for their weaknesses by using the skills where they excel, but in actuality the twice-exceptional student is functioning far below the level at which their cognitive ability shows they should be functioning.

The evidence suggests that during the 2013-2014 school year, PGCPS did not take into consideration the Student's high cognitive functioning and potential for growth when assessing his progress. Neither Ms. ██████████ nor Ms. ██████████ explained why the Student, with superior cognitive abilities, would not be expected to read and write at grade level or above with the appropriate supports in place. In the fall of 2013, the students in the fourth grade were placed in three groups, advance functioning students were placed in one class, students with needs in other areas not performing up to the standards of the advance students were in another class and the lower functioning students were in the third class. The Student was placed in the lowest functioning class. The testimony of Dr. ██████████, the School Psychologist, suggested he did not consider the Student's cognitive strengths at all. As part of the IEP process, Dr. ██████████ performed an assessment of the Student in January 2014 and observed him on three separate occasions. Dr. ██████████ testified that Student's score on the passage comprehension subtest on the WCJ-III was average and therefore a "strong score." However, when he was asked on cross-examination whether the same score and grade equivalency in reading comprehension for a child

with an IQ of 145 would still be considered a strong score, Dr. [REDACTED] stated that he “never thought of it that way.” Therefore, in light of the evidence presented through the IEP progress notes, the testimony of the Student’s teachers and the diagnostic tests, the evidence supports a conclusion that the Student’s progress was not markedly more than de minimus in light of his unique circumstances as a twice-exceptional student.

Appropriateness of the 2104-2015 IEP

FAPE requires an IEP be designed to enable the child to be involved in and make progress in the general education curriculum. 20 U.S.C. 1414 (d)(1)(A) and 34 C.F.R. §300.320(a). The *Andrew F.* Court further noted that the IEP should be “constructed only after careful consideration of the child’s present levels of achievement, disability and potential for growth. *Andrew F.*, 137 S. Ct. at 999.

Dr. [REDACTED] opined that based on his review of the Student’s academic records, his one observation of the Student in the classroom, as well as his expert knowledge of twice-exceptional children, the IEP ultimately designed for the Student was inappropriate. He testified that the IEP was inappropriate as it does not address all areas of need; the most glaring omission being that of a reading goal.

According to Mr. [REDACTED] the Student needs direct special education instruction in reading because of his reading fluency issues, reading comprehension issues and decoding issues. (Tr. 57). Dr. [REDACTED] also testified that the Student needs special education in reading. She based her conclusion on the [REDACTED] Schools WCJ-III 2014 results reflecting a grade equivalency score of 3.8 in broad reading.

The Student's educators admitted the Student's reading fluency was a definite weakness. FAPE requires an IEP must be designed to enable the child to be involved in and make progress in the general education curriculum. 20 U.S.C.1414 1414 (d)(1)(A) and 34 C.F.R.§300.320(a). The *Endrew F.* Court further noted that the IEP should be "constructed only after careful consideration of the child's present levels of achievement, disability and potential for growth. *Endrew F.*, 137 S. Ct. at 999.

Dr. [REDACTED] opined that based on his review of the Student's academic records, his one observation of the Student in the classroom, as well as his expert knowledge of twice exceptional children, the IEP ultimately proposed for the Student was inappropriate. He testified that the IEP does not address all areas of need; the most glaring omission being that of a reading goal.

According to Mr. [REDACTED] the Student needs direct special education instruction in reading because of his reading fluency issues, reading comprehension issues and decoding issues. Dr. [REDACTED] a Neuropsychologist, concurred that the Student needs special education in reading. She based her conclusion on the [REDACTED] Schools WCJ-III 2014 results reflecting a grade equivalency score of 3.8 in broad reading.

The Student's educators testified that the Student's reading comprehension was not an issue, but admitted that his reading fluency was a definite weakness. PGCPS educators explained fluency tests for speed and accuracy and is a measure of what the student can accomplish when compared to nondisabled peers within a given time frame. According to the educators, the Student's fluency deficits did not impact his reading comprehension and, thus, he did not require a reading goal on the IEP. PGCPS relies in part upon diagnostic testing in support of the decision. On May 12, 2014, Dr. [REDACTED] administered the Gray Oral Reading Tests- 5th Edition (GORT) specifically in order to gauge the Student's level of reading comprehension. The results

