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STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE ANN C. KEHINDE,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-MONT-OT-19-12412

DECISION

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STATEMENT OF THE CASE

On April 22, 2019, ██████████ (Parent), on behalf of her child, ██████████ (Student), filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by Montgomery County Public Schools (MCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017);¹ 34 C.F.R. § 300.511(a) (2018);² Md. Code Ann., Educ. § 8-413(d)(1) (2018); Code of Maryland Regulations (COMAR) 13A.05.01.15C(1). The Parent did not request mediation. On May 23, 2019, the OAH received a written waiver of the resolution session by the parties.

On June 4, 2019, I convened a telephone pre-hearing conference (TPHC). Paula A. Rosenstock, Esquire, represented the Parent. Manisha Kavadi, Esquire, represented

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

² C.F.R. is an abbreviation for Code of Federal Regulations.

Montgomery County Public Schools (MCPS). Ms. Rosenstock noted that the Parent was seeking to amend the Due Process Complaint; Ms. Kavadi responded that the MCPS was aware the Parent was seeking to amend the Due Process Complaint but was not taking a position on the amendment until the motion was filed. The parties agreed that the Parent would file a Motion to Amend, and we would reconvene the TPHC on June 13, 2019 to discuss the Motion and the hearing on the merits.

On June 10, 2019, the Parent filed a Motion to Amend.

On June 13, 2019, I reconvened the TPHC. Counsel advised that they had discussed the Motion and next steps in the case, and agreed that the Parent would withdraw her Motion to Amend. The parties would hold an Individualized Education Program (IEP) meeting as soon as it could be scheduled for the end of June or beginning of July 2019.³

On July 30, 2019, the Parent filed a new Amended Request for Due Process (Amended Request). MCPS did not object to the Amended Request. The parties were not available to reconvene a TPHC until August 16, 2019. On August 16, 2019, the TPHC was reconvened. Michael Eig, Esquire, participated on behalf of the Parent, and Manisha Kavadi, Esquire, participated on behalf of MCPS. The parties advised that the IEP meeting was held, the parties would not be holding a resolution session or mediation, and that the case should move forward to a hearing on the merits but, due to scheduled hearings, vacations, and witness availability, the parties were not available until September 10, 2019.⁴

³ A TPHC was scheduled for July 2, 2019, at the request of the parties to discuss the availability of Parent's expert witness. On July 2, 2019, the parties contacted the OAH to request that the TPHC be cancelled as the issue of the availability of the Parent's expert witness was resolved.

⁴ During August 2019, Ms. Kavadi was scheduled in several due process hearings plus key MCPS witnesses (who were not twelve-month employees) were unavailable. Further, during the week of August 26, 2019, MCPS had in-service scheduled. Ms. Kavadi stated that collective bargaining agreements restrict non-year-round employees from appearing during the summer and/or missing the scheduled in-service. The date of September 10, 2019 was the earliest date that counsel and the witnesses were mutually available to begin the hearing on the merits.

Unless an extension is requested by the parties, the due process hearing must be held and a decision issued within forty-five days of July 30, 2019, the triggering event for the timeframe for a due process decision, which was Friday, September 13, 2019. 34 C.F.R. §§ 300.510(b)(2), (c), 300.515(a) (2019); Md. Code Ann., Educ. § 8-413(h) (2019); COMAR 13A.05.01.15C(14). The parties requested an extension of the timeframe for holding a hearing and issuing the decision, which was granted. The parties agreed that the decision would be issued thirty days from the close of the record.⁵

On September 10, 2019, a hearing on the merits of this case began. Michael Eig, Esquire, and Meghan ██████ Esquire, represented the Parent. Manisha Kavadi, Esquire, represented MCPS. The hearing continued from September 11 through 13, 2019, September 16, 2019, and September 20, 2019. On September 20, 2019, the hearing ended mid-morning after Mr. Eig became ill. In the middle of trying to schedule further hearing dates, I became ill and was on medical leave until December 9, 2019.

On October 28, 2019, Administrative Law Judge Jana Burch held a conference call with counsel and offered the following options to complete the hearing as expeditiously as possible: (1) The parties could have another Administrative Law Judge (ALJ) hear the case from the beginning; (2) Another ALJ could be assigned to the case, review all of the transcripts and audio recordings, and continue the case where the parties left off on September 20, 2019; or (3) The case could be scheduled as soon as the parties, counsel and I were able to reconvene. The parties

⁵ The last date of hearing, as originally scheduled, was for September 26, 2019. Therefore, the decision would have been due by October 25, 2019.

chose the third option and hearing dates of January 21, 2020 through January 24, 2020 were scheduled.⁶

At the beginning of the reconvened hearing on January 21, 2020, the Parent requested that I reconsider my denial of her request to re-open because I only ruled “on one argument” and because I got “both the facts and law wrong” in my ruling. Contrary to the Parent’s argument, I addressed both of her concerns: that her case had become stale due to the length of time between the September 20, 2019 and January 21, 2020 hearing dates, as well as the Parent’s request that she be allowed to “present witness from the Student’s current placement at [REDACTED] to demonstrate the progress she is making at [REDACTED] due to the interventions it is providing the Student.” (Status Conference Report and Order, p. 2). The Parent cited eight cases for the proposition of why I must allow evidence from [REDACTED] as “Response to Intervention.”⁷ I addressed each case and explained that there were no holdings in these cases that required me to permit evidence that occurred after the hearing began to be admitted in order to show that IEPs proposed for the previous two school years were not calculated to provide FAPE.

⁶ On December 16, 2019, I held a status conference call to address the Parent’s concern that her case had become “stale” and that she should, in addition to presenting rebuttal testimony, be allowed to present witnesses from the Student’s current placement at the [REDACTED]. On December 20, 2019, I denied the Parent’s motion in a Status Conference Report and Order on Parent’s Request to Re-Open Case in Chief to Present Evidence (Status Conference Report and Order).

⁷ As noted during closing argument, the Parent used the term, “Response to Intervention,” (RTI) throughout the hearing, to describe how the Student performed in the parentally-placed nonpublic schools (first [REDACTED] and then [REDACTED]). However, RTI has a specialized meaning in special education and refers to the strategies school systems use “to ensure that children who are struggling academically and behaviorally are identified early and provided needed interventions in a timely and effective manner. Many LEAs have implemented successful RTI strategies, thus ensuring that children who do not respond to interventions and are potentially eligible for special education and related services are referred for evaluation; and those children who simply need intense short-term interventions are provided those interventions.” Office of Special Education and Rehabilitative Services, OSEP 11-07, Memorandum dated January 21, 2010. As the memorandum makes clear, RTI is a process that is often employed prior to evaluating a child suspected of having a disability but the evaluation cannot be delayed or denied because of implementation of an RTI strategy. Here, the parties agree that MCPS assessed the Student, found her to have a disability and developed an IEP(s) for her based on those assessments. RTI is inapplicable in this case.

Although it is true that evidence during the time period September 20, 2019 to January 21, 2020, would be relevant to the 2019-20 IEP, a due process hearing cannot be fairly and efficiently held in the context of a “moving target.” In other words, when the Parent requested permission to file an Amended Complaint that added the 2019-20 school year, she knew she had already agreed to hearing dates in September 2019, and was aware that she would have limited information from ██████ to introduce. Unfortunately, the hearing did not conclude in September 2019. In January 2020, the Parent requested that she put on witnesses from ██████ but they were not likely to be available that week which would necessitate a further postponement of the reserved hearing dates (which were in the middle of MCPS’s case) in order to re-open the Parent’s case. As the Parent could point to no new authority, I denied the Parent’s request for reconsideration on the record. The Parent argued that she should be allowed to brief the issue then, and at the end of the hearing, and that I denied her due process in refusing her requests; however, I note that the eight cases cited by the Parent in the December 16, 2019 status update conference were the same cases relied upon by counsel in his closing argument. I incorporate the Status Conference Report and Order in this Decision.

Procedure in this case 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. Md. Code Ann., Educ. § 8-413(e)(1) (2018); State Gov’t §§ 10-201 through 10-226 (2014 & Supp. 2019); COMAR 13A.05.01.15C; COMAR 28.02.01.

ISSUES

The issues are:

1. Whether MCPS failed to provide a free appropriate public education (FAPE) to the Student by failing to propose IEPs that were reasonably calculated to provide the Student with educational benefit for the 2017-18 school year (second grade), 2018-19 school year (third grade), and 2019-20 (fourth grade); and, if so,
2. Whether the Parent is entitled to tuition reimbursement for the school years 2017-18 and 2018-19 at [REDACTED] and,
3. Whether the Parent is entitled to placement and funding (including all related services and costs) for the Student, for the 2019-20 school year (fourth grade) at the [REDACTED] ([REDACTED]) and declare it to be her current educational placement.

SUMMARY OF THE EVIDENCE

The Parents offered 56 exhibits which were admitted into evidence as Parent's Exhibits 1 through 56.⁸

MCPS offered 62 exhibits which were admitted into evidence as MCPS Exhibits 1 through 62.⁹

The exhibits are listed in Appendix A and attached to this Decision.

⁸ On January 21, 2019, the Parent offered pre-marked as Parent's exhibits 57 through 70. These exhibits were not admitted into evidence as they occurred after the original hearing dates started; they are included in the Parent's exhibit binder and marked as not admitted.

⁹ MCPS did not offer what was pre-marked as MCPS 39 or MCPS 63; however, there was an exhibit pre-marked as MCPS 6A, so the MCPS had 62 exhibits admitted on its behalf.

Testimony

The Parent testified and presented the following witnesses:

- [REDACTED] Independent Educational Contractor, was qualified as an expert in special education programming and instruction
- [REDACTED] Psy.D., licensed clinical psychologist, was qualified as an expert in psychology
- [REDACTED] Ph.D., Lower/Middle School Director, [REDACTED] was qualified as an expert in special education¹⁰

MCPS presented the following witnesses:

- [REDACTED] certified school psychologist, MCPS, was qualified as an expert in school psychology
- [REDACTED] MCPS teacher, was qualified as an expert in early childhood education
- [REDACTED] MCPS special education teacher, was qualified as an expert in special education
- [REDACTED] MCPS special education teacher, was qualified as an expert in special education and special education placement
- [REDACTED] MCPS special education teacher, was qualified as an expert in early childhood education and special education

¹⁰ The Parent, Ms. [REDACTED] and Dr. [REDACTED] were recalled as rebuttal witnesses.

FINDINGS OF FACT

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

1. The Student turned ten years old during this hearing and is a friendly girl who enjoys interacting with adults more than her peers. She attended ██████ Elementary School, MCPS, for her kindergarten (2015-16) and first grade (2016-17) school years.¹¹ ██████

█████ Elementary School is the Student's "home school." Home school means the school the Student would attend if she were not disabled. (MCPS Ex. 1).

2. On June 8, 2015, an IEP team meeting was held to plan for the Student's next school year when she would be in Kindergarten. The IEP team agreed that the Student's primary disability was developmental delay, which affected her in the areas of math, reading, attention, communication, fine motor development and gross motor development. The IEP team developed goals for the Student in the areas of visual motor, speech and language, reading¹², math, gross motor, and attention. The IEP team agreed to meet on approximately March 28, 2016 to review the Student's yearly progress. (MCPS Ex. 1).

3. For kindergarten, the Student was provided with the following supplementary aids, services, program modifications and supports: pencil grippers, a slant board to be used during coloring, drawing and writing tasks, visual cues to help her meet her attention and reading goals, visual organizers to help her meet her math and reading goals, extended time and multiple

¹¹ The Student also received services from MCPS in preschool as a child with a disability.

¹² Although written as a reading goal, three out of four objectives related to attention skills necessary to reading: (1) Given visual cues of expectations, verbal/nonverbal prompts, [the Student] will remain in her seat with her body oriented to the speaker while attending to a story; (2) When asked for a response or when she has a requesting regarding the text, [the Student] will raise her hand while remaining in her seat; (3) When given directions to write a response to a text or questions, [the Student] will remain on topic with her drawing until completed." The fourth objective is one that is more typically associated with reading skills: "Given modeling and practice, [the Student] will identify and add to rhyming sounds." (MCPS Ex. 1).

and frequent breaks to help her with her attention goal and as a testing accommodation, and, reduction of distractions to help her with her attention goal. (MCPS Ex. 1).

4. The Student was provided with the following accommodations throughout the school day, in both whole and small group, instruction: use of highlighters and organizational aides for instruction and assignments, and having the general education teacher check with the Student for understanding, frequent and immediate feedback, monitor independent work, repeating directions, breaking assignments down into smaller parts, providing frequent changes of activities or opportunities for movement, providing manipulatives and sensory activities to promote listening and focusing skills, (MCPS Ex. 1).

5. For the Kindergarten year, the Student received ten hours of special education support and services per week; eight of the hours were within the general education classroom and two hours were pull out services for Early Interventions in Reading (EIR).¹³ (MCPS Ex. 1). The Student also received two, thirty-minute sessions of speech/language therapy per week, one, thirty-minute session of PT per week, and one, thirty-minute session of OT per week. The Student was also offered transportation with a bus attendant as a related service. (MCPS Ex. 1; 9/16/19 T. p. 795¹⁴).

Kindergarten Year (██████████ Elementary School, 2015-16)

6. ██████████ was the Student's kindergarten teacher. There were fifteen children in the kindergarten class and two special education teachers (Ms. ██████████ and Ms. ██████████) who worked with students in the classroom ("push-in services") and out of the classroom to work on goals in their IEPs ("pull-out services"). There was also an English for Speakers of

¹³ Early Interventions in Reading (EIR) is a research-based reading intervention. The Student began participating in EIR in October 2015.

