

██████████,

STUDENT

v.

ANNE ARUNDEL COUNTY

PUBLIC SCHOOLS

BEFORE LORRAINE E. FRASER,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-AARU-OT-19-37008

**DECISION**

STATEMENT OF THE CASE  
ISSUE  
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FINDINGS OF FACT  
DISCUSSION  
CONCLUSION OF LAW  
ORDER

**STATEMENT OF THE CASE**

On October 18, 2017, Anne Arundel County Public Schools (AACPS) filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to show that its educational evaluations of ██████████ (Student) were appropriate and that the Parents did not have a right to independent educational evaluations at public expense under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017).

On January 8 and 9, 2018, I held a hearing regarding AACPS's request. Wayne Steedman, Esquire, represented the Student and her parents ██████ and ██████ (Parents). Eric Brousaides, Esquire, represented AACPS.

On February 6, 2018, I issued a decision. I found that the AACPS evaluations in the areas of reading, math, written expression, pragmatic language, and social emotional development administered during the 2016-2017 school year were appropriate and ordered that the Parents' request for independent educational evaluations at public expense be denied.

On an unspecified date, the Parents appealed my decision to the United States District Court for the District of Maryland (Court). On November 18, 2019, the Court remanded the case to me for further proceedings. Specifically, the Court ordered that I consider additional evidence, make additional findings of fact, and determine whether AACPS's triennial evaluation of the Student was appropriate.<sup>1</sup> On November 20, 2019, the Court forwarded the remand order to the OAH, which the OAH received on November 25, 2019.

On December 3, 2019, the Parents filed with the Court a Motion to Reconsider and to Alter or Amend Judgment and a Motion to Stay while the Court considered the reconsideration motion.

On December 18, 2019, I held a prehearing conference with Mr. Steedman and Mr. Brousaides. Mr. Steedman advised that the Court granted a stay pending the reconsideration motion. The Court granted the stay on December 17, 2019.

On April 6, 2020, the Court denied the Parents' reconsideration motion. On May 12, 2020, Mr. Steedman forwarded the Court's order to the OAH.

On May 26, 2020, I held a telephone prehearing conference with Mr. Steedman and Mr. Brousaides. At the time, the OAH was not conducting hearings in person due to the COVID-19 pandemic and state and county buildings were not open to the public. The parties discussed their availability and that of their witnesses and agreed to hold the hearing on August 11-13, 2020.

On August 11, 12, and 13, 2020, I held the hearing via videoconference based on the Court's remand order. Mr. Steedman represented the Parents. Mr. Brousaides represented AACPS. At the close of the hearing, the parties acknowledged that the decision due dates under applicable law did not apply. *See* 34 C.F.R. §§ 300.510(b)(2), (c), 300.515(a); Md. Code Ann.,

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<sup>1</sup> The Court's remand order quotes Parents Ex. 40 for the scope of the Parents' request for an Independent Educational Evaluation. That document was not offered into evidence during either the January 2018 hearing or the August 2020 hearing. The only exhibits in evidence are those listed in this decision.

Educ. § 8-413(h) (2018); COMAR 13A.05.01.15C(14). The parties requested that the decision due date be Monday September 14, 2020, which I granted. 34 C.F.R. § 300.515(c); Educ. § 8-413(h).

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.

### **ISSUE**

The issue is whether AACPS's 2016-2017 triennial evaluation of the Student was appropriate.

### **SUMMARY OF THE EVIDENCE**

#### Exhibits<sup>2</sup>

The parties stipulated that all of the exhibits admitted during the hearing on January 8 and 9, 2018, the transcripts of the January 8-9, 2018 hearing, and the transcript of the November 15, 2017 telephone prehearing conference would be admitted into evidence as part of the record in this case.

I admitted the following exhibits on behalf of AACPS:

AACPS Ex. 1 IEP<sup>3</sup> Team Meeting Report Prior Written Notice, 12/14/16

AACPS Ex. 2\* Referral with Student Evaluation Plan, AACPS, 12/14/16

AACPS Ex. 3\* Academic Assessment Report, [REDACTED], Special Education Teacher, AACPS, 12/22/16

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<sup>2</sup> The parties premarked their exhibits; only the exhibits identified here were admitted into evidence. Exhibits marked with an \* were admitted during the January 8-9, 2018 hearing. Exhibits without an \* were admitted during the August 11-13, 2020 hearing.

<sup>3</sup> Individualized Education Program.

- AACPS Ex. 4 IEP Team Meeting Report Prior Written Notice, 1/26/17
- AACPS Ex. 5\* Psychological Assessment Report, [REDACTED], School Psychologist, AACPS, 2/2/17
- AACPS Ex. 6 IEP Team Meeting Report Prior Written Notice, 2/3/17
- AACPS Ex. 7\* Communication Assessment Report, [REDACTED], Speech/Language Pathologist, AACPS, 2/9/17
- AACPS Ex. 8 Occupational Therapy Assessment Report, [REDACTED], Occupational Therapist, AACPS, 2/17/17
- AACPS Ex. 9 IEP Team Meeting Report Prior Written Notice, 2/10/17
- AACPS Ex. 10 IEP Team Meeting Report Prior Written Notice, 2/17/17
- AACPS Ex. 11\* IEP Team Meeting Report Prior Written Notice, 3/15/17
- AACPS Ex. 12\* Referral with Student Evaluation Plan, AACPS, 3/15/17
- AACPS Ex. 13 Comprehensive Evaluation Review, AACPS, 3/15/17
- AACPS Ex. 14\* Academic Assessment Report, [REDACTED], Special Education Teacher, AACPS, 3/22/17
- AACPS Ex. 15 Classroom observation by [REDACTED], AACPS, 4/4/17
- AACPS Ex. 16 IEP Team Meeting Report Prior Written Notice, 4/20/17
- AACPS Ex. 17 Occupational Therapy Assessment Report, [REDACTED], Occupational Therapist, AACPS, 5/5/17
- AACPS Ex. 18\* IEP Team Meeting Report Prior Written Notice, 5/5/17
- AACPS Ex. 19\* Comprehensive Evaluation Review, AACPS, 5/5/17
- AACPS Ex. 20 IEP Team Meeting Report Prior Written Notice, 5/10/17
- AACPS Ex. 21 IEP Team Meeting Report Prior Written Notice, 5/24/17
- AACPS Ex. 22 Letter to [REDACTED] Middle School Special Education Team from [REDACTED], OTR/L, Occupational Therapist, 6/1/17
- AACPS Ex. 23 IEP Team Meeting Report Prior Written Notice, 6/2/17

- AACPS Ex. 24 Individualized Education Program, 6/2/17
- AACPS Ex. 25\* The Student's Report Cards for sixth and seventh grades
- AACPS Ex. 27\* Resume for [REDACTED], M.A., M.Ed., Speech-Language Pathologist
- AACPS Ex. 28\* Resume for [REDACTED], Pys.D., M.A., School Psychologist
- AACPS Ex. 29\* Resume for [REDACTED], M.Ed., Special Educator
- AACPS Ex. 33 IEP, 12/17/15
- AACPS Ex. 34 IEP, 2/10/17
- AACPS Ex. 35 IEP, 6/2/17<sup>4</sup>
- AACPS Ex. 36 Report cards from AACPS for school years 2016-2017, 2015-2016, 2014-2015, 2013-2104, 2012-2013; report card from the State of [REDACTED] for school year 2012-2013; State of [REDACTED] Academic Achievement Record for school years 2010-2011, 2011-2012, 2012-2013
- AACPS Ex. 37 Developmental Pediatrician visit summary, [REDACTED], M.D., [REDACTED], 4/11/17
- AACPS Ex. 38 Letter from [REDACTED], Ph.D., [REDACTED], 3/29/17
- AACPS Ex. 39 Medical notes, [REDACTED] M.D., 3/28/17
- AACPS Ex. 40 Assistive Technology Follow-up Visit, [REDACTED] OTL, MS, 3/6/17
- AACPS Ex. 41 Progress Report, [REDACTED], M.A., B.C.B.A.,<sup>5</sup> [REDACTED] 1/22/17
- AACPS Ex. 42 Occupational Therapy Daily Note, [REDACTED], 12/15/16
- AACPS Ex. 43 Test of Written Language – Fourth Edition (TOWL-4) assessment, [REDACTED] [REDACTED], M.S., CCC-SLP, 12/7/16
- AACPS Ex. 44 Parent Observation Report, 11/14/16 & 11/15/16
- AACPS Ex. 45 Letter from [REDACTED], OTR/L, [REDACTED], 10/23/16
- AACPS Ex. 46 Neurodevelopmental/Neurogenetic Clinic Note, [REDACTED], M.D., [REDACTED], 10/31/16

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<sup>4</sup> This appears to be a duplicate of AACPS Ex. 24.

<sup>5</sup> Board Certified Behavior Analyst.