of the tests, as explained by both Dr. [REDACTED] and Ms. [REDACTED], indicated that the fluency issue was not impacting the Student's comprehension and ability to access the curriculum. Dr. [REDACTED]'s report of the GORT results indicated that the Student was "able to read the stories at an average Rate and with Average accuracy, resulting in an average reading Fluency score." The Student's comprehension score also fell within the average range at the 50th percentile. The Reading Fluency and Reading Comprehension scores were combined and yielded an average Oral Reading Index falling at the 50th percentile. Dr. [REDACTED] testified that a reading goal was not included in the IEP because the Student was an average reader and any reading issues could be addressed by the executive functioning goals in the IEP. He further testified that the Student needs help with the executive thoughts of reading, "being able to put the thoughts together and organize them." (Tr. 600). Ms. [REDACTED] Special Education Instructional Specialist, testified that the Student's scores on the WCJ-III, MSA and GORT reflect the Student knows the reading process; he knows how to read words in isolation and comprehend what he is reading. [REDACTED] PGCPs Instructional Specialist, reiterated that, although the reading fluency scores were low on the 2013 WCJ-III, the fluency issues were not impacting his reading comprehension or decoding.

I am mindful that when assessing whether a student was offered, given or denied a FAPE, a judge must "afford great deference to the judgment of education professionals." *O.S. v. Fairfax County Sch. Bd.*, 804 F.3d 354, 360 (4th Cir. 2015) (quoting *E.L. ex rel Lorsson v. Chapel Hill-Carrboro Bd. of Educ.*, 773 F.3d 509, 517 (4th Cir. 2014)). The Fourth Circuit has found that local educators deserve latitude in determining the IEP most appropriate for a disabled child, and that the IDEA does not deprive these educators of the right to apply their professional judgment.

See *Hartmann ex rel. Hartmann v. Loudoun Cty. Bd. of Educ.*, 118 F.3d 996, 1001 (4th Cir. 1997). Likewise, a judge must be careful to avoid imposing his or her view of preferable educational methods upon a school district. *Rowley*, 458 U.S. at 207; see also *A.B. ex rel. D.B. v. Lawson*, 354 F.3d 315, 325 (4th Cir. 2004). However, the *Andrew F* decision also emphasized, “A reviewing court may fairly expect those authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” *Andrew F.* at 1002. PGCPS’s opinion that the reading goal and fluency goals were not needed in the IEP is simply contrary to the standard required by the *Andrew F.* Court.

The 2014-2015 school year IEP does not contain one reading goal, despite the fact that PGCPS educators agreed that in the third and fourth grades the Student had trouble keeping up with his peers. According to Ms. [REDACTED], the Student’s reading fluency issues could be addressed by supports of prompting cueing and chunking of information in the general education setting, yet the diagnostic test results indicate otherwise. At the beginning of the fifth grade, the [REDACTED] School administered the QRI, an informal non-normed reading assessment. Although I recognize that the test was not normed and the results were simply written on a piece of paper, the results are consistent with the other assessments showing the Student’s profound weakness in reading. The results reflected that the Student was reading at a grade level of 3.5 even with the supports in place.

Additionally, I afford little weight to Dr. [REDACTED]’s testimony regarding the appropriateness of the IEP because he contradicted himself on cross-examination when he admitted that the Student needs help with reading and it was a concern that the reading goal was absent from the IEP. He also testified the Student was compensating for some of his processing

deficits by over-relying on memorization, which was not as efficient. Additionally, Dr. [REDACTED] did not take into consideration, as previously discussed, the Student's superior cognitive abilities when addressing his progress. If he didn't consider the Student's cognitive strengths when assessing progress, it is reasonable for me to infer that he did not consider them when determining the appropriateness of the IEP.

The explanations of PGCPs educators for the lack of a reading goal are not cogent or responsive given that with the supports during the 2013-2014 school year in the general education classroom, the Student was still unable to keep pace with his peers, made very little progress in fluency and was assessed as still reading at third grade level. During the 2014-2015 school year, the Student was expected to be in a general education classroom with twenty-eight other students, all of whom were identified as TAG. PGCPs educators did not explain how the Student, who was unable to keep up with peers in the fourth grade, would be able to keep up with peers in the more rigorous TAG program without any direct reading instruction or goals.

The PGCPs appears content with the Student's status as an "average reader" and his below grade level status despite his cognitive potential, which according to the undisputed experts' testimony is much greater. PGCPs's expectations for the Student are at odds with the *Andrew F* decision which mandates that an educational program must be appropriately ambitious in light of a child's individual circumstance and potential for growth.