¹⁴ Citations to the transcript are in the following format: date of transcript, T. page number(s).

Other Languages (ESOL) teacher who came into the kindergarten class to work with a group of children that did not include the Student. (9/20/19 T. p. 1023-1024).

7. The Student was happy and affectionate in kindergarten. She had an excellent relationship with Ms. [REDACTED] (9/20/19 T. p. 1028).

8. The Student had a difficult time making friends and often played by herself. There was one student who told the Student she would never have friends and “put her hands on” the Student during recess. Ms. [REDACTED] referred the matter to the administration and asked the Parent and the Student’s older sister to please let her know if they heard concerns from the Student. (9/12/19 T. p. 434-438, 511). Ms. [REDACTED] worked with the Student throughout the year on improving peer relationships at recess. After speaking with the Student’s mother and sister, Ms. [REDACTED] had the Student pick one or two peers to have indoor recess with Ms. [REDACTED]. Ms. [REDACTED] used that time to help the Student interact with her peers so that she could generalize those interactions outside during general recess. (9/20/19 T. p. 1031).

9. In the mornings, the Student went to specials (art, music, media center or physical education) with the other students in her kindergarten class without any difficulty. The Student went to lunch and recess without any difficulty. (9/20/19 T. p. 1026).

10. The Student never refused to go to specials or lunch. She never “shut down” or refused to do work. The Student experienced deficits in the area of attention. Ms. [REDACTED] would break down assignments for her into smaller parts with the opportunity for the Student to check in with her after she finished each smaller part of the task. (9/20/19 T. p. 1029-1030).

11. As of February 25, 2016, the Student demonstrated a strong oral comprehension of classroom discussions and comprehension of text that was read aloud to her. She had

difficulty with focus which negatively impacted her reading accuracy and fluency. She could read 29 out of 44 Kindergarten sight words. (MCPS Ex. 2).

12. As of February 25, 2016, the Student demonstrated satisfactory understanding of basic math facts, concepts and applications. She had difficulty with basic operations and rote-counting but was able to rote count to 29. (MCPS Ex. 2).

13. As of February 25, 2016, the Student demonstrated satisfactory ideas, development and word choice in writing. She had a strong vocabulary which she tried to use in writing. The Student was able to independently write her name, but she used all capital letters; with prompting the Student used lowercase letters. She had difficulty with the mechanics of writing diagonal letters. (MCPS Ex. 2).

14. As of February 25, 2016, the length of time the Student was able to sit on the carpet during whole group instruction had increased since the beginning of the school year. (MCPS Ex. 2).

15. In kindergarten, the Student participated appropriately during classroom discussions. The Student shared her answers to questions that were posed to the whole group and they were on-point and meaningful contributions. (9/20/19 T. p. 1032).

16. The Student struggled with focus and remaining on-task during unstructured activities or independent work times but responded well to the use of a timer. (MCPS Ex. 2).

17. As of March 3, 2016, the Student was able to produce the following sounds in speech/language therapy: f, v, s, z, and sh. She was able to produce the “th” sound with direct instruction and modeling. The Student was not able to consistently transfer these skills to conversational speech and her speech in the classroom was sometimes unclear; the Student did not always speak in complete sentences. (MCPS Ex. 2).

18. On March 18, 2016, the IEP team met. The Student's mother reported to the IEP team that she saw an improvement in the Student's reading and saw the Student struggling with attention at home. The Student was on grade level reading text and had strong oral comprehension and comprehension of text read aloud. The Student was weak in reading accuracy because she sometimes read quickly and if she was not focused, she missed words and skipped around which then affected her accuracy, fluency and comprehension. (MCPS Ex. 2).

19. The IEP team developed annual goals for first-grade in the areas of OT, mathematics, speech and language, PT, written language, and reading skills. (MCPS Ex. 2).

20. On March 18, 2016, the IEP team formulated the following reading goal: "Given instruction using a research-based intervention to address phonics and decoding, reminders of strategies, and a model [the Student] will know and apply grade-level phonics and word analysis skills in decoding words." There were four objectives to reach the goal. The IEP team agreed to review the reading goal on or about March 9, 2017. (MCPS Ex. 2).

21. On March 18, 2016, the IEP team formulated the following math goal: "Given repeated small group instruction, number charts, number lines, manipulatives, and ten frames, [the Student] will represent, order, and compare whole numbers or objects to solve problems, decompose numbers (less than 20), model joining and separating situations, and fluently add and subtract (within 5)." There were four objectives to reach the goal. The IEP team agreed to reviewing the math goal on or about March 9, 2017. (MCPS Ex. 2).

22. On March 18, 2016, the IEP team changed the overall amount of special education supports and services from ten hours of special education support and services per week to nine and one-half hours per week. Seven and one-half hours were within the general education classroom to address reading, written language, math and attention goals. Two hours

of special education services were “pull-out” (in a small group of no more than four students) for Early Interventions in Reading (EIR). (MCPS Ex. 2). The Student continued to receive two, thirty-minute sessions of speech/language therapy per week, one, thirty-minute session of PT per week, and one, thirty-minute session of OT per week. (9/16/19 T. p. 796-797). The Student was also offered transportation with a bus attendant as a related service. (MCPS Ex. 1).

23. On March 18, 2016, the IEP team added the following supplementary aids, services, program modifications and supports to the Student’s IEP: scribe,¹⁵ allow the Student to respond on the test booklet (as opposed to a separate answer sheet), allow monitoring of test responses by an adult to address her distractibility, and permit math tools and calculation devices (i.e., calculator, number charts, manipulatives, base ten blocks, ten frames, and place value mats) for her to show how she solves problems. The provision of graphic organizers to assist the Student with her written language skills deficits continued on the Student’s IEP. At some point during the kindergarten year, noise-canceling headphones were made available to the Student if the environment of the classroom became overwhelming. The teacher also set up a tent in an area of the classroom where the Student could choose to work in a quieter environment. These physical and environmental supports were added to the Student’s IEP on March 18, 2016. (MCPS Ex. 2).

24. At the end of kindergarten, the Student met the grade-level standard by demonstrating proficiency in the areas of math, science, social studies, reading, writing, language, music, and physical education. She was in progress toward meeting the grade-level standards in art. By the end of kindergarten, the Student was demonstrating the following learning skills: following classroom rules and routines, interacting easily with peers, and using

¹⁵ Due to the Student’s fine motor difficulties, a scribe was provided for tasks involving writing.

classroom materials appropriately. The Student was progressing in reaching grade-level standards in collaboration. (P. Ex. 5).

25. In kindergarten, students take the Measures of Academic Progress (MAP) test only in math. The Student met the proficient benchmark for end of the year progress in math. (MCPS Ex. 33; 9/20/19 T. p. 1035-36).

26. The expectation for kindergarten students is that they will be on a level four in reading by the end of the year. (9/20/19 T. p. 1046). In the beginning of the kindergarten year, the Student was on a text level three; by April of her kindergarten year, the Student was on a text level six, which exceeded expectations. The Student's fluency scale increased from a two to a three.¹⁶ (MCPS Ex. 37).

27. In writing, the Student did not need any support or prompting in generating ideas. In the beginning of kindergarten, the Student was not able to independently write in terms of the mechanics of writing. Ms. [REDACTED] used highlighters and would draw boxes for the letters of the word for the Student to fill in. As the year progressed, the Student was able to write the letters smaller and fit them into the boxes. (MCPS Ex. 31).

28. MCPS has provided PT services to the Student since she was in pre-school. In kindergarten, the Student received thirty minutes of PT per week with goals to improve playground access and gross motor skills. The Student made good progress with playground access and was able to run over a variety of outdoor surfaces and access most playground areas. She needed encouragement and extra time to access areas such as the chain ladder, and she needed some assistance with motor sequencing for kicking and throwing a ball. (P. Ex. 12).

¹⁶ A level two is considered non-fluent with the student reading primarily in two-word phrases with some three-or four-word groupings. Level three and four are considered fluent with level three being primarily three-or four-word phrase groups. The pace is mixed with some faster and some slower reading. (MCPS Ex. 37).

First Grade (██████ Elementary School, 2016-17)

29. In first grade, the Student's regular education teacher was ██████ Ms. ██████ no longer teaches in MCPS. Ms. ██████ was the Student's special education case manager and she provided EIR, a research-based reading intervention to the Student outside the general education classroom. (1/21/20 T. p. 1125). There were fifteen students in the Student's classroom. (P. Ex. 15).

30. In the beginning of her first-grade year, the Student had difficulty finding the classroom and was unable to do simple tasks such as go to the bathroom and get water without getting lost on the way back to the room. By October 2016, the Student had made progress in this area and was able to independently navigate the school. (MCPS Ex. 32).

31. In the beginning of her first-grade year, the Student would put non-food items (e.g., school supplies) in her mouth and chew them. By December 2016, the Student no longer put non-food items in her mouth. (MCPS Ex. 32).

32. By December 2016, the Student was participating on grade level when she was able to provide oral responses and text was read to her. When she read on her own, she needed significant prompting to stay on task and was sometimes inconsistent: she would read a word correctly on one page and incorrectly on another page. She was on a reading level of 5/6 which was slightly below grade level. (MCPS Ex. 32).

33. By December 2016, the Student was on grade level in math with accommodations (scribe, prompts and one on one assistance). (MCPS Ex. 32).

34. By December 2016, the Student used the accommodation of a scribe for all writing tasks but loved to draw and color which she did independently. (MCPS Ex. 32).

35. In first grade, the Student sat next to an empty desk so that she could spread out

her school supplies. She needed constant prompts to help her keep her things organized or to find the right supplies. (MCPS Ex. 32).

36. On December 15, 2016, a reevaluation IEP meeting was held. The Parent raised behavioral, attentional, and sensory-related concerns. Student's mother gave permission for a reevaluation of the Student's learning behaviors that affected her progress in all areas of educational functioning. (MCPS Ex. 3).

37. On December 22, 2016, Ms. [REDACTED] conducted an educational assessment of the Student. Ms. [REDACTED] reviewed records and observed the Student for thirty minutes on December 21, 2016 in math class. Ms. [REDACTED] administered the Brigance IED III test to the Student. (MCPS Ex. 5). The Student's strengths were her experience with books and texts, alphabet identification and sounds, phonetic awareness and manipulation, number concepts, rote counting, comparing numbers and attributes, reading numbers, solving word problems, and finding the missing number. The Student's needs were in the area of common signs, word recognition, matching quantities and numerals, adding and subtracting numbers, attention and focus, personal space, keeping her hands to herself, hyperactivity and staying in her seat and location, slowing down when speaking and working, keeping her glasses on, and timed activities. (P. Ex. 7). The Student's inattention and frequent eyeglass removal may have negatively affected her performance on educational testing. (9/16/19 T. p. 804).

38. Ms. █████ suggested eleven supports and instructional strategies for the Student's educational program. (MCPS Ex. 5). Nine of Ms. █████ recommendations were explicitly written into the Student's IEP on March 9, 2017.¹⁷ (MCPS Ex. 7).

39. On January 5, 9, 13 and 17, 2017, █████ a Speech-Language Pathologist re-assessed the Student. Ms. █████ reviewed records and used both formal and informal testing to assess the Student's speech and language skills.¹⁸ The Student had weaknesses in articulation, intelligibility, and expressive language (i.e., expressive grammar). The Student also had some difficulties with pragmatic language and syntax construction. The Student had strengths in receptive vocabulary, paragraph comprehension and synonyms. (P. Ex. 10).

40. On February 16, 2017, Ms. █████ observed the Student for twenty minutes in reading class. The Student followed directions, corrected the verb tense in a sentence she read aloud from her notebook to the teacher, and sat up and kept her hands away from her mouth when speaking after she was prompted by her teacher. (MCSP Ex. 6).

41. On February 2 and 3, 2017, Ms. █████ school psychologist, evaluated the Student. Ms. █████ reviewed records, conducted testing, reviewed rating scales completed by her teacher and parent, and spoke with the Student's pediatrician. (P. Ex. 11; 9/16/19 T. p. 800).

¹⁷ Ms. █████ suggested direct instruction and small group for reading, writing and math. (MCPS Ex. 5). The Student received direct instruction in these areas (as did all of the students in first grade) and she received a small, pull-out group (no more than four students for reading). The witnesses did not discuss how small groups were set up for math and writing; however, as noted in Finding of Fact number 67 (below), the Student was on grade level in math by the end of first grade. In terms of writing, the classroom teacher noted that the Student did not need assistance with generating ideas for writing but needed help with the mechanics of writing. (Finding of Fact number 52, below). The Student received thirty minutes of OT services per week, which was delivered in the classroom and focused on the mechanics of writing. Ms. █████ also suggested reteaching sessions for reading and math which was not directly discussed by any MCPS exhibits or witnesses until Ms. █████ testified that re-teaching occurs in small group instruction in math during third grade. (Finding of Fact number 103).

¹⁸ Standardized assessments included the Comprehensive Assessment of Spoken Language (CASL), Peabody Picture Vocabulary Test, Goldman-Fristoe Test of Articulation, an analysis of speech-language samples, Percentage of Consonants Correct (PCC), and, an Oral Mechanism Exam. (MCPS Ex. 6).