- AACPS Ex. 47 Progress Report, [REDACTED], M.S., CCC-SLP, [REDACTED], 8/18/16
- AACPS Ex. 48 Physical Therapy Evaluation, [REDACTED], DPT, 8/7/16
- AACPS Ex. 49 Neuropsychological Evaluation, [REDACTED] Ph.D., Psychologist, Center for Autism Spectrum Disorders, [REDACTED], 8/18/16
- AACPS Ex. 50 Occupational Therapy Evaluation, [REDACTED], 6/6/16
- AACPS Ex. 51 Developmental pediatrician report, [REDACTED], M.D., [REDACTED], 5/18/16
- AACPS Ex. 52 Progress Report, [REDACTED], M.A., BCBA, [REDACTED], 5/23/16
- AACPS Ex. 53 Neurodevelopmental/Neurogenetic Clinic Note, [REDACTED], M.D., 5/9/16
- AACPS Ex. 54 Communication Assessment Report, [REDACTED] Speech Language Pathologist, AACPS, 10/8/15
- AACPS Ex. 55 Speech and Language Evaluation, [REDACTED], MA, MS, CCC-SLP, and Educator, 9/15/15
- AACPS Ex. 56 Neurological Assessment Plan, [REDACTED], M.D., [REDACTED], 9/9/15
- AACPS Ex. 57 Speech Language Evaluation, [REDACTED], M.A., CCC-SLP, [REDACTED], 6/23/15
- AACPS Ex. 58 Report of Supplementary Psychological Evaluation, [REDACTED] Ph.D., 3/11/15
- AACPS Ex. 59 Occupational Therapy Plan of Care, [REDACTED], OTR/L, [REDACTED], 3/6/15
- AACPS Ex. 60 Communication Assessment Report, [REDACTED], Speech Language Pathologist, AACPS, 6/5/14
- AACPS Ex. 61 Academic Assessment Report, [REDACTED] Special Education Teacher, AACPS, 6/3/14
- AACPS Ex. 62 Psychological Assessment Report, [REDACTED], School Psychologist, AACPS, 6/17/14

- AACPS Ex. 63 Comprehensive Evaluation Review, AACPS, 6/17/14
- AACPS Ex. 64 Re-Evaluation Report [REDACTED], M.A., CCC-SLP, [REDACTED], 3/17/14
- AACPS Ex. 65 Psychology Report [REDACTED], Ph.D., [REDACTED], 1/31/14
- AACPS Ex. 66 Academic Assessment Report [REDACTED], Special Education Teacher AACPS, 4/2/13
- AACPS Ex. 67 Communication Assessment Report, [REDACTED], Speech Language Pathologist, AACPS, 4/2/13
- AACPS Ex. 68 Evaluation Report, [REDACTED], M.A., CCC-SLP, [REDACTED], 1/24/13
- AACPS Ex. 70 Declaration of [REDACTED] Ph.D., filed in the U.S. District Court for the District of Maryland, 3/22/19
- AACPS Ex. 78 Resume for [REDACTED], Compliance Specialist, AACPS

I admitted the following exhibits on behalf of the Parents:

- Parents Ex. 22 Specific Learning Disability & Supplement, Technical Assistance Bulletin, Maryland State Department of Education, issued 11/7/16
- Parents Ex. 25\* Auditory Information Processing Assessment, [REDACTED], Ed.D., CCC-A/SLP, FAAA, 8/25/17
- Parents Ex. 27\* Neuropsychological Evaluation, [REDACTED], Ph.D., ABN, [REDACTED], 11/3/17
- Parents Ex. 34\* Speech Language Evaluation, [REDACTED], MA, CCC-SLP, 12/9/17
- Parents Ex. 36\* Resume for [REDACTED], Special Educator
- Parents Ex. 37\* Resume for [REDACTED], Ph.D., ABN, Neuropsychologist
- Parents Ex. 38\* Resume for [REDACTED], MA, CCC-SLP, Speech Language Pathologist
- Parents Ex. 39 Work samples of the Student, 2010-2017
- Parents Ex. 41\* Photograph of the Student

Parents Ex. 47 Resume of [REDACTED], M.Ed., M.A., Special Education Consultant

Parents Ex. 48 WIAT-III Examiner's Manual, pp. 85-89

### Testimony

The AACPS presented the following witnesses:

- The Student's mother
- [REDACTED], School Psychologist, accepted as an expert in school psychology
- [REDACTED], Compliance Specialist, accepted as an expert in special education

The Parents presented the following witnesses:

- [REDACTED], Neuropsychologist, accepted as an expert in psychological assessment and students with learning disabilities
- [REDACTED], Educational Consultant, accepted as an expert in special education, with a focus on learning disabilities

### **FINDINGS OF FACT**

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

1. The events leading to this case occurred when the Student was in the seventh grade at [REDACTED] Middle School (2016-2017 school year), where she was receiving special education services pursuant to an Individualized Education Program (IEP). The Student's native language is English.
2. The Student began attending AACPS during third grade and began receiving special education services pursuant to an IEP at that time. The Student was assessed regularly as part of the annual IEP development process in the areas of academics, speech and language, communication, psychology, neuropsychology, occupational therapy, and behavior.



3. As of the date of this hearing, the Student is entering the eleventh grade.
4. The Student has the following diagnoses: autism spectrum disorder, chromosomal anomalies, attention deficit hyperactivity disorder, developmental coordination disorder, apraxia of speech, pragmatic language disorder, expressive language disorder, articulation disorder, low bone density, hypermobility joint syndrome, hypotonia, voiding dysfunction, and amblyopia. The Student has been evaluated extensively privately and by the schools she has attended.
5. On October 19, 2016, the Parents provided to the IEP team a Neuropsychological Evaluation conducted by [REDACTED], Ph.D., Psychologist, Center for Autism Spectrum Disorders, [REDACTED]. Dr. [REDACTED] had evaluated the Student on July 19, 2016 and August 18, 2016.
6. Dr. [REDACTED] reviewed the Student's history beginning with her mother's pregnancy, her early development, medical history, school history, August 25, 2016 IEP, family history, prior evaluations, and previous treatment. Dr. [REDACTED] interviewed the Parents, reviewed behavioral questionnaires completed by the Student, the Parents, and the Student's teachers, and consulted with the Student's treatment providers.
7. Specifically, Dr. [REDACTED] reviewed eleven prior evaluations of the Student and noted their major findings, including four psychological evaluations (two private and two AACPS), a neuropsychological evaluation by [REDACTED], a speech and language evaluation (private), a behavioral therapist report, an occupational therapy evaluation (private), a hearing and speech evaluation (private), a communication assessment (AACPS), and a finding from the Developmental Disabilities Administration of the Maryland Department

of Health. The earliest evaluation Dr. [REDACTED] reviewed was conducted in 2010; most were conducted in 2014 and 2015.

8. Dr. [REDACTED] evaluated the Student's general intellectual functioning, attention and executive functioning, processing speed, language, visual-perceptual and visual-motor skills, motor skills, memory and learning, adaptive functioning, social functioning and sensory, and emotional functioning. The Student was cooperative with testing. Dr. [REDACTED] observed the Student appeared fatigued but it did not appear to impact the Student's performance. Dr. [REDACTED] concluded the results were a valid estimate of the Student's current functioning.
9. Dr. [REDACTED] administered the following tests:
  - For general intellectual functioning, the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V).
  - For executive control processes, the Behavior Rating Inventory of Executive Function (BRIEF), BRIEF-Self Report, ADHD Rating Scale-IV, Test of Everyday Attention for Children (TEA-Ch) Version A, California Verbal Learning Test-Children's Version (CVLT-C), Delis-Kaplan Executive Function System (D-KEFS), Tower of London-DX, and WISC-V digit span.
  - For language, the Menyuk Syntactic Comprehension Test, and Children's Communication Checklist-Second Edition (CCC-2) completed by the Parents.
  - For visual and visual-motor integration, the Beery Developmental Test of Visual Motor Integration (VMI) and the Rey Osterrieth Complex Figure.
  - For learning and memory, the California Verbal Learning Test – Children's Version (CVLT-C), Wide Range Assessment of Memory and Learning, Second Edition (WRAML-2), and Rey Osterrieth Complex Figure.

- For adaptive behavior, Adaptive Behavior Assessment System (ABAS-3) Parent Report.
  - For social and emotional, Autism Screening Questionnaire (ASQ), Social Responsiveness Scale Second Edition (SRS-2), Child Behavior Checklist (CBCL) and Teacher Report Form (TRF), Achenbach TRF Subscale Analysis, and Youth Self Report (YSR), and Autism Diagnostic Observation Schedule, Second Edition (ADOS-2), Module – 3.
10. Dr. [REDACTED] found the Student had average cognitive abilities, with high average processing speed, which she found consistent with previous testing. The Student struggled with cognitive flexibility, planning and organization, monitoring, inhibition, emotional control, and attention when not taking medication. These weaknesses interfered with learning, memory, and efficient demonstration of knowledge, communication, social engagement, and coping.
  11. Dr. [REDACTED] further found the Student had age appropriate core language skills but mild articulation weaknesses and significant pragmatic and higher-order language weaknesses. The Student had average learning and memory abilities; however, her executive dysfunction interfered with her learning accuracy and retrieval of information.
  12. Dr. [REDACTED] noted the Student had adaptive functioning weaknesses, weak bladder control, motor weaknesses, social skill and social cognition deficits, and symptoms of mood and anxiety problems.
  13. Dr. [REDACTED] diagnosed the Student with autism spectrum disorder, higher-order language impairment, attention deficit hyperactivity disorder, and speech sound production disorder. Dr. [REDACTED] also wanted to rule out a seizure disorder.