Insufficiency of IEP services

The Parents further contend that the proposed IEP at the end of the 2013-2014 school year, which provides for ten hours per week of special education instruction in the general education classroom to support him in math, written language, science and social studies, is insufficient to meet the Student's needs. The IEP provides for removal of the Student from the

general education classroom only to receive psychological consultation services. The Parents assert that in order to receive FAPE, the Student requires direct instruction in reading, writing and math in a smaller, more supported setting. The Parents rely upon the testimony of Mr.

██████████ Dr. ██████████ and ██████████ School educators to support this position.

Mr. ██████████ testified that based on his review of the records and his observation of the Student, the Student requires direct instruction in reading, writing and math, which is typically available in a small group-type special education setting. He explained that it was especially important to address the Student's foundational skills in reading, math and writing at this juncture before he moves on to the more demanding academic years. According to Mr. ██████████ providing the Student with instruction and accommodations in the general education setting is problematic for the Student as a twice-exceptional student because it embarrasses the Student and, in the mind of the Student, makes him appear less bright than his peers. He was also of the opinion that the IEP was inappropriate as it did not contain goals or strategies for improving his attention. He opined that the Student also needs instruction in how to improve his organization, study skills and problem solving.

Dr. ██████████ concurred that the general education setting was not the appropriate environment to offer instruction and accommodation. She stated the Student requires a small classroom setting with a low student-to-teacher ratio because of his trouble focusing and attention difficulties. The small classroom setting described would be conducive to him focusing and being on task. She further explained the Student needs to be with students with similar profiles because the same teaching strategies that apply to them would apply to the Student. According to Dr. ██████████ the Student has pervasive executive functioning difficulties across all

curriculum areas and, therefore, the Student requires a full-time, integrated systematic approach for learning, which requires a self-contained setting.

PGCPS adamantly disagrees that that the Student needs a more restrictive setting to received specialized instruction. PGCPS explained that the Student will receive instruction on his IEP goals when the general education teacher, special education teacher and paraprofessional are in the classroom. PGCPS educators were of the opinion that the Student benefits from attending classes with non-disabled peers. Ms. [REDACTED] cited the importance of the Student being in a classroom with non-disabled peers to use as role models. Similarly, Ms. [REDACTED] opined that the Student would benefit from being in a general education classroom because he needs to learn to ask for accommodations, which is one of his IEP goals. She stated he would not learn to do so if he is in a class where every child is getting accommodated. Ms. [REDACTED] noted that the general education classroom is an environment most closely matching a disabled student's community experiences and provides a student with the necessary skills for success in the community. Ms. [REDACTED] testified that it would be a disadvantage to pull the Student out of the general education environment where he can be successful. She opined [REDACTED] ES is an appropriate placement noting that "it's not like he was bombing out in everything." (Tr. 702-703).

Clearly, under the standard set forth in *Andrew F.*, placement cannot be considered appropriate based on the fact that the Student is "not bombing out." The *Andrew F.* decision recognizes the importance of children being educated in the least restrictive environment, noting that for most children "a FAPE will involve integration in the regular classroom and individualized special education calculated to achieve advancement from grade to grade." It also, however, made it clear that instruction and services "must likewise be provided with an eye toward progress in the general education curriculum." *Andrew F.* at 1000.

The benefits that the Student would receive from being in a classroom with non-disabled peers must weighed against the benefits the Student would receive in a classroom with similarly disabled peers and with integrated special education services. Given the Student's regression while in the general education setting the previous year, even with more hours of service offered, the evidence indicates that a smaller more integrated setting is needed for the Student to make meaningful progress.

Emotional/Social Goals

The Parents further contend that the IEP is defective because it fails to address the Student's significant emotional needs. The preponderance of the evidence does not support such a finding for the reasons explained below.

Both Dr. [REDACTED] and Mr. [REDACTED] testified that the Student's cognitive profile makes him vulnerable to anxiety and frustration that may manifest itself in symptoms such as withdrawal or emotional outbursts. The Parents contend that this behavior has in fact manifested itself at home and school. According to the Parents, during the fourth grade, the Student starting to complain that he hated school and he began exhibiting signs of frustration and anxiety. The Parent reported that the Student was having at least one emotional outburst per week related to school. He makes statements such as "I hate school" and "I feel lost." In addition to the incidents at home, the Parents cited to several incidents at school where the Student became upset in the classroom and needed to leave. The Parents placed particular emphasis on an incident in math class when the Student crawled under his desk and began sobbing.