42. As part of her evaluation, Ms. █████ considered information she obtained from observing the Student in the classroom on December 1, 2016 and on January 26, 2017. (9/16/19 T. p. 808). That information included:

- On December 1, 2016, the Student was participating in a physical movement activity with the whole class. She copied the movements slower than the majority of her peers but she participated in the whole group instruction until she moved to a smaller group. The small group instruction involved drawing and the Student was very engaged in the activity because she enjoys drawing. The teacher asked her if she needed help cutting and the Student told the teacher, “no.” (9/16/19 T. p. 810-812). The Student walked away in the middle of a conversation when Ms. █████ was talking to her. (MCPS Ex. 4).
- On January 26, 2017, the Student followed the teacher’s directions to collect the other students’ bingo boards. The next activity the Student was to independently complete a math problem. She completed it and brought it to the teacher who asked her to count on her fingers to check her answer. The Student had the wrong answer and the teacher told her to go back and redo the problem with the help of a number line. The Student retrieved the number line and went back a second time to the teacher. The teacher asked her if she had finished the problem and she replied, “no.” The teacher then told the Student she could not move on to the next activity if she did not complete her math problem. The Student went back to her desk and quickly complete the problem, showed it to the teacher, and moved on to the next activity. The Student completed the next activity, correctly putting a puzzle together, although it was upside down. (9/16/19 T. p. 812-817). When the Student was working on her Chromebook, she had a difficult time navigating to the math games. When the teacher asked if any of the students needed

anything, the Student told her that she could not get to the right place. The teacher helped the Student and she started working. (MCPS Ex. 4).

43. Ms. [REDACTED] administered the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V) to the Student. The WISC-V is an individually administered assessment of intelligence and cognitive abilities of children ages six to 16. (P. Ex. 11).

44. The WISC-V tests five specific cognitive areas: verbal comprehension, visual spatial, fluid reasoning index, working memory and processing speed. The Full-Scale IQ (FSIQ) is determined by performance across the five cognitive areas; however, in the Student's case, a FSQI could not be determined because there was too much variability in her performance across the five areas. (P. Ex. 11).

45. If the scores from the verbal comprehension, visual spatial and fluid reasoning index are similar enough, a General Ability Index (GAI) can be calculated. The Student's performance in these three areas was similar enough for a GAI to be calculated; the Student's GAI standard score was 100, the fiftieth percentile, and was in the average range. The Student has an average range of general thinking abilities when working memory and processing speed are not considered. The Student had a low average working memory and a very low score on processing speed. (P. Ex. 11). The Student has problems with inattention and the scores she received on the WISC-V might have been an underrepresentation of her true abilities. (9/16/19 T. 804).

46. The Student has significant difficulty with short-term memory tasks and quickly processing information compared to her same-age peers. (P. Ex. 11).

47. Ms. [REDACTED] used her observations of the Student to complete the Childhood Autism Rating Scale, Second Edition – High Functioning Version. The total score ranges from

15 (non-autistic rating) to 60 (severely autistic rating). The Student scored 28, which is mild-to-moderate symptoms of Autism Spectrum Disorder (ASD). (MCPS Ex. 4). Ms. [REDACTED] also had the Student's first-grade teacher and her Parent fill out Autism Spectrum Rating Scales. The Student has significant difficulty socializing with peers, displaying emotional reciprocity, and attention, but she is able to socialize with adults and does not display rigid behaviors in the classroom. (MCPS Ex. 4). When the Student is more attentive, she is better able to engage in social communication. (9/16/19 T. p. 826).

48. Ms. [REDACTED] had the first-grade teacher and her Parent complete Conners Behavior Scales to assess the Student for an attention deficit hyperactivity disorder (ADHD). The Student scored in the average to very elevated range. (MCPS Ex. 4). The Student meets the diagnostic criteria for ADHD, Combined Presentation under the Diagnostic and Statistical Manual of Mental Disorders – 5th edition (DSM-5). (P. Ex. 11).

49. Ms. [REDACTED] made the following recommendations to the IEP team: frequent and consistent prompts to refocus or redirect her to the task at hand; frequent checks for understanding throughout instruction; multi-sensory modalities; social skills group targeting general social interaction skills; consistent expectations, both at school and at home; simplifying and breaking down instructions, chunking of assignments, extended time on classwork and assessments; and, opportunities for structured movement opportunities. (P. Ex. 11). Each of these recommendations was addressed with a service or support specified in the Student's March 9, 2017 IEP, with the exception of a social skills group. That IEP included social skills training to be provided in the classroom by the special education teacher. (MCPS Ex. 7).

50. In first grade, the Student received thirty minutes of PT per week with safety awareness and gross motor skills goals. The Student needed frequent breaks when running, climbing over obstacles and participating in yoga poses. (P. Ex. 12).

51. During the winter of the Student's first grade year, the Measures of Academic Performance – Primary Grades (MAP-P) benchmark score for students in the first grade was a 181. The Student scored a 185. (MCPS Ex. 7).

52. By February 16, 2017, the Student was below her targeted reading level but had progressed from a 5/6 reading level (December 2016) to a level 9. She was on grade level in written language and math. Ms. [REDACTED] was concerned about all areas of the Student's organizational skills (organizing materials, completing assignments by the due date, arriving to class with necessary materials and bringing necessary materials home). (MCPS Ex. 32).

53. On March 9, 2017, an IEP meeting was held. After reviewing the speech/language, psychological and educational assessments, and the PT status report, the team changed the Student's primary disability to Other Health Impaired (OHI). The team also discussed the Student's symptoms of autism and that she met the criteria for ASD. The team decided that because of her ADHD, OHI impacted her education the most and it changed her coding to OHI. The IEP team agreed that because of her ADHD, the Student's OHI affected her in the areas of fine and gross motor skills, writing, organization, attention, social skills, articulation, intelligibility, and expressive language. (MCPS Ex. 7). The Parent agreed with the change to the Student's disability coding and agreed that the Student continued to have problems with attention. She wanted the Student to be more social but felt that the Student was "generally doing well." (MCPS Ex. 7).

54. As of March 9, 2017, the Student was using her accommodations in writing to meet grade level work. She was able to come up with ideas to write about. Her fine motor skills and attention deficit negatively impacted her writing skills. (MCPS Ex. 7).

55. As of March 9, 2017, the Student was successful with finding the missing number in various locations in an addition or subtraction equation, measuring, basic math facts, applying what she knows, operations, math concepts, and loves doubles. (MCPS Ex. 7).

56. As of March 9, 2017, the Student was reading on a level 9, which was on grade level for first grade. She read accurately and fluently when she had good attention. (MCPS Ex. 7).

57. At the IEP team meeting, the team did not include a new reading goal in the Student's IEP (MCPS Ex. 7) because she had met her goal and was on grade level. (MCPS Ex. 9, p. 75).

58. On March 9, 2017, the IEP team developed goals for the Student in the areas of OT, organization, behavior/attention, speech/language, gross motor function, behavior/social skills, and written language. (MCPS Ex. 7).

59. On March 9, 2017, the IEP team changed the overall amount of special education supports and services to eight hours a week of special education services per week within the general classroom to work on her goals in the area of organization, behavior/attention, behavior/social skills and written language. The IEP team also changed the amount of services the Student would receive outside of the general education classroom to two hours of special education services. The two hours would consist of the same small group reading intervention she had been participating in, but the focus would be to work on her social skills and attention during the reading group, not a reading goal. (9/16/19 T. p. 835-836).

60. The IEP also provided two, thirty-minute sessions of speech-therapy, one, thirty-minute session of OT, and one, thirty-minute session of PT per week. (MCPS Ex. 7).

61. On or about March 13, 2017 (during the third quarter of first grade), the Parent took the Student out of school for thirteen days to travel to [REDACTED] for a wedding. During the fourth quarter of the Student's school year, spring break was during the week of April 10, 2017, and April 17, 2017 for a total of six days.¹⁹ (MCPS Ex. 29).

62. The Student had difficulty returning to the school day structure after she was out of school in March and on spring break in April 2017. She made very slow progress in reading and writing the fourth quarter of her first-grade year. (MCPS Ex. 10).

63. A very severe storm occurred while the Student was in school after she returned from her trip. The Student became very fearful of rain. The teacher used social stories, role-playing and modeling, and the Student became less fearful of her classroom. (9/16/19 T. p. 848).

64. In May 2017, the Parent started the application process to [REDACTED] and the Student went there for two school days as part of the application process. The Student started telling her Parent after the visit to [REDACTED] that she did not want to go back to [REDACTED] Elementary School. (9/12/19 T. p. 443). The Parent reported there were three times when she had to leave the Student screaming in the guidance counselor's office and walk out of [REDACTED] [REDACTED] (9/12/19 T. p. 601). However, once the Parent left the building, the Student calmed down quickly. (9/12/19 T. p. 603).

65. On May 22, 2017, Ms. [REDACTED] completed an [REDACTED] Teacher Evaluation Form for the Student at the Parent's request. She listed 26 teaching strategies she had

¹⁹ The MCPS website contains archived calendars showing the dates for Spring break. It does not contain the dates for the third marking quarter but it would have been roughly the end of January to the end of March, 2017.

used with the Student that were effective. (P. Ex. 15).

66. By May 25, 2017, the Student was below her targeted reading level but had progressed from a reading level nine (February 16, 2017) to a level ten. (MCPS Ex. 9).

67. By May 25, 2017, the Student was on grade level in math. The Student was administered her MAP test in math in a small, quiet room. Her math MAP score was 193 and the benchmark was 181. (MCPS Ex. 9).

68. The Student was below grade level in written language. Ms. [REDACTED] continued to be concerned about all areas of the Student's organizational skills (organizing materials, completing assignments by the due date, arriving to class with necessary materials and bringing necessary materials home). (MCPS Ex. 32).

69. On June 1, 2017, the IEP team met at the Parent's request to review the Student's progress in first grade. The Parent attended and participated in the IEP meeting. The following MCPS staff attended and participated in the IEP meeting: Ms. [REDACTED] (principal), Ms. [REDACTED] (general education teacher), Ms. [REDACTED] (school psychologist), Ms. [REDACTED] (speech/language pathologist), Ms. [REDACTED] (guidance counselor) and Ms. [REDACTED] (special educator). The team reviewed the Student's progress since the March 9, 2017 IEP meeting and considered the Parent's observations that only the Student's handwriting had improved and that she was not reading at home. (MCPS Ex. 9).

70. The IEP team added a reading goal for decoding first grade words because she had fallen below her targeted reading level. The objectives targeted CVCC words, CVVC words, CCVC words, and CVCe words.²⁰ (MCPS Ex. 9).

²⁰ C is for consonant and V is for vowel, so an example of a CVCC word would be "sing."

71. The team added the following accommodations: notes and outlines; reduce distractions to the Student; and, reduce distractions to the other students by the Student's use of a scribe.²¹ (MCPS Ex. 9).

72. Towards the end of the Student's first grade year, the Parent went to [REDACTED] to see her children participate in field day. When the Parent arrived, the Student's grade and another grade were already on the field and Ms. [REDACTED] did not know where the Student was and thought she was with the Parent. The Student was on the field but back by a fence picking up rocks. (9/12/19 T. p. 444).

Second Grade (2017-18)

MCPS Proposed Second Grade IEP and placement:

73. The IEP proposed for second grade included eight hours a week of special education services within the general education setting and two hours of special education services outside the general education classroom, which consisted of the research-based reading intervention. The IEP also continued the related services of PT, OT, and speech/language therapy from the March 9, 2017 IEP. (MCPS Ex. 9).

74. On June 1, 2017, [REDACTED] informed the Parent that the Student was accepted. (9/12/19 T. p. 521).

75. On or about August 21, 2017, the Parent informed [REDACTED] Elementary staff that the Student would not be returning to that school for the 2017-18 school year. (MCPS Ex. 26).

²¹ The other accommodations listed in the March 9, 2017 IEP were continued.

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76. In August 2017, the Student started the second grade at ██████████ Her teacher was ██████████ The Student refused to participate in a reading assessment and was reluctant to participate in guided reading. (P. Ex. 39).

77. ██████████ uses a project-based approach to learning in which a student's interests are explored and the teacher develops lessons for the student based on the topics of interest to the student. Project-based learning is not an appropriate approach to teaching the Student reading; she needs a research and evidence-based reading intervention. (9/10/19 T. p. 191).

78. ██████████ used leveled books from an online source called Reading A-Z. Level books are not a method of reading instruction; instead they are books written at specific reading levels. (1/22/10 T. pp. 1450-51).

79. The Student did not receive any explicit, evidence-based reading intervention at ██████████ for second grade. (9/10/19 T. pp. 186-189).

80. The Student did not make any progress in reading during her second-grade year at ██████████ (9/10/19 T. pp. 191-192; p. 238).

81. The Student did not receive any speech/language therapy, OT, or PT-related services in second grade at ██████████ (9/10/19 T. p. 185).

82. On September 14, 2017, MCPS held a meeting to develop a service plan for the Student. The team offered the Student one, thirty-minute session of speech/language therapy per week. (MCPS Ex. 10). At the Parent's request, she was given a form to request that the speech/language therapy be closer to ██████████ (MCPS Ex. 28).

83. On September 15, 2017, the MCPS Speech-Language Pathologist sent

information to the Parent on non-MCPS speech-language pathologists. She also asked the Parent to let her know the status of the Parent's request for the Student to get speech-language services closer to [REDACTED]. On October 19, 20 and 27, 2017, November 7 and 28, 2017, the MCPS Speech-Language Pathologist emailed the Parent to try and set up therapy dates and times for the Student. The Parent did not take the Student for speech-language services. (9/12/19 T. p. 466). On February 9, 2018, the Speech-Language Pathologist informed the Parent that the Student was being unenrolled from the MCPS system for speech-therapy as she had missed so many sessions. (MCPS Ex. 28).

84. On November 3, 2017, [REDACTED] requested all the Student's records from MCPS. (MCPS Ex. 27).

85. During the Student's second-grade year, she experienced a drastic change in her behavior. She would talk with a growly voice and say, "I hate you," and "I want to kill you." She referred to herself as "The Hulk" when she used a growly voice. Her siblings said they wanted "the old [Student] back." (P. Ex. 24).

86. Towards the end of the Student's second-grade year at [REDACTED] [REDACTED] [REDACTED] Psy.D., a clinical psychologist evaluated the Student's cognitive, academic, and language functioning, her attention and executive functioning skills as well as her social and emotional functioning on May 15 and 18, 2018. (P. Ex. 24).

87. Dr. [REDACTED] administered the WISC-V to the Student and was also unable to obtain a Full-Scale IQ due to the variability of the subtest results. Dr. [REDACTED] was able to obtain a GAI score for the Student, which was 112, and placed the Student in the high average range, or seventy-ninth percentile. The Student's score in verbal comprehension (which is made up of vocabulary and similarities) was 124, which placed her in the superior range, or ninety-fifth percentile.

Although the Student scored in the borderline range for the processing speed index, the significant variability among the subtest scores rendered her score an invalid measure of her overall processing speed abilities. (P. Ex. 24).

88. The Student meets the clinical criteria for ASD and is moderately impaired by her ASD symptoms. (P. Ex. 24).

89. The Student demonstrates symptoms of clear inattention and distractibility and meets the clinical diagnostic criteria for Attention-Deficit/Hyperactivity Disorder, Combined Type. (P. Ex. 24).

90. The Student meets the criteria for Generalized Anxiety Disorder, which is a common co-occurring diagnosis among children who have ASD and ADHD. (P. Ex. 24).

91. Learning to be resilient is essential to successful long-term management of anxiety. (P. Ex. 24). The Student can be very resilient. (T. 9/12/19, p. 507).

92. Dr. [REDACTED] made extensive recommendations for the Student, including speech and language instruction, OT, and specific reading, math and writing interventions, as well as individual psychotherapy for the Student and parenting coaching for the Parent. (P. Ex. 24).

93. As of the end of her second-grade year at [REDACTED] the Student most often played by herself at recess collecting rocks or coloring. During class time she missed opportunities to interact with peers because she was playing with objects or coloring. (MCPS Ex. 46).

94. On June 11, 2018, [REDACTED] observed the Student in a writing and reading class at [REDACTED] for one hour. (P. Ex. 28).

95. The Student is severely myopic and is prescribed glasses. The Student does not like wearing her glasses and will frequently take them off and will frequently need prompting to

put them back on. At times the Student looks at items up close around the lens of her glasses. (9/12/19 T. p. 447). On June 13, 2018, the Student was not wearing her glasses because she lost them. She had not worn them to school for a long time. (P. Ex. 28; Testimony of Ms. [REDACTED])

96. During the summer between second and third grade, the Student began taking medication for ADHD. (9/12/19 T. p. 474).

97. The Parent asked the Student to read a book that was on the same level that [REDACTED] told her the Student could read. The Student was unable to read the book. (9/12/19 T. p. 541).

98. On July 26, 2018, the IEP team met to review the Psychological Assessment Report prepared by Dr. [REDACTED]. The Parent and Ms. [REDACTED] (attorney), Ms. Turner Percival (MCPS attorney), Ms. [REDACTED] (principal), Ms. [REDACTED] (school psychologist), Ms. [REDACTED] (special educator), and Ms. [REDACTED] (speech-language pathologist) attended the meeting. (MCPS Ex. 17).

99. After considering Dr. [REDACTED] report, as well as teacher report/work samples from [REDACTED] and the observations of the Student at [REDACTED] by the MCPS special educator and speech-language pathologist, the IEP team changed the Student's disability coding to Multiple Disabilities: Specific Learning Disability, OHI (ADHD), and Autism. The Parent was part of the IEP team and agreed to the change to multiply disabled. (MCPS Ex. 17).

100. For the Student's third-grade year, the IEP team developed goals in the areas of math calculation, math problem solving, written language mechanics, written language expression, reading – phonics, reading – phonemic awareness, reading fluency, reading comprehension, speech and language articulation, physical (gross and fine motor), behavioral –

attention, organization/executive functioning, behavioral – social interaction skills, and, social emotional/behavioral – anxiety and frustration. (MCPS Ex. 17). Social goal supports were added to the supplementary aids and services to address the Student’s anxiety with transitions during the school day. (MCPS Ex. 16). The Parent and her attorney agreed to the goals and objectives as they were written in her IEP.

101. The IEP team recommended the Student receive four hours of special education instruction outside the general education classroom (evidence-based reading and math interventions) and eleven and one-half hours of special education services within the general education classroom to support the Student’s needs in reading, writing, math, organization, attention, and social-emotional support to help the Student with anxiety. (MCPS Ex. 16). The Parent and her attorney disagreed with the number of hours; they requested a highly specialized full-time special education program. (MCPS Ex. 16).

Third Grade (2018-19)

MCPS Proposed Third Grade IEP and placement:

102. If the Student had attended ██████████ for third grade, Ms. ██████████ would have been her special educator and special education case manager. (1/22/20 T. p. 1341).

- Ms. ██████████ is trained in providing evidence-based reading interventions (e.g., Orton-Gillingham, Wilson, Read Naturally, EIR, Really Great Reading, Phonics for Reading, etc.) and evidence-based math interventions (iReady Math, Fast Math, etc.). Ms. ██████████ would have selected an evidence-based reading intervention to use with the Student in a small group (no more than four students) outside the general education classroom for thirty minutes per day, four times per week. (1/22/20 T. p. 1332).
- Ms. ██████████ would have selected an evidence-based math intervention to use with the

Student in a small group (no more than four students) outside the general education classroom for thirty minutes per day, four times per week. (1/22/20 T. p. 1359).

- The Student would have received one, thirty-minute session of OT to work on her goals in writing during part of the time when her third-grade class was working on writing. (1/22/20 T. p. 1360).
- The Student would have also received two, thirty-minute sessions of speech-therapy per week. The Student's speech-therapy would not be scheduled during core instructional time. (1/22/20 T. p. 1361).

103. During the 2018-19 school year, there were 21 students in the third-grade class. (1/22/20 T. p. 1362). Four of the students had IEPs.

- At 8:40 a.m., school starts with breakfast and a structured opportunity to organize materials for the school day. The Student would have received assistance organizing her materials from Ms. [REDACTED] or a paraeducator. Ms. [REDACTED] worked only with the third-grade class and the paraeducator was assigned to work with all four students in the third-grade class who were on an IEP. (1/22/20 T. p. 1351).
- From 9:10 a.m. to 10:00 a.m., the third graders had specials (music, physical education, art, etc.). The Student could participate with accommodations and supports. On the one day per week when the third graders are not scheduled for a special, they have a class meeting which involves role playing to learn specific social skills or mindfulness practices (visualization, mediation, yoga, etc.).²² (1/22/20 T. p. 1352).
- From 10:00 a.m. to 12:00 p.m., the third-grade students participated in reading/writing

²² Dr. [REDACTED] recommended techniques such as progressive relaxation, meditation, yoga and breathing techniques. (P. Ex. 24).

instruction rotations. The reading block usually starts with whole group instruction for fifteen minutes on the topic for the day. This is led by the teacher and the Student would benefit because she has very good oral comprehension and she would be exposed to grade-level content and vocabulary. The Student would work in a pull-out model of multi-sensory, evidence-based reading instruction in a small group (no more than four students) with Ms. [REDACTED] for thirty minutes. When she and the small group returned to the classroom, the general education teacher would then work with the Student's same small group in the back of the classroom. For independent reading work at centers, there is a paraeducator in the classroom who provided assistance. There is also an English for Speakers of Other Languages (ESOL) teacher who comes to the third-grade class during reading and writing to work with a group of children that does not include the Student. For writing, there is no more than fifteen minutes spent in whole group instruction; whole group instruction is a discussion based on the current topic. Ms. [REDACTED] also works in the classroom for writing. (1/22/20 T. pp. 1352-57).

- In Social Studies and Science, lessons are taught in small and whole groups. Ms. [REDACTED] or a paraeducator is in the classroom to assist the students on an IEP. Science lessons are almost entirely "hands on" projects. (1/22/20 T. p. 1351).
- The students in third grade are supervised by a paraeducator each day at recess and then lunch. (1/22/20 T. p. 1358).
- The math block for third graders is from 1:50 p.m. to 3:10 p.m. and the whole group lesson is never more than fifteen minutes. The Student would have participated in a pull-out model of research-based math intervention of no more than four students. Sometimes during that time period, Ms. [REDACTED] re-teaches concepts from prior years if the

students need it. The rest of the time would be organized like the reading/writing block. (1/22/20 T. p. 1367).

- At dismissal time, a paraeducator or Ms. [REDACTED] would be available to help the Student organize her materials. Visual schedules are posted and would be available on the Student's desk to help her with the school day routine. Timers are used throughout the day to signal the transitions to the students. (1/22/20 T. pp. 1378).

104. As the Student's special education case manager, Ms. [REDACTED] would have reviewed the Student's IEP with all of the Student's teachers and meet regularly with related service providers to make sure that they were all using the same strategies to help the Student (this is especially important in reading decoding strategies). (1/22/20 T. p. 1363-64).

- Ms. [REDACTED] had one planning block per week when she met with the regular education teacher to specifically plan for math and reading. (1/22/20 T. p. 1363).

105. Ms. [REDACTED] was responsible for making any modifications to the classroom environment (seating,²³ organizationally, etc.) for the Student and making sure she had all of the supports she needed throughout the day (manipulatives, check lists, videos (both instructional and grade-level or above-grade-level stories that the Student can access as many times as she needed to), graphic organizers, text on the correct level, front loading of vocabulary word banks, sentence starters and paragraph frames on the Student's Chromebook, different color folders for different subjects, and high lighters). In third grade, social skills would be worked on with the Student by modeling from the special educator in the classroom as she helps the students mediate

²³Seating options included bumpy cushions, scoop chairs, bouncy balls, standing desks with a pedal for the student's foot to move back and forth, sitting on the carpet using a clipboard, etc.

conflicts and with social stories and social games that are used by the general education teacher to address specific social interaction issues and problem-solving in the classroom. Ms.

██████████ and the general education teacher also frequently have “lunch bunches” with selected students so that they can help model appropriate social interaction. The Student would have been included in lunch bunches with her typical peers. (1/22/20 T. pp. 1377-78).

106. ██████████ Elementary School uses a school-wide reward or token system for encouraging positive and appropriate behaviors. Students have a chart on their desk or in a folder and earn “██████████” which can be used for rewards such as lunch with the principal. Each of the classrooms has a promethean board which are used for, among other things, “brain breaks.” One type of “brain break” is a movement video in which the whole class participates by following the movements in the video projected on the promethean board. The movement video helps calm students and improves their focus. The school also has a sensory path outside of the classroom which students can use as a motor break and to re-focus before they come back to the classroom. (1/22/20 T. pp. 1378-79).

107. On September 20, 2018, Ms. ██████████ and the Parent visited ██████████ and observed in three classrooms for seven minutes, five minutes and five minutes. (P. Ex. 37).

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108. For the 2018-19 school year, ██████████ moved from a building in ██████████ to a building in ██████████ (9/12/19 T. pp. 477-478). The Student found the new building challenging but because the teacher was the same teacher she had for second grade and some of the students had been in her class the previous year, the Student settled in after a few weeks. (9/12/19 T. p. 484).

109. The Student did not receive any speech/language therapy, OT-, or PT-related

services in third grade at [REDACTED] (9/10/19 T. p. 185).

110. The Student did not receive any explicit, evidence-based reading intervention at [REDACTED] for third grade. (9/10/19 T. pp. 186-189).

111. On September 17, 2018, Ms. [REDACTED] observed the Student at [REDACTED]. There were five students (including the Student) and one teacher in the classroom. When the teacher asked the Student to read in the small group (Student, teacher and one other student), the Student refused. The Student was off task and had to be frequently re-directed. She was easily redirectable. The Student had difficulty with materials management and completing a task. During snack time, the Student sat in the teacher's lap. (P. Ex. 37).

112. In December 2018, Ms. [REDACTED] left [REDACTED] to teach in [REDACTED]. The Student had a very difficult time adjusting to school without Ms. [REDACTED] because she considered Ms. [REDACTED] to be a "second parent." The Student did not want to return to [REDACTED] after Ms. [REDACTED] left during winter break. (9/12/19 T. pp. 484-485).

113. [REDACTED] became the Student's teacher after winter break. (9/12/19 T. p. 485).

114. On February 15, 2019, Ms. [REDACTED] and Ms. [REDACTED] observed the Student at [REDACTED]. The teacher's dog was in the classroom during the observation.²⁴

- The Student used a highlighter to accurately highlight 30 out of 41 words that ended in double letters (-ss, -ff, -ll, -zz). (MCPS Ex. 24).

²⁴ There were three or four dogs at [REDACTED] and the Parent witnessed one dog bite a student. In addition, the Parent testified that the Student would not walk past the dogs and was scared of at least two of the dogs because they would bark loudly and loud noises scared the Student. (9/12/19 T. pp. 577-580).

- The Student used a self-directed program on an iPad for reading instruction. There was no one to help her and when she did not know the answer she gave up and moved to the next question. (MCPS Ex. 23).
- During snack time, the Student easily engaged in a back and forth conversation with Ms. [REDACTED]. The Student attempted to ask another student a few questions, but the student did not respond so the Student walked away and asked the teacher. There was very little interaction among the four students in the classroom. (MCPS Ex. 24).
- During a math activity, the Student was easily re-directed and prompted. (MCPS Ex. 24).

115. In March of 2019, the Student worked for ten minutes and then took a five-minute break (she walked around the classroom, played with fidgets, drew or colored). A timer would go off after five minutes and the Student would return to work on her own. (MCPS Ex. 46).

116. Ms. [REDACTED] left [REDACTED] without notice during Spring break. (9/12/19 T. p. 485). The Student had various teachers with unknown credentials from Spring break to the end of the school year. (P. Ex. 53). The Student did not want to go to [REDACTED] for approximately the last two weeks of school and she did not attend the last two weeks of third grade. (9/12/19 T. p. 495).

117. [REDACTED] does not issue report cards with grades but uses progress reports with the following number levels for performance levels: (1) Emerging; (2) Developing; (3) Proficient; and, (4) Exemplary. (MCPS Ex. 49).

118. At the end of the third-grade school year, [REDACTED] issued the Student a progress report noting that her English/Language Arts was evaluated on both second and third grade expectations. In the Student's third grade progress report, five second-grade "foundational skills" under English/Language Arts were the same skills that were listed on her second-grade

progress report. The Student's ability to know and apply (second) grade-level phonics and word analysis skills in decoding words improved from a "2" in second grade to a "3" in third grade.

The other four foundational skills remained the same on her third-grade progress report as were reported on her second-grade progress report. (P. Ex. 29, P. Ex. 52).

119. At the end of the third-grade school year, ██████████ issued the Student a progress report noting that her mathematics skills were the same skills she worked on and assessed in second grade. (P. Ex. 52). In third grade, under numbers and operations in base ten, there were three standards in which the Student achieved a proficient rating in second grade (3) but received a developing rating (2) in third grade. There were two geometry standards in third grade that regressed to a developing rating from a proficient rating in second grade. There was one measurement and data standards in third grade that regressed to a developing rating from a proficient rating in second grade; the Student regressed from a developing rating in second grade on one measurement and data standard to an emerging rating in third grade. (P. Ex. 29, P. Ex. 52).

Fourth Grade (2019-20)

MCPS Proposed Fourth Grade IEP and placement:

120. An IEP meeting was held on March 13, 2019, to review and revise the Student's IEP for the fourth-grade year. The Parent, Ms. ██████████ (attorney), Ms. ██████████ (special education consultant), Ms. ██████████ (██████████ third grade teacher), and ██████████ (Director, ██████████) attended and participated in the IEP meeting. Counsel for MCPS attended as well as the following MCPS staff: Ms. ██████████ (principal), Ms. ██████████ (general education teacher), Ms. ██████████ (school psychologist), and Ms. ██████████ (special educator). The team

reviewed Ms. [REDACTED] Educational Needs report and the Student's third grade progress report from [REDACTED]. The team also reviewed a summary from the Student's former [REDACTED] [REDACTED] teacher (Ms. [REDACTED] and observations completed by Ms. [REDACTED] and Ms. [REDACTED] at [REDACTED] (MCPS Ex. 46).

121. The proposed IEP for fourth grade provided the Student with four hours per week of pull-out services for a special educator to provide the Student with a research-based reading and math intervention in a small group setting outside of the general education classroom. (MCPS Ex. 46).

122. The IEP provided for eleven hours and fifteen-minutes of special education services to the Student in the general education classroom to work on her IEP goals and objectives. The providers responsible for working with the Student on her goals would be a general education teacher, a special education teacher and a paraeducator. (MCPS Ex. 46).

123. The IEP provided for related services of one, thirty-minute session of OT, one, thirty-minute session of PT, and two, thirty-minute sessions of speech/language services per week to be delivered outside of the general education classroom by the appropriate service provider. The IEP also provided for fifteen minutes of counseling services per week to be provided in the general education classroom by a guidance counselor. (MCPS Ex. 46).

124. On March 28, 2019, Ms. [REDACTED] did an informal reading evaluation of the Student. The Student's ability to read sight words was inconsistent. The Student was not able to read any lists (Dolch Primer, first, second or the kindergarten and first grade MCPS Word Wall) independently. (P. Ex. 48).

125. On July 17, 2019, the IEP team met to review and revise the Student's fourth grade IEP. The IEP team reviewed the third and fourth quarter progress reports from [REDACTED]

██████████ and the March 28, 2019 Informal Reading Evaluation prepared by Ms. ██████████ (MCPS Ex. 53).

126. The Parent, her educational consultant and attorney stated that they were not in agreement with the data provided by ██████████ (third and fourth quarter progress reports) and asked for the information not to be included in the Student's current level of performance. The MCPS members of the IEP team rejected that request and included both the information from ██████████ and Ms. ██████████ reports. (MCPS Ex. 53).

127. The July 17, 2019 proposed IEP for fourth grade included goals in math calculation, written language mechanics, reading – phonics, physical – gross motor, behavioral – attention (2 goals), organization/executive functioning, speech and language articulation, social emotional/behavioral, physical – fine motor, reading comprehension, reading fluency, reading phonemic awareness, and, math problem solving. (MCPS Ex. 53).

128. The fourth-grade class at ██████████ Elementary would have been very similar to the structure of the third-grade class, but with an additional general education teacher. As a result, the fourth-grade math class was split in half and for whole group instruction, there would have been 10 or 11 students. The small group pull-out with a special educator using a research-based math intervention for the Student would have been with no more than four students. (1/22/20 T. p. 1367).

129. The Parent unilaterally placed the Student at the ██████████ a nonpublic, separate day school for children with disabilities, for her fourth grade (2019-20) school year. (9/12/19 T. p. 488).

DISCUSSION

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

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) and the applicable federal regulations. The parties in this case agreed that the Student is a child with a disability. In kindergarten the Student was considered “developmentally disabled.”

In March of 2017, during the Student’s first grade, the IEP team discussed the classroom observations, reviewed the psychological, speech/language and educational assessments, and changed the Student’s primary disability to OHI. The team also discussed the Student’s symptoms of autism and that she met the criteria for ASD. The team decided that because of her ADHD, OHI impacted the Student’s education the most and changed her coding to OHI. The IEP team agreed that because of the ADHD, the Student’s OHI affected her in the areas of fine and gross motor skills, writing, organization, attention, social skills, articulation, intelligibility, and expressive language. (MCPS Ex. 7). The Parent was part of the IEP team and agreed to the change in the Student’s coding to OHI.

The fact that the Student’s coding was changed to OHI, does not mean that the IEP team ignored the impact of her mild-to-moderate ASD. The IEP team agreed that the Student is friendly and interacts well with adults but noted that she had significant difficulty socializing

with peers, displaying emotional reciprocity, and maintaining attention throughout the school-day. As a result, the IEP team wrote specific goals to address behavior/social goals and behavior/attention goals. Although the Student experienced progress with her reading skills, the IEP team decided to keep her in the small, evidence-based reading intervention group because it was another opportunity for her to practice her social goals and the additional reading instruction would only be to her benefit.

In July 2018, the IEP team again changed the Student's disability coding. After considering Dr. [REDACTED] report, as well as teacher report/work samples from [REDACTED] and the observations of the Student at [REDACTED] by the MCPS special educator and speech-language pathologist, the IEP team changed the Student's disability coding to Multiple Disabilities: Specific Learning Disability, OHI (ADHD), and Autism. The Parent was part of the IEP team and agreed the Student's disability should be changed to multiply disabled. Although the parties have been in agreement each time the Student's disability coding has been changed, they are not in agreement as to the severity of her disabilities or, more importantly, whether her needs can be appropriately met in a general education classroom with special education services, supports and accommodations.

The Parent argued that the MCPS proposed IEPs did not provide FAPE because:

1. MCPS did not know the Student or her needs and they "never attempted to evaluate her or truly get to know her;"
2. MCPS never recognized the severity of the Student's disabilities; and,
3. The Student did not make significant progress on her first grade IEP.

After carefully reviewing the evidence, I am not persuaded by the Parent's arguments.²⁵

²⁵ The burden of proof in an administrative hearing under the IDEA is placed upon the party seeking relief.

MCPS evaluated the Student and understood her needs:

Although the Student attended pre-school programs in MCPS, this case began with a short review of the Student's performance in kindergarten and then mostly focused on how she performed in first grade. In the middle of the Student's first grade year, MCPS conducted a comprehensive assessment of the Student. Ms. [REDACTED] the school psychologist assessed the Student's cognitive and intellectual functioning and evaluated the Student for ASD and ADHD. The school psychologist used both formal and informal assessments and observed the Student in the classroom at least twice. Ms. [REDACTED] (speech-language pathologist) and Ms. [REDACTED] (special education teacher) both conducted thorough assessments of the Student which included classroom observations. Classroom observations are a critical piece of information because unless there is a careful observation of how the student performs in the classroom, there is no context for the other information obtained through testing.

After the comprehensive psychological, speech-language and special education assessments, as well as after considering a PT update, the IEP team (including the Parent) changed the Student's disability coding, and developed goals and objectives and specific services, supports and accommodations to assist the Student in addressing the Student's needs in all of the areas identified by the IEP team. The Parent has not identified one area in which she believed the IEP team missed a need. The Parent did not object to any of the goals and

Schaffer v. Weast, 546 U.S. 49 (2005). In this matter the Parent has the burden of proving that MCPS failed to provide the Student with a FAPE for the 2017-2018 and 2018-2019 school years, and that they are entitled to reimbursement for the Parent's unilateral placement of the Student at [REDACTED]. The Parent also has the burden to prove that the 2019-20 IEP proposed by MCPS would not have provided the Student with FAPE and therefore the Parent is entitled to reimbursement for her unilateral placement of the Student at [REDACTED] and a declaration that [REDACTED] is her current placement.

objectives and approved the IEP.

At the end of second grade, after the Student was at ██████████ for one year, the Parent's expert, Dr. ██████ evaluated the Student. The results of Dr. ██████ psychological evaluation were not that different from Ms. ██████ testing one and one-half years earlier. Dr. ██████ administered the WISC-V to the Student and was also unable to obtain a Full-Scale IQ due to the variability of the subtest results. Dr. ██████ was able to obtain a GAI score for the Student, which was 112, and placed the Student in the high average range, or seventy-ninth percentile. Ms. ██████ obtained a GAI score of 100, which was in the average range.

The Parent repeatedly pointed to the Student's verbal comprehension score, as measured by Dr. ██████ for the proposition that the Student is very bright and should have achieved way beyond what she did in public school. As noted above, the verbal comprehension is one of the scores that makes up the GAI. Verbal comprehension itself is make up of two sub-tests: vocabulary and similarities. When Ms. ██████ tested the Student, she received a 103 (fiftieth percentile) and when Dr. ██████ tested the Student, she scored a 124, which placed her in the superior range, or ninety-fifth percentile.

No one questioned the validity of the scores as reported by Ms. ██████ but Ms. ██████ wrote and testified that the Student has significant deficits with inattention, which could have resulted in her scores being depressed in some areas.

More importantly, just as both Ms. ██████ and Dr. ██████ recognized verbal comprehension as a strength for the Student, they also both recognized that processing speed was a significant weakness for the Student. Additionally, both Ms. ██████ and Dr. ██████ noted significant variability among the subtest scores, which rendered the Student's overall processing speed abilities an invalid measure. (P. Ex. 24). It is also important to note that insofar as verbal

comprehension was recognized by Dr. [REDACTED] as a strength for the Student and processing speed as a weakness, these results affirmed the observations of the Student's kindergarten and first grade teachers as well as other MCPS providers who observed the Student in the classroom. Although the Parent argued that MCPS did not do any evaluations (presumably after the evaluations by Ms. [REDACTED] and Ms. [REDACTED] she has not pointed to any specific cognitive or intellectual functioning issue(s) that needed further clarification or testing after Dr. [REDACTED] testing. Again, MCPS accepted Dr. [REDACTED] testing, which was not dissimilar to the results Ms. [REDACTED] obtained, regarding the Student's intellectual and cognitive functioning and I do not conclude that there were any intellectual or cognitive areas that should have been retested or tested in another manner.

Dr. [REDACTED] also noted that the Student met the clinical criteria for ASD and, is moderately impaired, by her ASD symptoms. (P. Ex. 24). Ms. [REDACTED] had already considered the Student to meet the diagnostic criteria for ASD and found the Student's symptoms to be mild-to-moderate. In respect to ASD, I do not find Dr. [REDACTED] report or testimony significantly differed from what MCPS concluded. In any event, as there was no major difference between Dr. [REDACTED] and Ms. [REDACTED] opinions, there was no need to further evaluate the Student in terms of ASD.

Similarly, Dr. [REDACTED] concluded that the Student demonstrated clear symptoms of inattention and distractibility and met the clinical diagnostic criteria for ADHD, Combined Type. (P. Ex. 24). Ms. [REDACTED] also found this when she tested the Student and every MCPS teacher and provider commented on the impact of inattention while instructing or observing the Student. As the parties agreed about the impact the Student's ADHD had on her classroom performance, there was no need to further evaluate the Student in terms of ADHD.

The only difference between Dr. [REDACTED] and Ms. [REDACTED] conclusions is that Dr. [REDACTED] also

diagnosed the Student with Generalized Anxiety Disorder. The diagnosis does not mean that MCPS failed to recognize that the Student was experiencing some anxiety and fear when she was at [REDACTED]. One of the subtests Ms. [REDACTED] administered to the Student as part of the Childhood Autism Rating Scale was to gauge anxiety symptoms. The Student scored in the mildly abnormal range on this subtest. (P. Ex. 11). More important than how she scored on a test, the Student's first-grade teachers recognized when the Student was struggling with anxiety and fear and implemented strategies to help the Student with these difficulties. For example, in the last quarter of the Student's first-grade year, there was a severe storm that took place while the Student was at school. Several students, including this Student, became very fearful and the Student continued to experience fear and anxiety in the days following the storm. As the teacher used social stories, role-playing and modeling, the Student became less fearful of rain.

Additionally, Dr. [REDACTED] diagnosis occurred one and one-half years after the Student was unilaterally placed by her Parent at [REDACTED]. The Parent admitted that the Student's behavior and mood changed drastically during her second-grade year at [REDACTED] (P. Ex. 24). Regardless of why the Student's anxiety increased after she left [REDACTED] the IEP team clearly considered and agreed with Dr. [REDACTED] concerns about the Student's anxiety because on July 26, 2018, the IEP team increased the hours of special education services to work on the Student's added social emotional/behavioral goal to help the Student with anxiety.²⁶

The Student has multiple disabilities which impact her education:

²⁶ The July 26, 2018 IEP contains the following social emotional/behavioral goal: "Given structured and unstructured settings, adult modeling, facing prompts, positive reinforcement, menu of coping strategies (social stories, feelings thermometer, etc.) role playing and talking sessions, [the Student] will demonstrate improved reactions to anxiety/frustration." Three objectives were listed to support the goal: "(1) [The Student] will identify/state situations or aspects of a situation that cause anxiety/frustration; (2) [The Student] will practice methods to reduce anxiety in real and simulated situations; and, (3) [The Student] will demonstrate appropriate coping strategies (feelings thermometer, requesting a break, etc.) to decrease personal anxiety associated with school." (MCPS Ex. 47).

The Parent also argued that MCPS has never understood that the Student is severely disabled and as a result, she needs a highly structured, small, special education setting with a low number of students in the Student's class in order for her to make progress. The Parent relies on her testimony, Dr. [REDACTED] and Ms. [REDACTED] for the proposition that the Student can only make progress if she is placed in a small special education class.

I have no doubt that the Parent wants what she thinks is best for her daughter. She wants her to be academically successful and happy; however, I give little weight to the Parent's testimony about her daughter's needs for several reasons. First, the evidence shows that the Parent was very happy with the Student's progress in kindergarten and loved the Student's teacher. She did not appear to have concerns about the Student's progress in the first half of first grade. In December 2016, the Parent raised concerns with the IEP team about the Student's behavioral, attentional and sensory related issues.²⁷ As discussed above, MCPS conducted thorough evaluations of the Student and made changes to her IEP on March 9, 2017. At that meeting, the Parent stated that she felt the Student was "generally doing well" although she wanted the Student to be more social. The Parent also agreed that attention continued to be an issue. (MCPS Ex. 7).

A few days after the March 9, 2017 IEP meeting, the Parent took the Student out of school for thirteen days so they could travel across country to attend her brother-in-law's wedding. In April, the Student did not receive services for six days due to spring break. In May and June, the Parent told the IEP team she did not think her daughter had made progress and wanted her to repeat first grade. In discussing the reason the Student missed thirteen

²⁷ It is also important to note that the Parent never observed the Student in school but was relating issues that she saw were difficulties for the Student at home.

instructional days in March, the Parent's tone of voice and demeanor suggested that she did not understand the correlation between her daughter's school attendance and her progress on IEP goals and objectives that everyone agreed she needed.

Also, even though [REDACTED] did not provide OT, PT or speech therapy to the Student for two years, the Parent nevertheless decided it was important for the Student to attend [REDACTED] because "I needed her to have a positive experience with school after what in her mind was a very, very negative experience at different schools." (9/12/19 T. p. 480). I do not know what the Parent meant about the Student attending "different schools" because the Student attended [REDACTED] Elementary for kindergarten and first grade. The Parent agreed that the Student was happy in kindergarten. Although she testified that the Student was unhappy to go to [REDACTED] after she visited [REDACTED] in the spring of first grade, and that she had to forcibly carry the Student into school to make her attend, there are no contemporaneous notes or other evidence to corroborate this assertion and the Student was not tardy. As counsel for MCPS pointed out, if the Student was engaged in school refusal in the last part of first grade, I would have expected to see lateness and absences recorded on her report card.

I also gave the Parent's observations less weight because the Student was offered a service plan for speech-language therapy in the third grade, but the Parent did not bring the Student for services and she was unenrolled. Again, the Parent's tone and demeanor in explaining why she was not able to bring the Student appeared very nonchalant. I understand the Parent has five children (including the Student) and was apparently attending school herself at the time, but, despite the competing demands on her time, it was still her responsibility to transport the Student to a free, necessary and related-service that was not being provided at the

school where the Parent placed her.²⁸

Further, the Parent and other witnesses testified that the Student was prescribed glasses because she is severely myopic. Witnesses testified that the Student did not always wear her glasses. Ms. [REDACTED] observed the Student at [REDACTED] on June 18, 2018 (end of second grade) and saw that the Student was not wearing her glasses. According to the Student's teacher, the Student lost her glasses a long time before the observation and the Parent did not obtain a replacement pair of glasses for her. As a result, Ms. [REDACTED] testified that she was uncertain as to whether the Student was getting up to walk around the room due to not being able to see or because of her inattention and distractibility. Ensuring that the Student had and used her prescription glasses is not an unreasonable expectation of the Parent.

I also do not give weight to the Parent's testimony because she was vague as to why she believed the Student's IEP could not be implemented at [REDACTED]. First, the Parent admitted that she "did not understand what the pull-out services were for" on the IEP. (9/12/19 T. p. 453). The pull out services on the MCPS' proposed IEPs for second and third grade were two hours of a research-based reading intervention (with no more than four students) in second grade and four hours of research-based reading and math interventions (with no more than four students) in third grade. Despite Dr. [REDACTED] recommendation that the Student receive specific reading, writing and math interventions in third grade, and despite Dr. [REDACTED] comment that "[r]eading and writing instruction should be a priority in her life[,]" the Parent sent the Student back to [REDACTED] [REDACTED] for third grade after she did not receive any research-based reading intervention and she did not make any reading progress in second grade.

²⁸ The Student's grandparents have been very involved with assisting the Parent and the Student. They attended IEP meetings, they paid for the Student's tuition in private schools and the grandfather was the main person responsible for transporting the Student back and forth to [REDACTED]

Finally, although the Parent argued that MCPS never bothered to understand the Student's needs, I note that Dr. [REDACTED] recommended individual psychotherapy for the Student and parent coaching, but the Parent never sought counseling for the Student and never received parent coaching. (P. Ex. 24; 9/12/19 T. p. 529).

Dr. [REDACTED] opined that the Student would only be able to learn in a small school with very small classrooms and a very small student to teacher ratio because she needs constant attention, supervision and redirection. (9/11/19 T. p. 320). Dr. [REDACTED] based her opinions on testing she performed for a total of seven or eight hours spread over two days, an interview with the Parent, and a review of Ms. [REDACTED] December 2017 psychological assessment. Dr. [REDACTED] agreed that she did not perform any classroom observations of the Student, or see the Student in any setting other than her office, even though observing a student in her classroom can be valuable "to see how a student performs with other children, how they're able to you know receive information, understand information, how they are in that type of setting." (9/11/19 T. p. 328). The fact that Dr. [REDACTED] did not observe the Student in a classroom setting is critical to the weight I gave her opinions regarding the size of the school, and class or teacher ratio, because the testing she performed was not to determine how the Student performs cognitively, emotionally, socially and behaviorally in a vacuum. The purpose is to determine how the Student performs in those areas and the impact it has on her in a school setting. In addition to not observing the Student outside her office, Dr. [REDACTED] did not review any of the IEPs or records other than the December 2017 psychological assessment, and did not speak with anyone other than the Parent (i.e., she did not speak with the Student's current teacher at [REDACTED] or her previous MCPS teachers). (9/11/19 T. p. 329-331). Finally, Dr. [REDACTED] has never been to [REDACTED]. Without observing the Student in an educational setting, speaking with teachers who have worked with the Student,

reviewing the Student's IEP, or having any information as to how the proposed IEP would be implemented at [REDACTED] Dr. [REDACTED] has not presented a satisfactory foundation for her opinion that the Student would not be able to learn in a "large public school." (9/11/19 T. p. 320).²⁹

On the other hand, Ms. [REDACTED] did observe the Student at [REDACTED] observed the proposed placement at [REDACTED] attended IEP meetings, reviewed records including the IEPs, and tested the Student. Based on this information, Ms. [REDACTED] opined that the Student needed a small school overall, and all academic instruction in a small, special education classroom so the teacher had the ability to provide one-to-one assistance. (9/10/19. T. p. 71).

I am not persuaded by Ms. [REDACTED] opinion that the Student requires a very small school overall because she cannot navigate from one classroom to another. Ms. [REDACTED] testified that MCPS records showed that the Student had difficulty navigating the larger building. (9/10/19 T. p. 71). The Student's teacher reported that in the beginning of her first grade year, the Student had trouble finding the classroom and was unable to do simple tasks such as go to the bathroom and get water without getting lost on the way back to the room; however, by October 2016, the Student was "much better." The teacher also reported that the Student still had difficulty finding other places in the building independently so she would send another student with her to help. (MCPS Ex. 32). Sending another student to help the Student is a reasonable strategy that worked; if the Student resisted going with the other student, walked or ran away

²⁹ Simply because a witness has been qualified as an expert in a particular profession, does not mean that the expert may render an unbridled opinion which does not otherwise comport with the rule governing admissibility of expert testimony; instead, sufficient facts must underlie the expert's opinions that indicate the use of reliable principles and methodology in support of the expert's conclusions so that the opinion constitutes more than mere speculation or conjecture. *Exxon Mobil Corp. v. Ford*, 67 A.3d 1061 (2013). A factual basis sufficient to support an expert witness's opinion testimony may arise from a number of sources, such as facts obtained from the expert's first-hand knowledge or facts obtained from the testimony of others. *Taylor v. Fishkind*, 51 A.3d 743 (2013). In this case, as discussed above, Dr. [REDACTED] has no knowledge of how the IEP would be implemented at [REDACTED] and did not obtain sufficient facts from others to form her opinion.

from the other student, etc., then it would be more reasonable to consider whether the Student needed a smaller school setting.

Ms. [REDACTED] testified that the teacher at [REDACTED] reported that the Student had difficulty navigating [REDACTED] with only sixteen students. (9/10/19 T. p. 71). She noted that in the March 13, 2019 IEP meeting, the Student's teacher and the Director of [REDACTED] [REDACTED] stated that the Student was unable to "transition a few feet from her classroom to the lunchroom." (P. Ex. 45).

I do not give any weight to Ms. [REDACTED] testimony on this point because she had no direct knowledge of the Student's inability to transition. She was relying on the comments from Ms. [REDACTED] who only became the Student's teacher when Ms. [REDACTED] left two months earlier during winter break. The Parent did not offer any evidence as to Ms. [REDACTED] qualifications or experience working with students with special needs.

More importantly, the testimony is contradicted by that of Ms. [REDACTED] the MCPS school psychologist. On February 15, 2019, Ms. [REDACTED] observed the Student at [REDACTED]. The Student asked Ms. [REDACTED] if she wanted to see her teacher's dog. When the Student's teacher said she could, the Student took Ms. [REDACTED] to the classroom next door to see the dog. (MCPS Ex. 24). Although I realize that the classroom was next door, it is some evidence that the Student did not have any issues with moving from one classroom to another and even initiated the transition.

I am also unpersuaded by Ms. [REDACTED] opinion that the Student requires a very small special education classroom throughout the school day. The major reason I am not persuaded by Ms. [REDACTED] opinion is due to her judgment regarding [REDACTED]. Ms. [REDACTED] initially testified that [REDACTED] was appropriate for the Student because "of the ratio, the

class size, the size of the building, the type of instruction and supports they can provide during the day, and be able to differentiate the instruction that she needed, both academically, but also that executive functioning ... and anxiety ... when she was shutting down.” (9/10/19 T. pp. 153-54). However, on cross-examination, Ms. ██████ admitted that she was never told by ██████ ██████ that it used a specific research and evidenced-based reading intervention with the Student for a specific amount of time and for a specific frequency. (9/10/19 T. p. 188, 191). As a result, she agreed that the lack of an evidence-based reading intervention could be the reason the Student did not make any progress in reading after her first year at ██████ (9/10/19 T. p. 189). In addition to the lack of evidence-based reading instruction, Ms. ██████ did not advise the Parent to look elsewhere for the Student’s third grade year even though the Student was not receiving any speech-language therapy, OT, PT, or counseling at ██████ ██████. Although Ms. ██████ testified it was critical for the Student to have consistency, the Student had at least three teachers during her third-grade year at ██████ and no one had any idea if the teacher(s) who replaced Ms. ██████ after Spring break had any degree or certification.³⁰

The Student made progress during her first-grade year at ██████

Counsel for the Parent repeatedly argued that the Student did not achieve one goal by the

³⁰ I also conclude that Ms. ██████ spent an insufficient time observing ██████ in order to conclude that it was inappropriate for the Student. Although Ms. ██████ observed in three classrooms, each observation was extremely brief (seven minutes, five minutes and five minutes). Further, her observations were based on what was currently happening in the classroom but not necessarily what would have been put in place for the Student if she had been in the class. For example, in a math class Ms. ██████ stated that no manipulatives were observed in the brief activity she witnessed. (P. Ex. 37). However, Ms. ██████ testified that as the case manager and special education teacher, she would have made sure that the accommodations that were listed on the Student’s IEP were implemented. Ms. ██████ was a very persuasive witness and the Parent conceded that she is an experienced and highly qualified special education teacher. Therefore, there is no reason to believe that the accommodations and supports that were specifically listed in the Student’s IEP would not have been provided to her. Finally, Ms. ██████ was also contradictory in some aspects of her observation. Although she testified that the Student needed visual reminders of her schedule, she took issue with ██████ because the Student would have had to “follow [the] posted schedule on the board.” (P. Ex. 37).

end of her first-grade year. Ms. [REDACTED] disagreed and testified that the Student did achieve a reading goal but the IEP team periodically met and updated the objectives. (1/21/20 T. p. 1188). Although Ms. [REDACTED] was not able to clearly explain what she meant, a review of the IEP goals that were developed and agreed to by the Parent, demonstrates what Ms. [REDACTED] meant.

During the Spring (March 18, 2016) of the Student's kindergarten year, the IEP team formulated goals, including a reading goal, that would be evaluated one year later. During the Spring (March 9, 2017) of the Student's first grade year, the IEP team noted that the Student had met her reading goal and removed it from the IEP. The Parent did not object. At the IEP team meeting, the team did not include a new reading goal in the Student's IEP because she had met her goal and was on grade level in reading. (MCPS Ex. 7). The fact that the Student met her reading goal was not documented in the March 9, 2017 IEP meeting notes (and should have been) but was documented in the June 1, 2017 IEP. (MCPS Ex. 9, p. 75).

The Student met her first-grade reading goal by March 2017; unfortunately, after the Student missed thirteen days of school later during the third quarter and six days of Spring break, she was having difficulty with decoding in June of 2017. Therefore, the June 1, 2017 IEP noted that a reading decoding goal was added to the Student's IEP. As the last day of school for MCPS was June 16, 2017, it is unreasonable to expect the Student would have achieved this new reading goal in 15 days. Nevertheless, she did achieve the reading goal that was proposed for her first grade IEP by March of her first-grade year.

Similarly, on March 18, 2016, the IEP team included a math goal for the Student's first grade year.³¹ Although there was no documentation on the March 9, 2017 IEP that the goal was met, there was a discussion regarding the Student's progress in math during the first three

³¹ Finding of Fact number 21 contains the math goal and the four objectives.

quarters and that she was on grade level in math. The sources of information that the Student was on grade level in math were multiple: teacher reports, Brigance III, classwork samples, EMAT and MAP-P tests. The IEP team noted that she had a lot of trouble with timed math assessments because she had difficulty staying focused. Finally, the team agreed that math needs did not impact the Student's "academic achievement and/or functional performance." (MCPS Ex. 7). The Parent did not object to the March 9, 2017 IEP or present evidence to refute the assertion that the Student was on grade level in math at the end of her first-grade year.

Therefore, I conclude that the Parent is disingenuous when she argued that the Student did not meet any of her first-grade IEP goals. In addition to accomplishing her goals in reading and math, the Student also made progress in other areas during her first-grade year. As noted above, the Student improved in finding her classroom after using the bathroom or getting a drink of water. In the beginning of her first-grade year, the Student would put non-food items (e.g., school supplies) in her mouth and chew them. By December 2016, the Student no longer put non-food items in her mouth. By January 2017, she was making progress towards her goals in the area of written language, social emotional, and organization. (MCPS Ex. 32).

As discussed above, MCPS proposed an IEP for the Student's kindergarten, first, second, third and fourth grade years. COMAR 13A.05.01.09 defines an IEP and outlines the required content of an IEP as a written description of the special education needs of the student and the special education and related services to be provided to meet those needs. The IEP must consider:

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

20 U.S.C.A. § 1414(d)(3)(A). Among other things, the IEP depicts a student's current

educational performance, explains how the student's disability affects the student's involvement and progress in the general curriculum, sets forth annual goals and short-term objectives for improvements in that performance, describes the specifically-designed instruction and services that will assist the student in meeting those objectives, describes program modifications and supports for school personnel that will be provided for the student to advance appropriately toward attaining the annual goals, and indicates the extent to which the child will be able to participate in regular educational programs. 20 U.S.C.A. § 1414(d)(1)(A)(i)(I)-(V); COMAR 13A.05.01.09A.

On June 8, 2015, the IEP team met to develop an IEP for the Student's kindergarten year. The IEP met each of the requirements mandated in State and federal regulations. The Parent agreed with the IEP and it was implemented. On March 18, 2016, the IEP team met to discuss the Student's progress on her kindergarten IEP thus far, and to plan for her first grade IEP. Again, the IEP proposed by MCPS met all regulatory requirements and the Parent agreed with the proposed IEP.

In the middle of the Student's first grade year, the Parent had concerns about the Student's attention and social-emotional functioning and requested an IEP meeting. The IEP team met on December 14, 2016 and agreed to conduct assessments of the Student in all identified or suspected areas of disability. The team met again on March 9, 2017, to review the assessments and make changes to the IEP.³² Again, the IEP proposed by MCPS met all

³² IEP teams must consider the student's evolving needs when developing their educational programs and it clearly did this in the Student's case. 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)" 34 C.F.R. § 300.320(a)(1)(i). 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. *Id.* § 300.324(a)(2)(i). As the witnesses noted, the Student does not have "acting out" behavior but difficulties with sustaining attention and focus. Each IEP team meeting included discussion of the

regulatory requirements and the Parent agreed with it. Towards the end of the first-grade year, the Parent expressed concerns about the Student's readiness for second grade. The IEP team met on June 1, 2017, and due to regression in decoding skills after the Student was out of school for 13 days to go to a wedding and six days for Spring break, the team made changes to the IEP by adding a decoding reading goal to the other goals proposed in March 2017.

The Parent rejected the IEP and parentally placed the Student at [REDACTED] for second grade. A service plan meeting was held on September 14, 2017, and speech-language services were offered.

After Dr. [REDACTED] conducted a psychological evaluation for the Student, an IEP meeting was held on July 26, 2018, to review her evaluation (along with other information discussed above) and propose an IEP that considered the fact that the Student did not make any progress in reading in second grade at [REDACTED]. The Parent did not object to anything in the proposed IEP except for the level of services and the proposed placement for third grade. As already noted, the Parent believed the Student needed full-time special education classes throughout the day in a small school setting. Even though the Student made no reading progress at [REDACTED] in second grade, and despite the fact that she did not receive OT, PT, or speech-language services at [REDACTED] the Parent placed the Student at [REDACTED] for third grade.

Finally, the IEP team met again on March 13, 2019, and proposed an IEP for the Student's fourth grade year to be implemented at [REDACTED]. Again, the Parent did not object to anything in the IEP except for the level of services and the proposed placement.³³ The Parent

Student's difficulty with focus and strategies for addressing focus. Further, 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. *Id.* § 300.324(b)(1). In the Student's case, the IEP teams met more frequently than annually.

³³ Although there was disagreement regarding levels of current educational performance, that disagreement was

continued to maintain that the Student needed full-time special education classes throughout the day in a small school setting; she placed the Student at ██████ for fourth grade.

The Supreme Court addressed the requirement of a FAPE in a seminal case: *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), holding that the requirement is satisfied if a school district provides “specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.” *Id.* at 201 (footnote omitted). The court set out a two-part inquiry to analyze whether a local education agency satisfied its obligation: first, whether there has been compliance with the procedures set forth in the IDEA; and second, whether the IEP, as developed through the required procedures, is reasonably calculated to enable the child to receive some educational benefit. *Id.* at 206-07.

The *Rowley* Court found, because special education and related services must meet the state’s educational standards, 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. *Rowley*, 458 U.S. at 204; 20 U.S.C.A. § 1401(9).³⁴

The parties in *Andrew F.* asked the Supreme Court to go further than it did in *Rowley* and set forth a test for measuring whether a disabled student had attained sufficient educational benefit. The framework for the decision was the Tenth Circuit’s interpretation of the meaning of

between ██████ and the Parent’s educational consultant, Ms. ██████. As a result, the IEP team noted both opinions regarding the levels of educational performance and noted whether the source was ██████ or Ms. ██████.

³⁴ To meet its substantive obligation under IDEA, the IEP team must offer an IEP that is “a fact-intensive exercise (that) will be informed not only by the expertise of school officials, but also by the input of the child’s parents.” *Andrew F. v. Douglas Cty. Sch. Dist.*, 580 U.S. (2017). There is no question that the input of the Parent and her advocates was considered by the MCPS members of the IEP team.

Rowley's "some educational benefit," which construed the level of benefit as "merely . . . 'more than *de minimis*.'" *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 798 F.3d 1329, 1338 (10th Cir. 2015).

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

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

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

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

That the progress contemplated by the IEP must be appropriate in light of the child's circumstances should come as no surprise. A focus on the particular child is at the core of the IDEA. The instruction offered must be "*pecially* designed" to meet a child's "*unique* needs" through an "[i]ndividualized education program."

Endrew F., 137 S. Ct. at 998-99 (citations omitted).

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 *Endrew 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.’” *Id.* (quoting *Rowley*, 458 U.S. at 206). 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.” *Id.* at 1002.

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

The Parent has not alleged any procedural violations in the formation of the second, third and fourth grade proposed IEPs. Although the Parent argued that the Student did not make any progress in first grade (and therefore could not be expected to make progress on the proposed IEPs for second, third and fourth grade), I have already explained above why the evidence does not support that proposition. Further, although the Parent, Dr. [REDACTED] and Ms. [REDACTED] testified as to why the Student needed to be in a small, special education class throughout her day, I have also discussed above why I did not find their opinions persuasive.

In addition to presenting the proposed IEPs, MCPS presented several persuasive witnesses to explain how the IEPs would have been implemented at [REDACTED] if the Student had remained in that school. Ms. [REDACTED] testified that the IEP proposed for second grade

included eight hours a week of special education services within the general education setting, and she would have focused on providing services to work on the Student's goals in the areas of OT, organization, behavior/attention, speech/language, gross motor function, behavior/social skills, and, written language. Although the general education setting consisted of 15 to 18 students in the second-grade year, Ms. [REDACTED] testified that she would have spent eight hours in the general education classroom to assist the Student directly. Further, the Student was removed from the general education classroom and taught in a small group (no more than four students) for two hours of special education services which consisted of the research-based reading intervention. The IEP also provided for related services of PT, OT, and speech/language therapy outside the general education classroom. (MCPS Ex. 9; 9/16/19 T. p. 852).

Ms. [REDACTED] testified in detail about how the Student's day would have been in third and fourth grade if she had attended [REDACTED]. The proposed IEPs for third and fourth grade increased the overall number of special education hours that would have been provided in the general education classroom because additional goals were written to address the deficits noted by the IEP team members, including the Parent and her advocates, in 2018 and 2019. The number of pull-out services was increased to four hours because an evidence-based math intervention program was added to the Student's program based on her identified deficits in math.

Counsel for the Parent agreed that Ms. [REDACTED] is a highly trained and experienced special education teacher. As detailed in Finding of Fact numbers 102 and 103, Ms. [REDACTED] explained how, although the Student would have been in a general education classroom, she spent no more than fifteen or so minutes in whole class instruction for reading and math, and the rest of the time she would have been working in a smaller group or independently with a

paraeducator or special education teacher available for assistance. Both Ms. [REDACTED] and Ms. Borowitz testified to the positive impact a short period of whole class instruction could have had for the Student. The documentary evidence, as well as the testimony, from both MCPS and the Parent's experts demonstrated that the Student has excellent verbal comprehension. Ms. [REDACTED] testified that whole group instruction is usually a short introduction to the topic and consists of the teacher posing a question or talking about a topic to engage the students. She testified that because the Student is strong in verbal comprehension, she would benefit from being exposed to the grade-level, or even higher, vocabulary and content that would be orally discussed. In fact, the whole group instruction could be an opportunity for the Student to significantly add to the discussion because of her good vocabulary and her ability to relate topics to her good background of general knowledge. Ms. [REDACTED] persuasively explained how the general education teacher could use the Student's strength in verbal comprehension and making connections to be a leader to her peers in that area. Ms. [REDACTED] opinion was not just wishful thinking; Ms. [REDACTED] testified that when she taught the Student, the Student's comments during whole-group discussions were on-point and meaningful.

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 free appropriate public education, meaning that, ordinarily, disabled and non-disabled students should, when feasible, be educated in the same classroom. 20 U.S.C.A. § 1412(a)(5); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117. Indeed, mainstreaming children with disabilities with non-disabled peers is generally preferred, if the disabled student can achieve educational benefit in the mainstreamed program. *DeVries v. Fairfax Cty. Sch. Bd.*, 882 F.2d 876, 878-79 (4th Cir. 1989). At a minimum, the statute calls for school systems to place children in the "least restrictive

environment” consistent with their educational needs. 20 U.S.C.A. § 1412(a)(5)(A). Placing disabled children into regular school programs may not be appropriate for every disabled child and removal of a child from a regular educational environment may be necessary when the nature or severity of a child’s disability is such that education in a regular classroom cannot be achieved.

In this case, MCPS has persuasively demonstrated that the Student received educational benefit in light of her circumstances in both kindergarten and first grade, and that she would have received educational benefit if the proposed IEPs for second, third and fourth grade had been implemented at [REDACTED]. The teachers who had first-hand knowledge of the Student in kindergarten and first grade, persuasively testified how the Student never refused to participate in any activities (academic or nonacademic) during kindergarten and first grade. They also persuasively testified that the Student would gain benefit from being taught with her nondisabled peers by being exposed to grade-level vocabulary, content and discussion in academic areas, and by having typical peers to practice her social skills with when addressing her goals in social interaction. Finally, although the Student is frequently distracted, both MCPS Staff and Ms. [REDACTED] noted that she is easily re-directed. In addition, several MCPS witnesses noted that she was able to self-advocate (e.g., raise her hand or ask for help, express which method of assistance would help her with writing, etc.) when she was a student at [REDACTED] and when they saw her at [REDACTED] and [REDACTED].

The Parent argued that [REDACTED] is a good school (and her siblings have and do attend) but it is not the right school for her. The Parent contrasted the Student’s refusal or reluctance to enter [REDACTED] with the happiness with which she entered [REDACTED] and now [REDACTED]. I do not doubt that the Student was happy to attend [REDACTED] for most of the two years

she went there. The description of [REDACTED] by MCPS witnesses who observed the Student there, and agreed to in part by Ms. [REDACTED] is of a school that was not very structured or had many rules. If the Student refused to be tested or did not want to read, the teacher did not use any strategies to get the Student to engage in testing or read with the teacher. The “feel” of the school was much more informal than a public school – dogs were permitted in the school and classrooms and in second grade it was noted that the Student ate her snack while doing her work and sat in the teacher’s lap during snack time. It is not hard to imagine that any student, especially this Student who finds it hard to focus and sustain her attention, and enjoys interacting with adults, would be happy to attend a school that was so relaxed and did not expect her to do things she did not want to do (e.g., testing and reading).

More importantly, the Student’s happiness in attending [REDACTED] (and now [REDACTED] does not mean that MCPS was not providing her with a FAPE at [REDACTED]. Although the Parent testified that she had to force her daughter to go to school at the end of the first grade, Ms. [REDACTED] testified that she has seen the Student on a few occasions when she came to the school with her mother or sibling. Ms. [REDACTED] testified that the Student remembers her and came up behind her to give her a big hug. Further, although the Parent argued that it took all she could do to get the Student to attend her brother’s science fair, the fact remains that the Student did attend. She came into the school and into the large, multi-purpose room where the fair was being held. There were at least twenty participants in the science fair as well as family, teachers, and staff. Despite the number of people walking around the room to see the exhibits and speak with the students, the Student did not try to leave but sat under a table coloring the STEM sheets that were being given out to family members attending the fair. This is not that surprising as

everyone agrees that one of the Student's favorite activities is to color and draw.³⁵

In addition to failing to show that MCPS' proposed IEPs for second, third and fourth grade, were not calculated to provide the Student with educational benefit, the Parent has not persuasively demonstrated that she cannot be educated in the least restrictive environment – which is [REDACTED] the Student's home school.

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 system failed to comply with its statutory duties and that the unilateral private placement provided an appropriate education. *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985). The issue of reimbursement for unilateral placement was expanded in *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993), where the Court held that placement in a private school not approved by the state is not a bar under the IDEA. Under *Burlington*, parents may recover the cost of private education only if (1) the school system failed to provide a free appropriate public education; (2) the private education services obtained by the parent were appropriate to the child's needs; and (3) overall, equity favors reimbursement. The private education services need not be provided in the least restrictive environment. *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009). As I have concluded that MCPS provided the Student with a FAPE in the least restrictive environment, it is not necessary for me to address the second and third prongs of *Burlington*.

³⁵ The Parent did not suggest that the Student's interaction with nondisabled peers causes her to be anxious; in fact, the Student engages in activities with her typical peers. The Parent testified that the Student attends [REDACTED] with nondisabled peers (four or five students in the class) and she also participates in baseball and boy scouts with her typically developing peers. (9/12/19 T. p. 497).

CONCLUSIONS OF LAW

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

1. MCPS provided a free appropriate public education to the Student by proposing an Individualized Education Program that was reasonably calculated to provide the Student with educational benefit for the 2017-18 school year (second grade), 2018-19 school year (third grade) and for the 2019-20 school year (fourth grade); and, therefore,
2. The Parent is not entitled to tuition reimbursement second grade and third grade at [REDACTED] or fourth grade at the [REDACTED]

ORDER

I **ORDER** that the Parent's Request is **DENIED and DISMISSED**.

February 20, 2020
Date Decision Issued

Administrative Law Judge
Ann C. Kehinde

ACK/cj
#183903

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) (2018). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence. A party appealing this decision must notify the Assistant State Superintendent for Special Education, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, in writing of the filing of the appeal. The written notification must include the case name, docket number, and date of this decision, and the court case name and docket number of the appeal. The Office of Administrative Hearings is not a party to any review process.

Copies Mailed To:

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STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE ANN C. KEHINDE,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-MONT-OT-19-12412

FILE EXHIBIT LIST – APPENDIX A

The Parent offered the following exhibits which were admitted:

- P- 1. Amended Request for Due Process, 7-30-19
- P-1A. Emails between parent and ██████████ staff, Fall 2015;
- P- 2. MCPS Elementary Teacher Report for Quarterly Progress, 1-26-16
- P- 3. MCPS IEP Goals, 10-30-15 to 4-8-16
- P- 4. MCPS Elementary Teacher Report for Quarterly Progress, 6-16-16
- P- 5. MCPS Final Report Card, June 2016
- P- 6. MCPS Elementary Teacher Report for Quarterly Progress, 11-3-16
- P- 7. MCPS Educational Assessment Report, 12-22-16
- P- 8. MCPS IEP Goals, 4-8-16 to 1-26-17
- P- 9. MCPS Elementary Teacher Report for Quarterly Progress, 1-25-17 and 2-16-17
- P- 10. MCPS Speech-Language Re-Assessment, 3-2-17
- P- 11. MCPS Report of School Psychologist, 3-2-17
- P- 12. MCPS Physical Therapy Status Report, 3-9-17
- P- 13. MCPS IEP, 3-9-17
- P- 14. MCPS IEP Goals, 4-6-17
- P-14A. Emails between parent and ██████████ staff, Spring 2017
- P- 15. ██████████ Teacher Evaluation Form, 5-22-17
- P- 16. MCPS Reading and Math Testing, 5-24-17
- P- 17. MCPS Elementary Teacher Report, 5-24-17
- P- 18. MCPS IEP, 6-1-17
- P- 19. MCPS Final Report Card, June 2017
- P- 20. ██████████ reading summary and work samples, 3-3-18
- P- 21. Letter to ██████████ from Michael J. Eig, Esq., 4-11-18
- P- 22. MCPS Amended IEP, 4-12-18
- P- 23. Letter to Michael J. Eig, Esq. from Leslie Turner-Percival, Esq., 5-15-18
- P- 24. Comprehensive Psychological Assessment Report by Dr. ██████████ May 2018
- P- 25. Letter to Michael J. Eig, Esq. from Leslie Turner-Percival, Esq., 6-1-18
- P- 26. Letter to Leslie Turner-Percival, Esq. from Michael J. Eig, Esq. enclosing signed authorization, 6-5-18
- P- 27. MCPS Elementary Teacher Report, 6-11-18
- P- 28. MCPS Classroom Observation (Two Versions), 6-13-18
- P- 29. ██████████ Student Progress Report, June 2018

- P- 30. Student End-of-Year Reflection Essay, 6-14-18
- P- 31. MCPS Notice of No Assessment Needed, 7-12-18
- P- 32. MCPS IEP, 7-26-18
- P- 33. MCPS Prior Written Notice, 7-26-18
- P- 34. Notice Letter to Leslie Turner-Percival, Esq. from Michael J. Eig, Esq., 8-6-18
- P- 35. Response to Notice Letter to Michael J. Eig, Esq. from Emily B. Rachlin, Esq., 8-10-18

- P- 36. ██████████ Second Quarter Student Progress Report, February 2019
- P- 37. Educational Needs Report by ██████████ 1-22-19
- P- 38. Exhibit withdrawn**
- P- 39. Academic, Social and Emotional Observation Report by Lunley ██████████ 2-11-19

- P- 40. Resume of ██████████
- P- 41. Resume of ██████████ – **not introduced**
- P- 42. Resume of Dr. ██████████
- P- 43. Resume of Dr. ██████████
- P- 44. Student Work Samples from ██████████
- P- 45. IEP Meeting Notes by ██████████ 3-13-19
- P- 46. MCPS Consideration of External Report, 3-13-19
- P- 47. MCPS IEP, 3-13-19
- P- 48. Informal Reading Evaluation by ██████████ 4-5-19
- P- 49. ██████████ Third Quarter Student Progress Report, 4-10-19
- P- 50. Letter of Acceptance from the ██████████ 5-16-19
- P- 51. ██████████ Reading and Mata Data, 6-13-19
- P- 52. ██████████ Fourth Quarter Student Progress Report, 6-14-19
- P- 53. MCPS IEP and Prior Written Notice, 7-17-19
- P- 54. MCPS IEP Meeting Notes by ██████████ 7-17-19
- P- 55. Letter to Emily B. Rachlin serving notice, 8-7-19
- P- 56. Letter from MCPS in response to notice letter, 8-30-19

The Parent offered the following exhibits which were not admitted into evidence but have been placed in an envelope and are part of the case file if needed for appeal:

MCPS offered the following exhibits which were admitted:

- MCPS-1 IEP, 6/8/2015
- MCPS-2 IEP, 3/18/2016
- MCPS-3 IEP, 12/15/2016
- MCPS-4 Psychological Evaluation Report, MCPS, 2/2017
- MCPS-5 Educational Assessment, MCPS, 12/2016
- MCPS-6 Speech Language Assessment Report, MCPS, 1/2017
- MCPS-6A Physical Therapy Status Report, 3/9/3017
- MCPS-7 IEP, 3/9/3017
- MCPS-8 IEP Meeting Invitation, 5/18/2017
- MCPS-9 IEP, 6/1/2017

MCPS-10 Service Plan, 9/14/2017
 MCPS-11 Eligibility Status Report, 9/14/2017
 MCPS-12 IEP Meeting Invitation, 6/4/2018
 MCPS-13 Letter from Parent Attorney to MCPS, 6/5/2018
 MCPS-14 IEP Meeting Invitation, 6/27/2018
 MCPS-15 IEP Meeting documents, 7/12/2018--Notice of No Assessment Needed, SLD Team Report, Team Consideration of External Report

 MCPS-16 Prior Written Notice, 7/26/2018
 MCPS-17 IEP, 7/26/2018
 MCPS-18 Psychological Assessment Report, Dr. [REDACTED] ([REDACTED]) 5/2018

 MCPS-19 Email from Parent Attorney to MCPS attaching MCPS 20, 21 (1/24/2019)
 MCPS-20 [REDACTED] 3rd Grade, 1st Quarter Progress Report
 MCPS-21 Educational Needs Report, [REDACTED] ([REDACTED]), 1/22/2019

 MCPS-22 Parent Consent for Observations by MCPS staff, 2/6/2019
 MCPS-23 MCPS Observation Report, [REDACTED] 2/22/2019
 MCPS-24 MCPS Observation Report, [REDACTED] 2/15/2019
 MCPS-25 IEP Meeting Invitation, 2/26/2019
 MCPS-26 Letter from Parent to MCPS, 8/2017
 MCPS-27 [REDACTED] Request for Records, 11/3/2017
 MCPS-28 Emails regarding Service Plan Speech services, September-February 2018
 MCPS-29 Report Cards
 MCPS-30 IEP Progress Notes
 MCPS-31 Kindergarten Teacher Quarterly Reports
 MCPS-32 First Grade Teacher Quarterly Reports
 MCPS-33 Kindergarten MAP scores
 MCPS-34 Kindergarten Readiness Assessment
 MCPS-35 Kindergarten Data Notebook
 MCPS-36 Kindergarten Progress Notebook
 MCPS-37 Reading Records, 2015-2016 school year
 MCPS-38 Teacher Report, [REDACTED] 6/11/2018
 MCPS-39 Resume – [REDACTED] **-not introduced**
 MCPS-40 Resume – [REDACTED]
 MCPS-41 Resume – [REDACTED]
 MCPS-42 Resume – [REDACTED]
 MCPS-43 Resume – [REDACTED]
 MCPS-44 Resume – [REDACTED]
 MCPS-45 Prior Written Notice, 3/13/2019
 MCPS-46 IEP, 3/13/2019

 MCPS-47 Five Day Verification Notice after IEP Meeting, 3/18/19 with accompanying documents

 MCPS-48 Emails between attorneys regarding [REDACTED] documents, June 20-25, 2019
 MCPS-49 [REDACTED] 3Q Progress Report, 2018-2019 SY

MCPS-50 ██████████ 4Q Progress Report, 2018-2019 SY
MCPS-51 ██████████ Reading Record, 6/13/2019
MCPS-52 Informal Reading Evaluation, ██████████ (Weinfeld Education Group)
MCPS-53 Prior Written Notice, 7/18/2019
MCPS-54 IEP, 7/18/2019
MCPS-55 Parent Consent for Assessment, 7/29/2019
MCPS-56 MSDE Letter to ██████████ 2/21/2019
MCPS-57 MSDE Letter to ██████████ with Allegations, 3/27/2019
MCPS-58 MSDE Letter to ██████████ regarding Investigation, 3/27/2019
MCPS-59 MSDE Letter to ██████████ 5/1/2019
MCPS-60 MSDE Letter to ██████████ 6/4/2019
MCPS-61 MSDE Letter to ██████████ 6/6/2019
MCPS-62 MSDE Letter to ██████████ 8/29/2019
MCPS-63 Resume – Amy Shorb – **not introduced**