14. Dr. [REDACTED] identified the Student's following risks: social rejection and isolation, inflexibility and difficulty integrating information to understand the "big picture,"<sup>6</sup> others' inappropriate expectations of her, emotional decline, decline in academic progress, and poor social cognition. The Student's executive dysfunction caused difficulties in writing, such as weak organization, and in making inferences in reading. Her executive dysfunction would more significantly impact her academic progress as complexity increased.
15. Dr [REDACTED] made seven pages of recommendations for school and home including the following:
- Significant supports for the Student's autism and placement with students with strong cognitive abilities with supports to address her executive and social deficits, pragmatic language weaknesses, social skill and social cognition weaknesses, executive dysfunction, and motor weaknesses.
  - Continued occupational therapy to address sensory needs, accommodations for the Student's hypermobility, risk for injury, impact on written output, and fatigue.
  - Small group instruction, assistance navigating changes in expectations, and a "go-to"<sup>7</sup> person for problem solving and challenging social interactions.
  - Speech and language therapy for higher order and pragmatic language deficits.
  - A social skills development group.
  - Continued accommodations for her weak bladder control. Continued use of a concrete positive behavior plan. Minimized distractions, highly structured routines, frequent individual comprehension checks, quiet, isolated study areas, brief oral directions with visual reminders, and follow up questions to determine whether she needed to relearn

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<sup>6</sup> AACPS Ex. 49, p. 10 (bates stamp 755).

<sup>7</sup> AACPS Ex. 49, p. 11 (bates stamp 756).

material. Review and highlight changes and new material, written routines to facilitate organization and integrate discrete steps. Assignments with achievable time limits for completion.

16. Dr [REDACTED] noted a neuropsychological evaluation should be completed in three years or when helpful to monitor progress and update recommendations.
17. On October 26, 2016, the Parents provided to the IEP team a report of a physical therapy evaluation conducted on August 4, 2016. [REDACTED], Physical Therapist, noted the Student's hypermobility syndrome, decreased strength, and decreased bone density and recommended physical therapy, including strengthening, balance training, and resistance training. The IEP team discussed the physical therapy evaluation during an IEP team meeting on January 26, 2017.
18. Also on October 26, 2016, the Parents provided to the IEP team a progress report from [REDACTED] written on August 18, 2016. [REDACTED], Speech Language Therapist, recommended the Student continue one-to-one speech language therapy two times per week to increase her expressive and pragmatic language skills and articulation. She also recommended the Student attend a social skills group. The IEP team discussed the speech language progress report during an IEP team meeting on January 26, 2017.
19. In addition, on October 26, 2016, the Parents provided to the IEP team a letter from [REDACTED], Occupational Therapist, [REDACTED]. Ms. [REDACTED] recommended the following: use of multisensory presentations, access to a word processor, extended time for processing, verbal cues to review her work, reduction of visual clutter, repetition for new material and tasks, access to desk copies of materials to be

copied, frequent movement breaks, executive function supports such as checklists and tasks broken down, preferential seating, and an appropriately sized desk and chair. The IEP team discussed the occupational therapy letter during an IEP team meeting on January 26, 2017.

20. On November 7, 2016, the Parents provided to the IEP team a neurodevelopmental/neurogenetic clinic note from [REDACTED], M.D., recommended adding to the Student's IEP interventions to address social skills, activities of daily living, writing, communication skills, and executive function skills. The IEP team discussed the clinic note during an IEP team meeting on May 10, 2017.
21. On November 9, 2016, [REDACTED], School Psychologist, [REDACTED], Occupational Therapist, and [REDACTED], Speech/Language Pathologist, AACPS, reviewed Dr. [REDACTED]'s evaluation. They noted the Student's cognitive abilities were average overall and consistent with prior evaluations. They also noted the Student's weaknesses in executive functioning. They agreed to consider specific recommendations from the report in developing the Student's IEP. They stated they wanted to collect additional information about the Student's social and emotional functioning in school in order to assess the degree of educational impact and provide appropriate accommodations. They noted the Student's teachers did not report social or emotional problems that impacted her function or academics in school.
22. On November 14, 2016, the Student's mother observed her in Science class and her co-taught<sup>8</sup> English Language Arts class. On November 15, 2016, her mother observed her in her co-taught Social Studies class. Her mother wrote a fourteen-page report of her observations that she submitted to the IEP team on December 9, 2016. The IEP team discussed the report during IEP team meetings on February 10 and April 20, 2017.

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<sup>8</sup> In co-taught classes both a general educator and a special educator are present teaching the class.

23. In the report, the Student's mother described the Student's limited interactions with other students and classroom participation, motor difficulties in writing, postural issues, limited written output, repetitive movements, fidgeting, looking around the room, and disorganized materials. She relayed that the Student said she was bored in the co-taught English class because they were re-teaching concepts she already understands. Her mother noted the Student scored in the seventy-second percentile nationally on a recent reading assessment and that her recent Gates reading scores for comprehension and vocabulary were in the advanced range.
24. The Student's mother recommended the Student be encouraged to self-advocate and use the accommodations in her IEP, provided with technology to decrease the motor demands of writing, provided a scribe, placed in non-co-taught classes to challenge her areas of strength including reading and encourage her development of complex discussion and critical thinking skills, receive individual coaching to develop her executive functioning, given a comprehensive writing evaluation, and given social skills support.
25. On December 14, 2016, the IEP team prepared to reevaluate the Student as part of a triennial review. The IEP team considered as part of the review a progress report prepared by the Parents and information from independent sources provided by the Parents, including Dr [REDACTED]'s Neuropsychological Evaluation, as well as the Student's current educational performance, existing data, curriculum-based assessments, and progress on her annual IEP goals. The team reviewed the need for assessments in specific areas. The team determined the need for further assessment in the following areas: written expression, pragmatic language, fine/visual, sensorimotor, and social/emotional development. The team also planned to conduct a formal observation of the Student. The team determined

that further assessment was not needed in the following areas: health, gross motor, articulation, expressive/receptive language, cognitive/intellectual, attention/executive functioning, adaptive skills, reading, and math. The team decided a formal assistive technology assessment was not needed to determine the most appropriate technology, but technology would be provided through the IEP. The Parents and the Student participated in the discussion and consented to the evaluations, with the exception that they disagreed with the decision not to conduct a formal assistive technology assessment. The Parents requested an Independent Educational Evaluation (IEE) in the area of assistive technology.

26. On December 16, 2016, the Parents provided to the IEP team a testing report from [REDACTED] [REDACTED] Speech Language Pathologist, [REDACTED]. On December 7, 2016, Ms. [REDACTED] administered to the Student the Test of Written Language – Fourth Edition (TOWL-4). The Student’s composite scores and subtest scores were all in the average range, with the exception of her subtest score in vocabulary which was below average. Overall, Ms. [REDACTED] found the Student had some weaknesses in writing and many strengths. Ms. [REDACTED] suggested the Student receive specific interventions to address her areas of relative weakness, including vocabulary, logical sentences, story composition, and punctuation. The IEP team discussed the TOWL-4 results during an IEP team meeting on May 10, 2017.
27. On December 22, 2016, [REDACTED], M.Ed., Special Educator, AACPS, assessed the Student’s present levels of performance in written expression, without accommodations. Ms. [REDACTED] assessed the Student’s written expression using the Wechsler Individual Achievement Test (WIAT III) subtests on sentence combining, sentence building, spelling, and essay composition. Ms. [REDACTED] administered the subtests on one day for a total of



approximately thirty-five minutes. Ms. [REDACTED] administered the subtests in accordance with the test manufacturer's instructions. Ms. [REDACTED] also evaluated the Student's writing on the essay portion of her December 20, 2016, Social Studies quarterly assessment using the Skill-Based Writing Inventory for Grades 7-12. The Student was hard-working and focused during the testing.

28. Ms. [REDACTED] co-taught the Student in Language Arts and Social Studies during the seventh grade and served as the Student's special education case manager.
29. The WIAT III and the Skill-Based Writing Inventory for Grades 7-12 were valid procedures to assess the Student and provided valid information regarding the Student's present level of functioning in written expression, including her strengths and weaknesses.
30. The Student's performance on the WIAT III and the essay portion of her December 20, 2016, Social Studies quarterly assessment was consistent with Ms. [REDACTED]'s observations of her written performance in class. Specifically, the Student made some mistakes in spelling and punctuation; however, the content of her writing was strong. On the WIAT III, the Student performed in the average range for essay composition, sentence combining, and sentence building. The Student performed below average for spelling.
31. On January 11, 2017, the Parents provided to the IEP team an occupational therapy note from [REDACTED], Occupational Therapist, dated December 15, 2016. Ms. [REDACTED] planned to continue to address the Student's self-awareness, body awareness, social skills, fine motor skills, hand strength, handwriting, typing, executive functioning, motor planning, and sensory processing. The IEP team discussed the therapy note during an IEP team meeting on May 24, 2017.

32. On January 11, 12, 18, 19, and 25, 2017, Dr. [REDACTED] School Psychologist, AACPS, assessed the Student's present levels of social and emotional development using the following methods: parent and teacher ratings on the Social Responsiveness Scale, Second Edition (SRS-2); the Developmental Neuropsychological Assessment, Second Edition (NEPSY-II) social perception subtests; the Test of Problem-Solving 2 – Adolescent (TOPS2); teacher consultation; student interview; and classroom observations. Dr. [REDACTED] administered the tests in accordance with the test manufacturer's instructions.
33. Dr. [REDACTED] provided direct psychology services to the Student during sixth grade and consultative psychology services to the Student during seventh grade.
34. The Student told Dr. [REDACTED] what times in the day would work best for her to participate in testing but was flexible about Dr. [REDACTED]'s schedule. The Student easily engaged in testing and was polite and cooperative. The Student engaged in social conversations with Dr. [REDACTED] about a movie she wanted to see, a book she had read, and being sick. The Student remained focused during testing and put forth good effort.
35. The testing instruments used by Dr. [REDACTED] (the SRS-2, NEPSY-II, and TOPS2) were technically sound and the results were valid and reliable.
36. Dr. [REDACTED]'s testing, teacher consultation, student interview, and classroom observations were valid procedures to assess the Student and provided valid information regarding the Student's present levels of social and emotional functioning, including her strengths and weaknesses.
37. The Student's test results were consistent with Dr. [REDACTED]'s observations of her behavior in the classroom and her diagnosis of autism spectrum disorder. Specifically, the Student's difficulties with social skills did not substantially interfere with her social interactions in

the classroom or impact her academic or functional performance. The Student had some difficulty understanding the meaning of others' tone of voice and facial expressions. She was able to work well in small peer groups in the classroom. She did not socialize much outside of school.

38. Dr. [REDACTED] issued her report on February 2, 2017. She recommended direct and explicit feedback to the Student about social behaviors, checking with the Student for comprehension particularly if sarcasm was used, reviewing social expectations before new group activities, assigning specific group roles, asking questions to improve vague answers, connecting new material to the Student's existing knowledge, and encouraging the Student to participate in after school clubs.
39. On January 26, 2017, the team held an IEP meeting at which the following information was reviewed: physical education restriction forms, bone scan and provider notes from Dr. [REDACTED] and Dr. [REDACTED] an ophthalmologist report, a letter from the Developmental Disabilities Administration, Ms. [REDACTED]'s physical therapy evaluation, Ms. [REDACTED]'s occupational therapy evaluation, Ms. [REDACTED]'s letter, Ms. [REDACTED]'s speech and language therapy progress reports, and Dr. [REDACTED]'s developmental pediatrician notes. The Parents and the Student participated in the meeting.
40. On January 4 and February 1, 2017, Ms. [REDACTED], Occupational Therapist, AACPS, assessed the Student; she issued her report on February 17, 2017. She reviewed Ms. [REDACTED]'s June 2, 2016 occupational therapy evaluation, Dr. [REDACTED]'s neuropsychology evaluation, and Dr. [REDACTED]'s neurodevelopmental note and consulted with all of the Student's teachers.

41. Ms. [REDACTED] found the Student had average fine motor skills and above grade level handwriting fluency; however, her weaknesses in executive function impacted the quality of her handwriting. The Student had the ability to produce legible printed work, but she rushed through assignments. She was usually the first or one of the first students to complete assignments and did not use the extra time to review her work without prompting. The greater the demands of the assignment, the more difficulty the Student had with the writing process. The Student's hypotonia and hyper joint mobility impacted her writing stamina. When given a checklist and reminders to slow down, the Student produced neat, legible handwriting with appropriate spacing and letter formation. Ms. [REDACTED] noted the Student's sensory processing difficulties and that she seeks movement, auditory input, and oral motor input for focus and attention.
42. Ms. [REDACTED] issued her report on February 17, 2017. For school, she recommended the Student have breaks and opportunities for movement and auditory and oral motor input; preferential seating close to instructions and away from distractions; checklists for tasks with multiple steps, reviewing/editing work, and organizing materials; assistive technology for longer writing assignments; support during the writing process, including pre-writing, writing, and editing and revising; and use of a gel pen or mechanical pencil to reduce fatigue. She also made recommendations for home.
43. On February 3, 2017, the team held an IEP meeting at which the following information was reviewed: Dr. [REDACTED]'s psychological evaluation, Dr. [REDACTED]'s neuropsychological evaluation, supplementary aids and services regarding social/emotional weaknesses, present levels of performance in expressive/receptive communication and oral motor/feeding, supplementary aids and services, and assistive technology. The team added

to the IEP: a speech/language consult, a psychological consult, the Student was permitted to use her phone to take pictures of posted homework and assignments, she was encouraged to expand vague oral and written statements, and she was permitted to use a word processor for all writing tasks longer than a paragraph. The team noted the Student was taking the required coursework and state and county assessments for a high school diploma. The Parents and the Student participated and agreed with the changes.

44. On January 27, 2017 and February 3, 2017, [REDACTED], Speech-Language Pathologist, AACPS, assessed the Student's present level of performance in pragmatic language. She noted that the Student's language had been previously assessed by the school and private speech-language pathologists. Ms. [REDACTED] assessed the Student's pragmatic language using the Clinical Evaluation of Language Fundamentals – 5 (CELF-5) pragmatics profile subtest, the pragmatics activities checklist, and classroom observation. Ms. [REDACTED] completed the pragmatics profile in consultation with Ms. [REDACTED]. Ms. [REDACTED] administered the subtest and checklist in accordance with the test manufacturer's instructions. The Student was motivated and cooperative during testing. The Parents completed the pragmatics profile independently and shared the information with Ms. [REDACTED].
45. Ms. [REDACTED] conducted speech-language testing of the Student in the sixth grade and provided speech-language services to the Student in the sixth and seventh grades.
46. The CELF-5 pragmatics profile subtest, the pragmatics activities checklist, and classroom observation were valid procedures to assess the Student and provided valid information regarding the Student's present level of functioning in pragmatic language, including her strengths and weaknesses.

47. The Student's results on the CELF-5 pragmatics profile subtest and the pragmatics activities checklist were consistent with Ms. [REDACTED]' observations of her use of language in class. Specifically, the Student's conversations in class were focused on tasks required to complete her work and impacted her positively academically. She had weaknesses in nonverbal communication skills, such as interpreting facial cues, gestural cues, and tone of voice, and knowledge of social scripts, which could impact her social interactions with peers.
48. Ms. [REDACTED] issued her report on February 9, 2017. She noted the Student had pragmatic weaknesses interpreting non-verbal communication and social scripts. The Student's weaknesses could impact her in social interactions and her perception of characters in texts. The Student would benefit from support in understanding jokes and figurative language and in her interactions with other students.
49. On February 10, 2017, the team held an IEP meeting at which the following was discussed: information from the Parents and the Student, and the Student's present levels of performance in written expression, learning behaviors, fine/visual motor and sensorimotor, supplementary aids and services, and extended school year services. During the meeting, changes were made to the Student's IEP goals and objectives in written expression, learning behaviors, expressive/receptive language, and occupational therapy. Also, the Student's supplementary aids and services were added or revised, including: a writing/editing checklist, an occupational therapy consult, an assistive technology consult, access to electronic worksheets, paper with lines, backpack for carrying and organizing materials, and dynamic seating. In addition, the team discussed and made changes to the Student's placement. Specifically, the Student stated that she wanted to be in non-co-

taught classes because she did not find them challenging. The team determined that the Student would remain in the co-taught Language Arts class but could be in a non-co-taught class for Social Studies. The Parents and the Student participated and agreed with the changes to the IEP.

50. On February 17, 2017, the team held an IEP meeting at which the academic assessment report and the speech/language assessments were discussed. The Parents and the Student participated.
51. On March 6, 2017, [REDACTED], Occupational Therapist, AACPS, consulted with the Student and Ms. [REDACTED]. Ms. [REDACTED] determined that it would be better for the Student to use a Chromebook in school rather than the laptop she had been using. Ms. [REDACTED] said the Student would be given a Chromebook and she would train the Student, her Parents, and school staff as needed.
52. On March 15, 2017, an IEP team held a meeting during which the team discussed the cognitive/intellectual and occupational therapy assessments and conducted a comprehensive evaluation review. The Student's performance on the Maryland School Assessment (MSA) on April 15, 2015 was advanced in reading, and proficient in math and science. The Student's classroom performance in reading was as follows: county-based assessments on October 27, 2016, 50% (proficient) and on January 20, 2017, 85% (advanced); and Gates-MacGintie on September 15, 2016, vocabulary 71% (advanced) and comprehension 62% (advanced). The Student's classroom performance in math was as follows: county-based assessments on October 25, 2016, 76% (advanced) and on January 23, 2017, 88% (advanced). The Student's classroom performance in writing was as follows: county-based assessment on January 23, 2017, 85% (advanced). The team

reviewed samples of the Student's classroom work; interviews with the Student; information from the Parents; information from the Student's teachers; classroom observations; and psychological, academic, communication, and occupational assessments. The team noted the Student was meeting grade level standards in listening comprehension, basic reading skills, reading fluency skills, reading comprehension, mathematics calculation, and mathematics problem solving. The team noted the Student was not meeting grade level standards in oral and written expression.

53. The team reviewed the Student's scores on the WISC-V (administered by Dr. [REDACTED]) and WIAT III (administered by Ms. [REDACTED]). On the WISC-V, the Student scored: 108 on verbal comprehension, 97 on visual spatial, 109 on fluid reasoning, 91 on working memory, and 111 on processing speed, with a full-scale score of 103. On the WIAT-III, the Student scored: 91 on written expression, 102 on reading fluency, 97 on reading comprehension, 114 on mathematics calculation, 89 on mathematics problem solving, and 94 on basic reading skills.
54. On March 15, 2017, the team found the Student's autism and other health impairment were the most significant cause of her educational weaknesses. The Student did not have a significant pattern of strengths and weaknesses that showed a specific learning disability in writing (i.e. dysgraphia). However, the Student had poor spelling, poor handwriting, poor endurance for handwriting, and difficulty putting thoughts on paper, which were characteristics consistent with dysgraphia. The team determined that the Student was eligible for special education services as a student with multiple disabilities including other health impairment and autism. The Student's mother stated that she believed the Student also had a specific learning disability. The Student's mother was concerned the academic



assessment did not reflect the Student's true academic ability. The team agreed to conduct additional assessments in the areas of basic reading skills, reading comprehension, math calculation, math reasoning, and sensorimotor. The team noted more information in the area of academics was needed to determine if a specific learning disability existed. The Parents and the Student participated in the discussion and consented to the assessments.

55. On March 16 and 22, 2017, Ms. [REDACTED] Special Educator, assessed the Student's present levels of performance in reading and math. Ms. [REDACTED] assessed the Student in math using the following WIAT III subtests: numerical operations, math fluency addition, math fluency subtraction, math fluency multiplication, and math problem solving. Ms. [REDACTED] assessed the Student in reading using the following WIAT III subtests: reading comprehension, word reading, pseudoword decoding, and oral reading fluency. Ms. [REDACTED] administered the subtests during two one-hour sessions. The Student was focused and worked hard during both sessions; she did not appear rushed or careless.
56. The WIAT III was a valid procedure to assess the Student and provided valid information regarding the Student's present level of functioning in math and reading, including her strengths and weaknesses.
57. The Student's results on the WIAT III showed she was performing in the average range in math and reading, with the exception that she was performing below average in math fluency.
58. Ms. [REDACTED] recommended that the Student receive specific feedback on her work and monitoring to ensure she was careful with her calculations.

59. On March 29, 2017, the IEP team received a four-sentence letter from Dr. [REDACTED] in which he diagnosed the Student with dysgraphia and recommended one-on-one intervention in writing. The IEP team discussed this letter during an IEP meeting on April 20, 2017.
60. On April 11, 2017, the IEP team received medical notes from the Student's March 28, 2017 visit with [REDACTED], M.D., regarding her medical restrictions in physical education.
61. On April 18, 2017, the IEP team received a visit summary from the Student's developmental pediatrician, [REDACTED], M.D., dated April 11, 2017. Dr. [REDACTED] recommended continuing special education supports, small group instruction for writing, assistive technology, social skills, communication skills, time management, and occupational therapy for fine motor and keyboarding skills. The IEP team discussed the summary at an IEP meeting on May 10, 2017.
62. On April 20, 2017, the IEP team held a meeting to discuss a progress report from [REDACTED], M.A., B.C.B.A., [REDACTED], the Student's mother's classroom observation, and the letter from Dr. [REDACTED]. The team agreed information from these reports would be considered in the development of the IEP. The Student and her mother participated and agreed.
63. On April 20, 2017, the Parents provided to the IEP team a progress report from the CACD<sup>9</sup> program conducted by [REDACTED], M.A., B.C.B.A., [REDACTED], dated January 22, 2017. The Student received Applied Behavioral Analysis (ABA) services at [REDACTED] since August 2014. Ms. [REDACTED] re-evaluated the Student's needs<sup>10</sup> and developed a behavior intervention plan targeting her undesirable behaviors.

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<sup>9</sup> Comprehensive Autism Care Demonstration.

<sup>10</sup> Ms. [REDACTED] had evaluated the Student previously on May 23, 2016.

64. On April 6, 2017, [REDACTED], Occupational Therapist, AACPS, reviewed her February 2017 assessment with the Student and her mother. Ms. [REDACTED] issued her report on May 5, 2017. Specifically, the Student's mother was concerned that the Student may have misunderstood the questions on the Adolescent/Adult Sensory Profile Self-Questionnaire and given incorrect answers. The Student's mother reviewed and rephrased the questions for the Student and gave examples of behavior she observed. The Student changed some of her answers but her sensory profile remained essentially the same. In addition, Ms. [REDACTED] reviewed the results of the Child Sensory Profile 2 Caregiver Questionnaires completed by both Parents and the School Companion Sensory Profile 2 Teacher Questionnaires completed by the Student's teachers. Ms. [REDACTED] found the Student engaged in sensory behaviors more than others at home but like the majority of others when in school. She noted the Student's need for movement and focus without distractions should be addressed through accommodations. She recommended the Student be given dynamic or alternative seating, opportunities for movement, breaks throughout the day, and be seated away from distractions.
65. On May 5, 2017, the IEP team held a meeting during which it reviewed AACPS assessments and private assessments from 2016 and 2017. The team also conducted a comprehensive evaluation review. The Parents and the Student participated in the IEP meeting.
66. The team reviewed the Student's performance on the following state and county assessments:
- Maryland School Assessments April 15, 2015: reading (advanced), math (proficient), and science (proficient).

- Classroom performance in reading: Gates-MacGintie September 14, 2016 comprehension 71% (advanced) and vocabulary 62% (advanced); county-based assessments on October 27, 2016 50% (proficient), January 25, 2017 85% (proficient), and March 27, 2017 78% (proficient).
  - Classroom performance in math: county-based assessments on October 27, 2016 76% (proficient), January 27, 2017 88% (advanced), and March 27, 2017 90% (advanced).
  - Classroom performance in written language work samples: February 2, 2017 persuasive advertisement 10/10, February 17, 2017 professional athletes' salaries 10/10, and February 28, 2017 Jackie Robinson essay 11/12.
67. The team reviewed the Student's performance on classroom assignments and work samples and noted her difficulties with spelling, generating and organizing ideas, varying text transitions, and seeing the "big picture." The Student said she cannot read her own writing at times and cannot multitask.
68. The team reviewed teachers' anecdotal information. The Student's teachers reported that she was conscientious, motivated to do well, and had improved her self-advocacy. They reported that the Student's interest in an assignment or topic impacted her performance in writing and she performed better when given more rigorous expectations and tasks.
69. The team reviewed the Student's psychological, academic, communication, and occupational therapy assessments, as follows:
- Psychological – The Student's teachers noted that her difficulties with social skills did not substantially interfere with her interactions at school. She was able to work well with peers in collaborative learning activities.

- Academic – The Student performed in the average range in reading and mathematics with the exception of math fluency.
- Communication – The Student had pragmatic strengths and weaknesses. Her conversation in the classroom was task focused and helped her complete her work. She had difficulty telling and understanding jokes, joining and leaving interactions, participating in unstructured group activities, offering to help others, reading social situations correctly, and interpreting non-verbal cues.
- Occupational therapy – The Student was not significantly impacted by the sensory environment at school but needed movement breaks and to be seated away from visual and auditory distractions.

70. The team considered the letter from [REDACTED], Ph.D., in which he wrote that it was clear that the Student had a “Specific Learning Disorder”<sup>11</sup> in written expression, known as dysgraphia. Dr. [REDACTED] stated that he based his diagnosis on recent evaluations conducted by the school team but did not identify the evaluations that the Parents provided to him.
71. In addition, the team reviewed the Student’s grade-level achievement in the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading fluency skills, reading comprehension, mathematics calculation, and mathematics problem solving. The Student was achieving on grade level in all areas except oral and written expression. Her math teacher noted that she was performing in the top 25%, potentially the top 10%, of her class. She had a good grasp of concepts and applied them to various structures. Her teacher said the assessment did not accurately reflect her skills in math because she showed lower motivation on less complex tasks.

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<sup>11</sup> AACPS Ex. 38.

72. The team reviewed the Student's WISC-V scores (by Dr. [REDACTED]) showing her intellectual development - processing strengths and weaknesses, and WIAT-III scores (by Ms. [REDACTED]) showing her academic achievement results. The team considered her strengths and weaknesses in mathematics and attributed her weaknesses to her difficulty with timed tasks and lower motivation on less complex tasks. The team did not find the Student had a specific learning disability in mathematics. The team considered the Student's characteristics of dysgraphia, including poor spelling, handwriting, organization, and endurance during writing, and difficulty putting thoughts on paper. The team attributed her writing weaknesses to her autism and executive function difficulties. The team did not find the Student had a specific learning disability in written expression. The team concluded that the Student continued to require special education services based on her autism and other health impairment.
73. The Parents disagreed with the IEP team's conclusion that the Student did not have a specific learning disability in writing. They did not express any disagreement with the assessments or evaluations at that time.
74. On May 10, 2017, the IEP team held a meeting during which they reviewed a neurodevelopmental/neurogenetic clinic note from [REDACTED], M.D., dated May 9, 2016; a neurodevelopmental/neurogenetic clinic note from [REDACTED], M.D., dated October 31, 2016; the TOWL-4 writing assessment by [REDACTED] M.S., CCC-SLP, dated December 7, 2016; the medical notes from [REDACTED], M.D., dated March 28, 2017; and the developmental pediatrician visit summary from Dr. [REDACTED], dated April 11, 2017. The team agreed to consider the recommendations when drafting the IEP. The Parents and the Student participated and agreed.

75. On May 24, 2017, the IEP team held a meeting during which they reviewed Dr. [REDACTED]'s April 11, 2017 visit summary and the occupational therapy note from [REDACTED] dated December 16, 2016. The team agreed the Student needed small group instruction for writing mechanics, spelling, and line spacing. Many of the recommendations were already being provided, such as voice to text technology, small group for writing, social skills in the context of the school day, and assistance with time management, communication and conversation skills. The team's school members did not find the Student needed direct occupational therapy services for keyboarding skills. The Parents and the Student disagreed regarding occupational therapy.
76. The IEP team agreed the Student was pursuing a high school diploma and would participate in state and county assessments.
77. The IEP team agreed on the Student's present levels of performance in written expression, learning behaviors, pragmatic language, attention/executive functioning, social/emotional expressive/receptive, fine/visual motor, health/physical status, sensor motor, oral motor/feeding, cognitive/intellectual. The team agreed the Student benefited from the use of a word processor and would receive assistive technology consult services. They agreed the Student continued to need testing and instructional accommodations and supplementary aids and services. The Student did not need extended school year services.
78. The team revised the Student's goals on the IEP in written language, pragmatic language, expressive/receptive language, and learning behaviors. The Parents agreed to the goal revisions.
79. The team revised the Student's services on the IEP. The Student would continue to receive special education services in the co-taught Language Arts class. She would receive three

fifteen-minute sessions of speech/language therapy in the general education classroom and two thirty-minute sessions of speech/language therapy outside the general education setting. Direct occupational therapy services were removed from the IEP, but indirect services would continue as a quarterly consult with the Student. The Parents disagreed with direct occupational therapy services being removed from the IEP.

80. The team determined that the Student's placement continued to be appropriate. Specifically, the Student would participate with her non-disabled peers in all areas except when receiving speech/language services outside the general education classroom. The Parents agreed to the placement.
81. On June 2, 2017, the IEP team held a meeting during which they reviewed and finalized the Student's IEP. The Parents and Student participated and agreed. They did not express any disagreement with the assessments or evaluations at that time.
82. The 2016-2017 triennial evaluation ended when the June 2, 2017 IEP was finalized.
83. For the 2015-2016 school year (sixth grade), the Student's final grades for the year were: As in English/Language Arts, Social Studies, Science, and World Language Connect, and a B in Mathematics.
84. For the 2016-2017 school year (seventh grade), the Student's final grades for the year were: As in Social Studies, Science, and Chinese, and Bs in English/Language Arts and Mathematics.
85. During the triennial review, the IEP team appropriately evaluated the Student's strengths and weaknesses in all areas by reviewing her performance in the classroom and on all the assessments described above, both private and public.



86. The assessments in reading and writing described above, as well as her classroom performance, were the appropriate tools for identifying whether the Student had a specific learning disability in reading or writing.
87. Based on the extensive testing of the Student and her classroom performance during the triennial review and throughout her years in school, the IEP team had ample information to evaluate the Student's disabilities, including whether the Student had a specific learning disability in reading or writing.
88. The IEP team did not find the Student had a specific learning disability in reading or writing. Rather, reading was an area of strength for the Student. Further, the Student's weaknesses in writing were attributable to her other health impairment, not to a specific learning disability.
89. AACPS's triennial review of the Student during the 2016-2017 school year was appropriate.

## **DISCUSSION**

### **Burden of Proof**

The standard of proof in this case is a preponderance of the evidence. *See* 20 U.S.C.A. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3). To prove an assertion or a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002). The burden of proof rests on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005). In this case, AACPS bears the burden of proof as it is the party seeking relief.

### The Court's Remand

The Court ordered that I consider additional evidence, make additional findings of fact, and determine whether AACPS's 2016-2017 triennial evaluation of the Student was appropriate. In order to ensure my findings of fact on remand are complete, I incorporated the findings of fact from my February 2018 decision and added to them extensively. I will not repeat my discussion of the testimony and evidence in the January 2017 hearing in this decision but incorporate it by reference.

### Analysis

AACPS began its triennial evaluation of the Student on December 14, 2016 and concluded when it finalized the Student's IEP on June 2, 2017. As detailed in the findings of fact above, the Student had been extensively tested and observed, both privately and by AACPS, since she began attending AACPS in the third grade and receiving special education services pursuant to an IEP.

During its triennial review, AACPS considered all of the information submitted by the Parents, including: Dr. [REDACTED]'s Neuropsychological Evaluation dated July 19 and August 18, 2016; Dr. [REDACTED]'s developmental pediatrician notes; Dr. [REDACTED]'s and Dr. [REDACTED]'s neurodevelopmental/neurogenetic clinic notes; Dr. [REDACTED]'s developmental pediatrician visit summary; Dr. [REDACTED]'s and Dr. [REDACTED]'s medical notes; an ophthalmologist report; a letter from the Developmental Disabilities Administration; Ms. [REDACTED]'s physical therapy evaluation; Ms. [REDACTED]'s occupational therapy evaluation, therapy notes, and letter; Ms. [REDACTED]'s speech and language therapy progress report; Ms. [REDACTED]'s Applied Behavioral Analysis progress reports; Dr. [REDACTED]'s psychological evaluation and letter; Ms. [REDACTED]'s writing assessment; and the Student's mother's class observation report.

In addition, AACPS personnel conducted the following assessments during the triennial review: Ms. [REDACTED]'s academic assessments dated December 22, 2016 (writing) and March 22, 2017 (reading and math); Dr. [REDACTED]'s psychological assessment dated February 2, 2017; Ms. [REDACTED]'s communication assessment dated February 9, 2017; Ms. [REDACTED]'s occupational therapy assessments dated February 17, 2017 and May 5, 2017; and Ms. [REDACTED]'s assistive technology follow-up visit on March 6, 2017.

The IEP team held eleven IEP meetings from December 14, 2016 through June 2, 2017, during which all of the private assessments and progress reports and notes and the AACPS assessments were discussed. AACPS incorporated recommendations from the Student's private providers into the Student's IEP.

Further, AACPS conducted two comprehensive evaluation reviews (CER), during the IEP meetings on March 15, 2017 and May 5, 2017, addressing: the Student's performance on state assessments in reading, math, and science; county assessments in reading, math, and written language; psychological, academic (reading, math, and writing), communication, and occupational therapy assessments of the Student; teacher interviews; Student interviews; classroom observations; and parent questionnaires.

During the March 15, 2017 CER, the team found that the Student was adequately achieving for her age and grade level in the areas of listening comprehension, basic reading skills, reading fluency skills, reading comprehension, mathematics calculation, and mathematics problem solving but not oral expression and written expression. The team noted that the Student had been receiving specialized instruction in written expression for four years. The team agreed the Student continued to require special education services for her autism and other health impairments. The team did not find that the Student had a specific learning disability at that time

but requested additional testing and information to further explore if a specific learning disability existed. Specifically, the team requested additional assessments in the areas of reading and math, which Ms. [REDACTED] conducted on March 16 and 22, 2017, using the WIAT III, an appropriate assessment tool for that purpose.

The team reviewed Ms. [REDACTED]'s additional reading and math assessments in the context of all the other information during the May 5, 2017 CER. Ms. [REDACTED] noted the Student was performing in the average range in reading comprehension, word reading, pseudoword decoding, oral reading fluency, numerical operations, and math problem solving. Ms. [REDACTED] found the Student performed below average in math fluency (addition, subtraction, and multiplication). The team discussed the Student's weakness in math fluency and attributed it to her difficulty with timed tasks and her lower motivation on less complex tasks. The Student's math teacher reported that the Student was performing in the top 25%, and potentially the top 10%, of her regular education math class. The team did not find the Student had a learning disability in Mathematics. The team considered Dr. [REDACTED]'s diagnosis of dysgraphia and the Student's difficulties with spelling and putting thoughts on paper, poor handwriting and organization, and lack of endurance in handwriting. The team attributed the Student's writing weaknesses to her autism and executive functioning difficulties rather than a specific learning disability in written expression. The team found the Student's reading skills were average and agreed she continued to require special education services for her autism and other health impairments.

The Student has multiple disabilities which impact her academic performance, namely her autism impacts her social skills and cognition, her ADHD causes difficulties with attention and execution function, and her low muscle tone causes fatigue and motor skill weaknesses. In all of the private and AACPS assessments conducted before and during the 2016-2017 triennial

review, not one of the professionals who taught or assessed the Student, both private and AACPS staff, concluded or even suggested that the Student had a specific learning disability in the area of reading. Rather, reading was consistently identified as an area of strength for the Student. The Student was reading on grade level in the classroom, she scored proficient on county quarterly reading assessments, she scored advanced in reading on the MSA, and she scored advanced on comprehension and vocabulary on the Gates-MacGintie. Dr. [REDACTED] found the Student had age appropriate core language skills but had a higher-order language impairment; i.e., she had difficulty making inferences in reading and seeing the “big picture” because of her autism. Ms. [REDACTED] found the Student’s reading scores on the WIAT III were average. Finally, the Student’s mother stated that reading was an area of strength for the Student. Her mother asked the team to remove the Student from co-taught classes with a special educator including Language Arts and place her in a general education classroom for all classes because the Student said she was bored in the co-taught classes going over material she already understood.

The Student was appropriately assessed for a specific learning disability in writing. Ms. [REDACTED] the Student’s private Speech Language Therapist, assessed the Student’s written language skills in December 2016, using the TOWL-4, an appropriate tool for that purpose. All of the Student’s subtest scores and composite scores were in the average range, with the exception of vocabulary. Ms. [REDACTED] noted the Student would benefit from specific instruction in her areas of relative weakness, including vocabulary, logical sentences, story composition, and punctuation. Ms. [REDACTED] assessed the Student’s written language using the WIAT III, also an appropriate tool. The Student’s scores in sentence combining, sentence building, and essay composition – grammar and mechanics were average. Her spelling score was below average. On her Occupational Therapy Evaluation, Ms. [REDACTED] found that when the Student was given

extra time, prompts to slow down, and a self-editing checklist, the Student was able to produce legible handwritten work. In contrast, when the Student was rushed and poorly focused, her work was sloppy and difficult to read, and had mechanical errors. Ms. [REDACTED] noted the greater the demands of a writing assignment, the more difficulty the Student had shifting her attention between handwriting and the writing process, including generating ideas, organizing thoughts, sequencing events, and applying the rules of punctuation, capitalization, grammar, and spelling. As noted above, the team considered the Student's weaknesses in writing and agreed she continued to need specialized instruction in written expression.

During the August 2020 hearing, Dr. [REDACTED] testified that the team reviewed all of the assessments in conjunction with the Student's classroom performance. Dr. [REDACTED] stated that the primary question is how an identified weakness impacts a student's access to education. She said that the IEP team had more than sufficient data to conduct an analysis of the Student's patterns of strengths and weaknesses and determine whether she had a specific learning disability. She emphasized that the AACPS staff worked with the Student, knew the Student, and understood the Student's executive functioning weaknesses impacted the Student's educational access, not a specific learning disability.

Dr. [REDACTED] testified at the August 2020 hearing that he would have conducted additional testing for dyslexia (a specific learning disability in reading), including subtests and composite scores for rapid naming, phonological processing, word count, and ability to organize theme. He stated that Ms. [REDACTED] should have had the WIAT III scoring assistant software conduct an analysis of the Student's pattern of strengths and weaknesses rather than the IEP team conducting its own analysis of her patterns of strengths and weaknesses. He said background information is useful but cannot be used to rule out a learning disability because children change.<sup>12</sup> He opined that

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<sup>12</sup> During the February 2018 hearing, Dr. [REDACTED] criticized Dr. [REDACTED]'s, Ms. [REDACTED]', and Ms. [REDACTED]'s assessments

the IEP team's evaluation was inadequate to determine a specific learning disability because of the failure to use the WIAT III's analysis of a pattern of strengths and weaknesses and the lack of additional subtests and composite scores.

Dr. [REDACTED]'s testimony is problematic for a number of reasons. One, Dr. [REDACTED] criticized Dr. [REDACTED] for not assessing the Student's psychological and cognitive processes in her February 2017 psychological assessment. However, Dr. [REDACTED] admitted during the hearing that Dr. [REDACTED] had assessed the Student's psychological and cognitive processes in July and August 2016. The Parents gave Dr. [REDACTED]'s assessment to the IEP team in October 2016 and Dr. [REDACTED] and the rest of the IEP team reviewed and relied upon Dr. [REDACTED]'s assessment. The IEP team accepted Dr. [REDACTED]'s assessment and there was no need to conduct another psychological and cognitive assessment only six months later. Two, there is no evidence that the IEP team was required to limit its evaluation of the Student's patterns of strengths and weaknesses to only the WIAT III's software's analysis of that test's scores. Rather, it was more appropriate for the IEP team to evaluate the Student's strengths and weaknesses in light of all the data they had on the Student's performance. Three, Dr. [REDACTED]'s testified that standardized testing was the most valid data and that report cards and other data were relevant but did not have the same weight. Dr. [REDACTED] minimized the Student's average, proficient, and advanced scores on multiple reading assessments, including standardized assessments such as the MSA, Gates MacGintie, and the WIAT III, as well as her classroom performance. At the same time, Dr. [REDACTED] ignored the ultimate issue: whether an identified weakness impacted the Student's access to education. The Student's reading scores are consistent with her classroom performance. Dr. [REDACTED] did not offer a convincing explanation as to why the IEP team should

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as incomplete because they did not contain all of the Student's background information.

have continued to test the Student's reading skills when she was able to access the general education curriculum with the supports and services she was already receiving.

Ms. [REDACTED]'s testimony in support of more testing was not convincing either. Ms. [REDACTED] had never evaluated the Student or met her. She first became aware of the Student approximately two weeks before the hearing. She had not spoken to AACPS staff nor had she reviewed all the records. She did not know how many times the IEP team had met.

In sum, I find that AACPS thoroughly assessed the Student in all areas, including academic, psychological, speech/language, occupational therapy, and assistive technology. AACPS assessed the Student using valid and appropriate assessment tools. AACPS assessed the Student for a specific learning disability and concluded she did not have one. AACPS determined the Student's educational weaknesses were due to her disabilities of autism and other health impairments and continued to provide her with special education supports and services on her IEP. Therefore, I find that AACPS demonstrated that its 2016-2017 triennial evaluation of the Student was appropriate. Thus, the Parents were not entitled to an IEE at public expense. 34 C.F.R § 300.502(b) (2019); *E.P. v. Howard Cty. Pub. Sch. Sys.*, 2017 WL 3608180 (D. Md. Aug. 21, 2017).<sup>13</sup>

### **CONCLUSION OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that AACPS's 2016-2017 triennial evaluation of the Student was appropriate. 34 C.F.R § 300.502(b) (2019); *E.P. v. Howard Cty. Pub. Sch. Sys.*, 2017 WL 3608180 (D. Md. Aug. 21, 2017).

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<sup>13</sup> My discussion of both the regulation and *E.P.* is contained in my February 2018 decision.



**ORDER**

I **ORDER** that Anne Arundel County Public Schools' 2016-2017 triennial evaluation of the Student was appropriate and that the Parents' request for independent educational evaluations at public expense is denied.

September 14, 2020  
Date Decision Issued

Lorraine E. Fraser  
Administrative Law Judge

LEF/kp/cj  
#187337

**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:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

STUDENT

v.

ANNE ARUNDEL COUNTY

PUBLIC SCHOOLS

BEFORE LORRAINE E. FRASER,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-AARU-OT-19-37008

**FILE EXHIBIT LIST<sup>1</sup>**

The parties stipulated that all of the exhibits admitted during the hearing on January 8 and 9, 2018, the transcripts of the January 8-9, 2018 hearing, and the transcript of the November 15, 2017 telephone prehearing conference were admitted into evidence as part of the record in this case.

I admitted the following exhibits on behalf of AACPS:

AACPS Ex. 1 IEP<sup>2</sup> Team Meeting Report Prior Written Notice, 12/14/16

AACPS Ex. 2\* Referral with Student Evaluation Plan, AACPS, 12/14/16

AACPS Ex. 3\* Academic Assessment Report, [REDACTED], Special Education Teacher, AACPS, 12/22/16

AACPS Ex. 4 IEP Team Meeting Report Prior Written Notice, 1/26/17

AACPS Ex. 5\* Psychological Assessment Report, [REDACTED], School Psychologist, AACPS, 2/2/17

AACPS Ex. 6 IEP Team Meeting Report Prior Written Notice, 2/3/17

AACPS Ex. 7\* Communication Assessment Report, [REDACTED], Speech/Language Pathologist, AACPS, 2/9/17

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<sup>1</sup> The parties premarked their exhibits, only the exhibits identified below were admitted into evidence. Exhibits marked with an \* were admitted during the January 8-9, 2018 hearing. Exhibits without an \* were admitted during the August 11-13, 2020 hearing.

<sup>2</sup> Individualized Education Program.

- AACPS Ex. 8 Occupational Therapy Assessment Report, [REDACTED], Occupational Therapist, AACPS, 2/17/17
- AACPS Ex. 9 IEP Team Meeting Report Prior Written Notice, 2/10/17
- AACPS Ex. 10 IEP Team Meeting Report Prior Written Notice, 2/17/17
- AACPS Ex. 11\* IEP Team Meeting Report Prior Written Notice, 3/15/17
- AACPS Ex. 12\* Referral with Student Evaluation Plan, AACPS, 3/15/17
- AACPS Ex. 13 Comprehensive Evaluation Review, AACPS, 3/15/17
- AACPS Ex. 14\* Academic Assessment Report, [REDACTED], Special Education Teacher, AACPS, 3/22/17
- AACPS Ex. 15 Classroom observation by [REDACTED], AACPS, 4/4/17
- AACPS Ex. 16 IEP Team Meeting Report Prior Written Notice, 4/20/17
- AACPS Ex. 17 Occupational Therapy Assessment Report, [REDACTED], Occupational Therapist, AACPS, 5/5/17
- AACPS Ex. 18\* IEP Team Meeting Report Prior Written Notice, 5/5/17
- AACPS Ex. 19\* Comprehensive Evaluation Review, AACPS, 5/5/17
- AACPS Ex. 20 IEP Team Meeting Report Prior Written Notice, 5/10/17
- AACPS Ex. 21 IEP Team Meeting Report Prior Written Notice, 5/24/17
- AACPS Ex. 22 Letter to [REDACTED] Middle School Special Education Team from [REDACTED] OTR/L, Occupational Therapist, 6/1/17
- AACPS Ex. 23 IEP Team Meeting Report Prior Written Notice, 6/2/17
- AACPS Ex. 24 Individualized Education Program, 6/2/17
- AACPS Ex. 25\* The Student's Report Cards for sixth and seventh grades
- AACPS Ex. 27\* Resume for [REDACTED], M.A., M.Ed., Speech-Language Pathologist
- AACPS Ex. 28\* Resume for [REDACTED], Pys.D., M.A., School Psychologist
- AACPS Ex. 29\* Resume for [REDACTED], M.Ed., Special Educator

- AACPS Ex. 33 IEP, 12/17/15
- AACPS Ex. 34 IEP, 2/10/17
- AACPS Ex. 35 IEP, 6/2/17<sup>3</sup>
- AACPS Ex. 36 Report cards from AACPS for school years 2016-2017, 2015-2016, 2014-2015, 2013-2104, 2012-2013; report card from the State of [REDACTED] for school year 2012-2013; State of [REDACTED] Academic Achievement Record for school years 2010-2011, 2011-2012, 2012-2013
- AACPS Ex. 37 Developmental Pediatrician visit summary, [REDACTED], M.D., [REDACTED] 4/11/17
- AACPS Ex. 38 Letter from [REDACTED], Ph.D., [REDACTED], 3/29/17
- AACPS Ex. 39 Medical notes, [REDACTED], M.D., 3/28/17
- AACPS Ex. 40 Assistive Technology Follow-up Visit, [REDACTED], OTL, MS, 3/6/17
- AACPS Ex. 41 Progress Report, [REDACTED], M.A., B.C.B.A.,<sup>4</sup> [REDACTED] [REDACTED], 1/22/17
- AACPS Ex. 42 Occupational Therapy Daily Note, [REDACTED], 12/15/16
- AACPS Ex. 43 Test of Written Language – Fourth Edition (TOWL-4) assessment, [REDACTED] [REDACTED], M.S., CCC-SLP, 12/7/16
- AACPS Ex. 44 Parent Observation Report, 11/14/16 & 11/15/16
- AACPS Ex. 45 Letter from [REDACTED], OTR/L, [REDACTED], 10/23/16
- AACPS Ex. 46 Neurodevelopmental/Neurogenetic Clinic Note, [REDACTED], M.D., [REDACTED], 10/31/16
- AACPS Ex. 47 Progress Report, [REDACTED], M.S., CCC-SLP, [REDACTED] [REDACTED], 8/18/16
- AACPS Ex. 48 Physical Therapy Evaluation, [REDACTED], DPT, 8/7/16
- AACPS Ex. 49 Neuropsychological Evaluation, [REDACTED], Ph.D., Psychologist, Center for Autism Spectrum Disorders, [REDACTED] 8/18/16
- AACPS Ex. 50 Occupational Therapy Evaluation, [REDACTED], 6/6/16

<sup>3</sup> This appears to be a duplicate of AACPS Ex. 24.

<sup>4</sup> Board Certified Behavior Analyst.

- AACPS Ex. 51 Developmental pediatrician report, [REDACTED], M.D., [REDACTED]  
[REDACTED] 5/18/16
- AACPS Ex. 52 Progress Report, [REDACTED], M.A., BCBA, [REDACTED],  
5/23/16
- AACPS Ex. 53 Neurodevelopmental/Neurogenetic Clinic Note, [REDACTED], M.D.,  
5/9/16
- AACPS Ex. 54 Communication Assessment Report, [REDACTED], Speech Language Pathologist,  
AACPS, 10/8/15
- AACPS Ex. 55 Speech and Language Evaluation, [REDACTED], MA, MS, CCC-SLP, and  
Educator, 9/15/15
- AACPS Ex. 56 Neurological Assessment Plan, [REDACTED], M.D., [REDACTED]  
9/9/15
- AACPS Ex. 57 Speech Language Evaluation, [REDACTED], M.A., CCC-SLP, [REDACTED]  
[REDACTED] 6/23/15
- AACPS Ex. 58 Report of Supplementary Psychological Evaluation, [REDACTED], Ph.D.,  
3/11/15
- AACPS Ex. 59 Occupational Therapy Plan of Care, [REDACTED], OTR/L, [REDACTED]  
[REDACTED], 3/6/15
- AACPS Ex. 60 Communication Assessment Report, [REDACTED], Speech Language  
Pathologist, AACPS, 6/5/14
- AACPS Ex. 61 Academic Assessment Report, [REDACTED], Special Education Teacher,  
AACPS, 6/3/14
- AACPS Ex. 62 Psychological Assessment Report, [REDACTED], School Psychologist, AACPS,  
6/17/14
- AACPS Ex. 63 Comprehensive Evaluation Review, AACPS, 6/17/14
- AACPS Ex. 64 Re-Evaluation Report, [REDACTED], M.A., CCC-SLP, [REDACTED]  
[REDACTED], 3/17/14
- AACPS Ex. 65 Psychology Report, [REDACTED], Ph.D., [REDACTED],  
1/31/14
- AACPS Ex. 66 Academic Assessment Report, [REDACTED], Special Education Teacher  
AACPS, 4/2/13

- AACPS Ex. 67 Communication Assessment Report, [REDACTED], Speech Language Pathologist, AACPS, 4/2/13
- AACPS Ex. 68 Evaluation Report, [REDACTED], M.A., CCC-SLP, [REDACTED], 1/24/13
- AACPS Ex. 70 Declaration of [REDACTED], Ph.D., filed in the U.S. District Court for the District of Maryland, 3/22/19
- AACPS Ex. 78 Resume for [REDACTED], Compliance Specialist, AACPS

I admitted the following exhibits on behalf of the Parents:

- Parents Ex. 22 Specific Learning Disability & Supplement, Technical Assistance Bulletin, Maryland State Department of Education, issued 11/7/16
- Parents Ex. 25\* Auditory Information Processing Assessment, [REDACTED], Ed.D., CCC-A/SLP, FAAA, 8/25/17
- Parents Ex. 27\* Neuropsychological Evaluation, [REDACTED], Ph.D., ABN, [REDACTED], 11/3/17
- Parents Ex. 34\* Speech Language Evaluation, [REDACTED], MA, CCC-SLP, 12/9/17
- Parents Ex. 36\* Resume for [REDACTED], Special Educator
- Parents Ex. 37\* Resume for [REDACTED], Ph.D., ABN, Neuropsychologist
- Parents Ex. 38\* Resume for [REDACTED], MA, CCC-SLP, Speech Language Pathologist
- Parents Ex. 39 Work samples of the Student, 2010-2017
- Parents Ex. 41\* Photograph of the Student
- Parents Ex. 47 Resume of [REDACTED], M.Ed., M.A., Special Education Consultant
- Parents Ex. 48 WIAT-III Examiner's Manual, pp. 85-89