Dr. [REDACTED] explained that her conclusions were based on a neuropsychological evaluation on October 22, 2013, which focused on the Student's executive functioning and emotional status. Dr. [REDACTED] explained that in order to assess the Student's emotional status, she spoke with him

and gave him several questionnaires that specifically deal with emotional issues. As part of her evaluation, Dr. [REDACTED] administered the BASC, a questionnaire assessment that looks at externalizing as well as internalizing behaviors, as well as some social aspects, such as relationships, attitudes about school and self-esteem. She also provided the Student and the Parents with the SCARED, a non-normed anxiety questionnaire. According to Dr. [REDACTED] on the SCARED the Student's self-report indicated an "anxiety disorder of some kind." Dr. [REDACTED] report specifically noted that the Student demonstrates "many social and emotional strengths." (NP #17). She documented that "on a sentence completion task, the Student made positive statements about himself, peers, and family. Nevertheless, she opined that the Student "shows significant symptoms of emotional distress."

Although there is evidence that that Student has had episodes of frustration and may experience periods of anxiety, the evidence does not support a finding that the Student has extensive emotional needs that are not addressed in his IEP. It is important to note that Mr. [REDACTED]'s opinion is based on his general knowledge of twice-exceptional children and the Parents' report of the Student's behavior, and not any specific behaviors of the Student that Mr. [REDACTED] personally observed. Similarly, I have not given Dr. [REDACTED]'s opinion great weight as her conclusion that the Student displays significant symptoms of emotional distress was not gleaned from her interaction with the Student or even from the Student's self-assessment, but rather from the Parent's self-report on the SCARED. According to the Parents, the Student exhibited significant school avoidance, but the Student only endorsed as "somewhat true" the statement "I worry about going to school." She also found that the Student had symptoms consistent with a Separation Anxiety Disorder. However, on the BASC, the Parents' and teachers' ratings fell below the risk rating for Student anxiety. Dr. [REDACTED] administered the Piers Harris Children's

Self Concept Scale to assess the Student's self-esteem within the educational process and the test results indicated the absence of anxiety in relation to school.

Most importantly, the anxiety/emotional issues reported by the Parents and their experts were not exhibited by the Student on a routine basis. The overwhelming testimony of the [REDACTED] ES staff was that the Student generally did not present as anxious. The other [REDACTED] ES educators were unanimous in their observations and assessments of the Student being a happy and socially engaging participant at school. Ms. [REDACTED] testified that throughout the school year the Student remained the same happy child, except when it came to math instruction. She and the Assistant Principal confirmed that all of the incidents at school referenced by the Parents occurred during math class. The one particular incident where the Student was sobbing under the desk was described by Ms. [REDACTED] as uncharacteristic of the Student. On that particular day, the Student was working independently on math when he became upset and crawled under his desk and sobbed. After being removed by the aide and going for a walk, the Student calmed down and explained that to Ms. [REDACTED] that he became upset because he felt inferior to his peers because he did not understand the information that was being presented. The fact that the Student became frustrated several times in a class of a subject area that is a known area of difficulty and dislike for the Student does not lead to the conclusion that the school cannot address his emotional needs.

The 2014-2015 IEP provided for a Behavioral-Self Management goal that specifically addressed the issue of frustration and overload. The goal provided that on an independent task, the Student will use strategies to work through frustration in order to complete the task. The goal included objectives of the Student to identify the source of the frustration, choose a strategy to

address the frustration and, with prompting from staff, recognize that he is off task. Based on the Student's behavioral history at school and the emotional accommodations contained in the IEP, I find that even in light of the *Andrew F.* decision, the IEP appropriately addressed the Student's needs in this area.

Reimbursement for [REDACTED] School

The Supreme Court has articulated the requirements for reimbursement when the private placement desired by a child's parents is proper, but the one recommended by the school system is inappropriate. The Court has upheld the right of the parents to unilaterally place a learning disabled child in a private school and to recover reimbursement from the local educational agency (LEA) when the educational program offered by school authorities is not reasonably calculated to provide a FAPE. *Burlington School Committee v. Department of Education*, 471 U.S. 359 (1985). This reimbursement right may even apply when the placement selected by the parents does not meet all of the standards applicable to private placements effectuated by the State itself. *Carter v. Florence County School Dist. Four*, 950 F.2d 156 (4th Cir. 1991), *aff'd*, 510 U.S. 7 (1993); *see also*, 34 C.F.R. § 300.148(a) and (c).

As recognized in *Burlington* and *Carter*, parents who unilaterally remove a child from a public school system placement without the consent of school officials, and who place their child at a private school, "do so at their own financial risk." *Burlington*, 471 U.S. at 374. Before they can expect to recoup their expenses for the private placement they must meet a two-pronged test under those cases: (i) the placement proposed by the school system is not reasonably calculated to provide a child with FAPE, and (ii) the private unilateral placement is appropriate.

PGCPS failed to develop a program for the Student which actually took into consideration the Student's unique circumstances as a twice-exceptional student with a constellation of disabilities, but with superior cognitive abilities in certain areas and how the interaction of those strengths and weaknesses affect the way he learns. PGCPS denied the Student FAPE in failing to design a program in which the Student made markedly more than de minimus progress in light of his cognitive potential and it failed develop an IEP that provided adequate services and included goals in all his areas of need.

The Student has been attending the [REDACTED] School since the beginning of the 2014-2015 school year and, according to the Parents and the [REDACTED] School educators, the Student is happy and making academic progress. The [REDACTED] School is approved in Maryland for special education placements. It is a self-contained special education day school serving bright Students with primarily language-based learning disabilities, attention deficit disorders and executive functioning difficulties. The Student is in a homeroom with thirteen students, a classroom teacher, a teacher assistant and graduate intern.

The opinions of the [REDACTED] School educators, Mr. [REDACTED] and Dr. [REDACTED] were that the [REDACTED] School is an appropriate placement for the Student. Mr. [REDACTED] testified that he is very familiar with the [REDACTED] School and does not believe the environment is too restrictive for the Student. He noted that at the [REDACTED] School, the Student will be learning with peers who are similarly bright and have similar challenges. He expressed his opinion that the [REDACTED] School provides an appropriate, small class size environment where the Student receives direct and daily intervention in his reading and math foundational skills so that he can close the gaps where his academic progress has faltered. Ms. [REDACTED] the Head of the Intermediate School at the [REDACTED] School [REDACTED] described the program the Student receives at the [REDACTED] School. While at

the [REDACTED] School, the Student receives instruction from a special education teacher in reading, literacy, written language and math. Reading instruction is given in a ratio of six to seven students with three staff members. The [REDACTED] School provides the Student with explicit instruction that will focus on his reading, writing and math skills that, up until now, have been weak and have not permitted him to make progress commensurate with his cognitive capabilities. The program also focuses on executive functioning difficulties, organization, planning and study skills. These foundational skills need to be improved in order for him to succeed as he progresses through the more demanding academic years.

In sum, the Parents have shown the [REDACTED] School offers the Student an appropriate program and placement reasonably calculated to provide the Student educational benefit. Although the Student is in the restrictive environment of a private, special education day school, the program and placement address his specific needs.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Parents proved the Student's IEP for the 2014-2015 school year, with placement in the general education classroom, was not reasonably calculated to provide the Student a free appropriate public education. 20 U.S.C.A. §§ 1401(9), 1412(a)(1) (2017); *Endrew F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988 (2017); *Bd. of Ed. v. Rowley*, 458 U.S. 176 (1982).

I further conclude as a matter of law that the Parents proved by a preponderance of the evidence that placement in the [REDACTED] School is appropriate and they are entitled to reimbursement for that placement. *Sch. Comm. v. Dep't of Educ.*, 471 U.S. 359 (1985); *Carter v. Florence Cty. Sch. Dist. Four*, 950 F.2d 156 (4th Cir. 1991), *aff'd*, *Florence Cty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993).

ORDER

I **ORDER** that the Parents' request for the Student's placement at [REDACTED] School for the 2014-2015 school year is hereby **GRANTED**; and,

I further **ORDER** PGCPS to pay the Student's tuition for the 2014-2015 school year.

If corrective action is required by this decision, the local education agency shall, within thirty days of the date of this decision, provide proof of compliance to the Chief of the Complaint Investigation and Due Process Branch, Division of Special Education and Early Intervention Services, the Maryland State Department of Education.

May 3, 2018
Date Decision Issued

GAK/sw
#172532

Signature Appears on
Original

Geraldine A. Klauber
Administrative Law Judge

REVIEW RIGHTS

Any party aggrieved by this Final Decision may file an appeal with the Circuit Court for Baltimore City, if the Student resides in Baltimore City, or with the circuit court for the county where the Student resides, or with the Federal District Court of Maryland, within 120 days of the issuance of this decision. Md. Code Ann., Educ. § 8-413(j) (Supp. 2017). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence.

Should a party file an appeal of the hearing decision, that party 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 court action. The written notification of the filing of the court action must include the Office of Administrative Hearings case name and number, the date of the decision, and the county circuit or federal district court case name and docket number.

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

Copies Mailed To:

