

██████████,

STUDENT

v.

PRINCE GEORGE'S COUNTY

PUBLIC SCHOOLS

BEFORE JOCELYN L. WILLIAMS,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-PGEO-OT-20-08662

DECISION

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STATEMENT OF THE CASE

On March 24, 2020, ██████████¹ (Parent), on behalf of her child, ██████████ (Student), filed a Due Process Complaint (Complaint) with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by Prince George's County Public Schools (PGCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017);² 34 C.F.R. § 300.511(a) (2019);³ Md. Code Ann., Educ. § 8-413(d)(1) (2018); Code of Maryland Regulations (COMAR) 13A.05.01.15C(1).

I held a telephone prehearing conferences on May 11, 2020 and June 19, 2020. The Parent was not present, but was represented by Kimm Massey, Esquire. Jeffrey Krew, Esquire, represented the PGCPS.

¹ During the hearing the Parent indicated her full name is ██████████. The Due Process complaint lists the Parent as ██████████ and she was referred to as Ms. ██████████ throughout the hearing.

² U.S.C.A. is an abbreviation for United States Code Annotated. Unless otherwise noted, all citations of 20 U.S.C.A. hereinafter refer to the 2017 bound volume.

³ C.F.R. is an abbreviation for Code of Federal Regulations. Unless otherwise noted, all citations of 34 C.F.R. hereinafter refer to the 2019 volume.

I held the due process hearing remotely via video utilizing the Google Meet platform on July 6-10, 2020, July 13-15, 2020, and July 20-22, 2020.⁴ Ms. Massey represented the Student. Mr. Krew represented the PGCPS.

Under the applicable law, a decision in this case normally would be due by June 5, 2020, forty-five days after the expiration of the thirty-day resolution period, April 23, 2020. 34 C.F.R. §§ 300.510(b)(2), (c), 300.515(a). In this case, counsel for the parties reviewed their calendars and noted multiple conflicts, notably Ms. Massey's unavailability the last week of May and the first three weeks of June, including her participation in another lengthy hearing scheduled before the OAH. The parties also preferred to have the hearing held on consecutive days.

In addition to these scheduling conflicts, the following hinderances transpired in the State of Maryland. On March 12, 2020, Governor Larry Hogan ordered Maryland public schools, which includes the PGCPS, to close from March 16 through March 27, 2020, to protect public health by limiting the spread of the COVID-19 virus, which has been declared a global pandemic. On March 25, 2020, Governor Hogan extended the school closure through April 24, 2020. On March 30, 2020, Governor Hogan issued a Stay at Home Order limiting travel within the State for essential purposes only. On April 17, 2020, Governor Hogan extended the school closure through

⁴ By agreement of the parties, the hearing was originally scheduled to conclude on July 15, 2020, an additional day was reserved on July 20, 2020. However, it became clear that additional days would be needed; therefore, July 21, 2020 and July 22, 2020 were also added, and the parties were informed that the hearing would conclude on July 22, 2020.

The additional hearing days were needed in large because, although Mr. Krew requested subpoenas duces tecum for the "not otherwise specified" Parent's expert witnesses, and Ms. Massey failed to serve the witnesses once they were identified. Although Mr. Krew requested that the potential expert witnesses provide documents, the witnesses did not do so and an inordinate amount of time had to be devoted to a voir dire of the witnesses regarding the documents. Further, the additional days were required due to the unavailability of expert witnesses to testify on certain days (even though the days were specified in my Pre-Hearing Conference Report and Order), and the constant need to address the inappropriate behavior, lack of professionalism, and incivility displayed by Ms. Massey and Mr. Krew; and the implementation of "professionalism breaks" or recesses to allow Ms. Massey and/or Mr. Krew time to regroup and comport themselves with decorum.

Though the hearing concluded on July 22, 2020, the parties requested to submit a two page statement of points of authority in lieu of an oral closing, to be submitted electronically no later than the close of business on July 29, 2020. Both parties understood and agreed that the record would remain open until July 29, 2020. Both parties submitted their statement of points of authority by the close of business on July 29, 2020, at which time the record was closed.

May 15, 2020, and on May 6, 2020, he further extended the school closure through the remainder of the 2019-2020 school year. Concurrently, the OAH suspended all in-person proceedings through July 3, 2020 to limit the spread of COVID-19; though some hearings were being held remotely.

The parties jointly requested that the timeline for issuing the decision be extended, noting the pandemic, the logistical issue of physically accessing records and contacting witnesses during the school closure, as well as the preference of having consecutive hearing days. For those reasons, I found good cause to extend the regulatory timeframe as requested.⁵ *Id.* § 300.515(c).

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.

ISSUES⁶

The issues are whether PGCPs failed to provide a free appropriate public education (FAPE) to the Student by:

- failing to implement the Student's Individualized Education Programs (IEPs) dated January 31, 2018, March 5, 2018, January 24, 2019, and January 14, 2020 and the amendments;

⁵ Administrative Law Judge (ALJ) [REDACTED], held a telephone conference with the parties on May 5, 2020, in an attempt to assess and schedule timeframes in this case. The parties declined to discuss any timeframes or extensions of time, requesting instead to have the matter scheduled for a telephone pre-hearing conference before the ALJ who would be assigned to conduct the hearing.

While both parties requested and agreed to an extension of the timeframes, Mr. Krew requested my decision be due thirty days from the close of the record and Ms. Massey only agreed to a twenty-one-day decision due date. Therefore, the decision was due twenty-one days following the close of the record. On the final day of the hearing, after discussion at a bench conference, both parties requested and agreed to submit a statement of points and authority in lieu of an oral closing argument. The parties understood and agreed that the record would remain open until July 29, 2020, to allow for the submission of these documents.

⁶ I restated the issues originally defined by the parties during the telephone pre-hearing conference, with slight variation. The variation has not changed the substantive nature of the issues. The order of the issues has changed to address the Motion to Dismiss made by PGCPs and to keep the decision cohesive.

- failing to provide accurate quarterly IEP progress reports;
- failing to provide appropriate IEPs on January 31, 2018, March 5, 2018, January 24, 2019, January 14, 2020 and the amendments;
- failing to convene IEP meetings to review and revise the Student’s IEP to address her failure to make expected progress;
- failing to provide an appropriate location of services for the 2017-2018 school year dating back to March 2018, the 2018-2019 school year, and the 2019-2020 school year; and
- failing to propose an appropriate placement in March 2020.

SUMMARY OF THE EVIDENCE⁷

Exhibits

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

Testimony

The Parent testified and presented the following witnesses:

- [REDACTED] the Student’s father;
- [REDACTED];⁸

⁷ I made my best effort to admit corresponding exhibits for both parties that were presented by the other party. However, as there were no stipulations as to exhibits in this case prior to the commencement of the hearing, it is possible that there are duplicate exhibits that were offered and admitted by one party, but not likewise admitted on behalf of the other party.

[REDACTED] was offered by the Parent as an expert in Special Education. Following an entire day of voir dire by both parties, and after reviewing various exhibits, I had serious concerns as to Ms. [REDACTED]’ credibility and was not persuaded to qualify her to testify as an expert witness for the purposes of offering opinion testimony. Ms. [REDACTED] had limited documented classroom teaching experience, and she was evasive and contradictory as to whether notes that she had written existed in this case. She blurred the line between an advocate and independent educational evaluator by testifying that she did not need to give requested documents to counsel for PGCPs because she had given them to the Parent’s attorney. It was not clear to me whether she was acting as an advocate or as an impartial expert. The Parent declined to call Ms. [REDACTED] as a fact witness.

It is also of note that Ms. [REDACTED] filed a Motion to Quash Subpoena on July 1, 2020. The Motion to Quash Subpoena was addressed on the record on July 8, 2020. It was denied in part and sustained in part. Ms. [REDACTED] produced documents pursuant to the subpoena both prior to the hearing and after the ruling on the Motion to Quash Subpoena, however she did not ultimately provide any testimony as to the merits of this case.

- [REDACTED], Ph.D., [REDACTED] ([REDACTED]) Coordinator at PGCPs, was qualified as an expert in the [REDACTED] at [REDACTED] Elementary School ([REDACTED]) and Speech Language Pathology;
- [REDACTED], Ph.D., was qualified as an expert in Speech Language Pathology in clinical and educational settings;
- [REDACTED], Ph.D., was qualified as an expert in Psychology including the administration and interpretation of psycho-educational testing to elementary and middle school aged children with disabilities; and
- [REDACTED], MS⁹, OTR/L¹⁰, Occupational Therapist at PGCPs, was qualified as an expert in occupational therapy.

The PGCPs presented the following witnesses:

- [REDACTED], Ph.D., School Psychologist at PGCPs, was qualified as an expert in school psychology with an emphasis on the analysis of psychometric testing of elementary and middle school students;
- [REDACTED], Special Education Instructional Specialist at PGCPs, was qualified as an expert in special education;
- [REDACTED], Speech Pathologist at PGCPs, was qualified as an expert in speech and language pathology with an emphasis on the provision of assessment services in elementary school aged children;
- [REDACTED] Special Education Chair/ Resource Teacher/ Intervention Specialist/ Team Leader at PGCPs, was qualified as an expert in special education and teaching reading to elementary school children; and

⁹ Master of Science

¹⁰ Occupational Therapist Registered and Licensed

- [REDACTED], Central IEP Chair at PGCPS, was qualified as an expert in the educational placement of special needs children in PGCPS.

FINDINGS OF FACT

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

1. The Student is currently twelve years old and completed her fifth-grade school year at [REDACTED] during the 2019-2020 school year.
2. For the 2013-2014 and 2014-2015 school years the Student was enrolled in the [REDACTED] ([REDACTED]) program at [REDACTED] Elementary School ([REDACTED]).
3. The [REDACTED] program is on the continuum of programs that are offered to students with Intellectual Disabilities (ID) and other students with disabilities who need goals in both academic skills and adaptive skills based on the student's present levels of performance and cognitive abilities.
4. An assessment of a student's cognitive abilities is the closest measurement of a student's innate abilities, notwithstanding the inherent bias of all standardized cognitive abilities testing. Although one's cognitive abilities can be influenced by many factors (prenatal development, medical issues, brain injury and trauma) it should not be reflective of the instruction a student has received.
5. On March 12, 2015, while in the first grade, Dr. [REDACTED], School Psychologist, evaluated the Student. (Parent Ex. 16, PGCPS Ex. 6). The Student's teacher requested the accelerated re-evaluation because she observed academic improvement, social skills and language usage which suggested the Student's previous assessments may have underestimated her ability.¹¹

¹¹ This evaluation took place outside the statutory timeframe at issue in this case. This information is provided as

6. The Student performed in the limited range of cognitive abilities on the Standard Binet-Fifth Edition, earning a full-scale score of 67, placing her in the first percentile. (Parent Ex. 16, PGCPS Ex. 6).

7. The Student's adaptive behavior was also assessed using the Vineland II Parent Rating form which was completed by the Parent. The Student performed in the borderline range, earning a composite score of 79. (Parent Ex. 16, PGCPS Ex. 6).

8. Dr. [REDACTED] recommended the Student's disability code be changed from ID to Specific Learning Disability (SLD), indicating the Student no longer met the criteria of intellectually limited. He further recommended the Student be placed in a more challenging educational program which focused on academic skills. (Parent Ex. 16, PGCPS Ex. 6).

9. Subsequently, an IEP team meeting was held, on a date unclear from the record, at which time the IEP team discussed Dr. [REDACTED]'s March 12, 2015 psychological report and recommendations. The IEP team changed the Student's disability code to SLD and changed her placement to the [REDACTED] ([REDACTED]) at [REDACTED].¹²

10. The [REDACTED] is a non-categorical program designed to provide special education services to students with a range of disabilities. [REDACTED] provides whole group academic instruction aligned with the grade level curriculum and small group academic instruction taught on the student's instructional level using the goals on the student's IEP developed based on the student's present level of performance. In the [REDACTED] students are afforded the opportunity to engage and interact with their non-disabled peers during lunch, recess and non-academic subjects such as art and physical education.

background information to provide context only.

¹² This evaluation took place outside the statutory timeframe at issue in this case. This information is provided as background information to provide context only.

11. During the 2015-2016 school year the Student was placed in the [REDACTED] at [REDACTED] and repeated the first grade.¹³

12. During the first grade, in small group instruction, the Student received reading and language arts interventions using the S.P.I.R.E.,¹⁴ iReady, and Myon programs. (Parent Ex. 11).

13. The Student's report card from the first grade in the [REDACTED] noted the Student received a modified academic curriculum, her reading level was below grade level, her oral and written communication skills were "in process," her math skills were "emerging," her science skills were "in process," and her social studies skills were proficient. (Parent Ex. 2).

14. During the 2016-2017 school year, the Student was in the second grade. Her placement remained as the [REDACTED] at [REDACTED].¹⁵

15. On February 9, 2017, an annual IEP meeting was held to plan for the beginning of the Student's third grade year. The Student's disability code remained SLD. The IEP noted the Student received consultative occupational therapy (OT) services, which included both classroom observations of the Student and consultation with the teacher. The Student did not meet eligibility requirements for Extended School Year (ESY). The IEP noted the Student's areas of weakness included reasoning, working memory and low adaptive skills, which caused her to have difficulty learning to read, calculating math problems and writing to express her ideas. The Student had a SLD in reading, written language, and math. (Parent Ex. 31, p. 10).

16. The February 9, 2017 IEP provided the Student with the following instructional and testing accommodations: human reader or audio recording verbatim reading of an entire test, text to speech software for verbatim reading of entire test, mathematics tools and calculations

¹³ The Student's first grade year in [REDACTED] is outside the statutory timeframe at issue in this case. The information pertaining to the first grade is provided as background information to provide context only.

¹⁴ Specialized Program Individualizing Reading Excellence

¹⁵ The Student's second grade year in [REDACTED] is outside the statutory timeframe at issue in this case. The information pertaining to the first and second grades is provided as background information to provide context only.

devices, spelling and grammar devices, graphic organizer, extended time, multiple and frequent breaks and reduced distractions to the Student. (Parent Ex. 31).

17. The February 9, 2017 IEP indicated the Student would receive monthly OT consultative services to include OT intervention for strategies or modifications with writing assignments to the Student, collaboration with staff and/or strategies and recommendations to increase independence with classroom tasks. (Parent Ex. 31).

18. Under the February 9, 2017 IEP, the Student was allocated a total of twenty-two hours and 30 minutes per week of special education services, outside general education. (Parent Ex. 31).

19. During the 2017-2018 school year, the Student was in the third grade. Her placement remained the [REDACTED] at [REDACTED]

20. During the 2017-18 school year, the [REDACTED] program was reconfigured. In addition to the ten students that were taught with the Student from her second-grade year, six general education students were added to the class and two students with IEPs were also added. Adding the general education students to the class (sometimes referred to as “reverse mainstreaming”) provided appropriate models to the students, including this Student, to work on her communication skills. Although the overall class size increased, the teacher/provider to student ratio remained the same for the [REDACTED] students.

21. On October 18, 2017, an IEP meeting was held to determine the need for assessments; the IEP team noted the Student was due for re-evaluation by March 9, 2018. The IEP team discussed the Student’s academic performance, and concerns were raised regarding her reading level, which was at Kindergarten level, and her ability to retain content. The Student’s father attended the meeting and signed permission for re-evaluation testing. The Parent was not present for this meeting. (Parent Exs. 25 and 26).

22. On October 19, 2017, the Student participated in a psychological assessment conducted by [REDACTED] Ph.D., NCSP. The assessment included the following test/assessment procedures: a record review, observation of the Student, a Parent/Teacher conference, Draw a Person, Weschsler Intelligence Scale for Children- Fifth Edition (WISC-V), Bender-Gestalt Visual Motor Test- Second Edition, Test of Non-Verbal Intelligence-Fourth Edition (TONI-4), Boehm Test of Basic Concepts- Third Edition Form F (Boehm-3F), Adaptive Behavior Assessment System- Third Edition: Teacher (ABAS-3:T), Adaptive Behavior Assessment System- Third Edition: Parent (ABAS-3:P), Behavior Assessment System for Children- Third Edition Parent (BASC-3P), Behavior Assessment System for Children- Third Edition Teacher (BASC-3T), Thematic Apperception Test (TAT) and Incomplete Sentences. (Parent Ex. 17).

23. The WISC-V is a battery of tests used to assess 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 all five cognitive areas. On the WISC-V the Student received a FSIQ of 52, which placed her at the 0.1 percentile, in the extremely low range for cognition. (Parent Ex. 17, PGCPs Ex. 16).

24. The TONI-4 measures abstract thinking and problem solving. On the TONI-4, the Student received a Scaled Score of 71, which placed her in the third percentile, below average. (Parent Ex. 17, PGCPs Ex. 16).

25. The Bender-Gestalt measures visual-motor integration skills, and assessed the Student's ability to use her pencil, hands and eyes together. The Student received a Scaled Score of 54, which placed her in the .11 percentile, in the very low, deficient range. (Parent Ex. 17, PGCPs Ex. 16).

26. The Boehm-3 is designed to assess mastery of basic concepts that are fundamental to understanding verbal instruction and essential for early school achievement. The Student

earned a raw score of 30/50, showing mastery of 60% of concepts, typical by the end of first grade. (Parent Ex. 17, PGCPS Ex. 16).

27. The ABAS-3 is a ratings scale useful for assessing skills of daily living. It is comprised of observations both at home and at school. The Student's General Adaptive Composite score on both the Parent and Teacher form was the same at 63, which placed the Student in the 1st percentile, or the extremely low range. (Parent Ex. 17, PGCPS Ex. 16).

28. The BASC-3 is designed to assess social-emotional functioning. The Student's teacher and the Parent completed separate questionnaires. On the teacher's forms the Student's results were elevated on the subscales which measure attention problems, atypicality and learning problems. These results combined with other data suggested the presence of an ID. The subscales also noted the Student had trouble with social skills, leadership, study skills and functional communication. On the Parent's form the Student's results were elevated on the subscales measuring atypicality and attention problems. The Parent's form also indicated the Student was encountering trouble with adaptive skills including leadership, activities of daily living (ADLs) and functional communication. (Parent Ex. 17, PGCPS Ex. 16).

29. The TAT is a social-emotional assessment based on less structured, and more indirect measures, of personality. The Student was asked to tell stories based on picture illustrations. Overall, the Student's stories suggested concrete thinking, consistent with ID. (Parent Ex. 17, PGCPS Ex. 16).

30. The Student's responses to Incomplete Sentence Stems were consistent with the other test data suggesting concrete thinking. (Parent Ex. 17, PGCPS Ex. 16).

31. Dr [REDACTED] noted the Student had difficulty with self-regulation and learning, even though [REDACTED] provided a highly structured setting with a low student-to-teacher ratio and paraprofessional support. The Student needed a high level of structure and support to manage

her daily responsibilities in school and make academic and social progress. He suggested consideration of placement in a program designed to address the unique needs of the ID student. (Parent Ex. 17, PGCPS Ex. 16).

32. On October 25, 2017, [REDACTED], OTR/L, assessed the Student in OT, as part of a three year OT re-evaluation process. The assessment included a record review, interviews and observations of occupational performance and participation in the educational program. The Beery Developmental Test of Visual-Motor Integration- Sixth edition (Beery VMI-6) and the PGCPS Informal Handwriting Assessment were administered. (Parent Ex. 19).

33. The Beery VMI-6 uses a developmental sequence of geometric shapes to be copied using paper and pencil to determine the unification of a student's eye-directed hand movements. On the overall visual-motor skills section, the Student received a standard score of 66 which ranked her in the first percentile, very low range. On the visual-perception section, the Student received a standard score of 79 which ranked her in the eighth percentile, low range. On the motor coordination section, the Student received a standard score of 79 which ranked her in the eighth percentile, low range. (Parent Ex. 19).

34. The PGCPS Informal Handwriting Assessment is a tool used to measure letter and word legibility, during near and far point copying tasks, dictation tasks and sentence construction tasks. (Parent Ex. 19).

35. As a result of the OT assessment, recommendations were made for the Student to receive assistance such as a near point model when copying is required, a visual cue near what is being copied so she does not lose her place, sentence starters, and a visual model of the alphabet to reduce letter reversal when writing, to assist her with writing tasks in the classroom. (Parent Ex. 19).

36. On November 20, 2017, [REDACTED], Speech Pathologist, assessed the Student's speech and language skills. The Clinical Evaluation of Language Fundamentals- V (CELF-5) was administered. The CELF-5 is used for the identification, diagnosis and follow-up evaluation of language skill deficits in school aged children, adolescents and young adults ages five to twenty-one. (PGCPS Ex. 13).

37. On the CELF-5 the Student received a standard score of 72 in receptive language, which ranked her in the third percentile, below average range, and a standard score of 67 in expressive language, which ranked her in the first percentile, very low range. The assessment report notes the Student is a visual learner and recommended accommodations in the general education environment; and caution should be taken when viewing the scores, as the Student was still learning English.¹⁶ The IEP team agreed with the Speech Language Pathologist's conclusion that the Student's language skills were above her cognitive ability, thus no speech and language services were warranted. (PGCPS Ex. 13).

38. On December 13, 2017, an IEP team meeting was held to discuss the results of the Student's re-evaluations. The IEP team decided to change the Student's disability code from SLD back to ID. The Parent was present for this meeting and did not object to the change in the disability code or file for a due process hearing based upon this change in disability code. (PGCPS Ex. 15).¹⁷

39. In the third grade the Student received special individualized reading intervention using iReady, a research-based intervention three to five times per week for twenty to thirty minutes per day. The Developmental Reading Assessment (DRA) is an oral reading assessment

¹⁶ The Speech and Language Pathologist was the only witness who referred to the Student as having limited English proficiency. No other witness indicated the Student had limited English proficiency and the IEP notes that the Student is not an English Learner and does not have limited English proficiency.

¹⁷ This IEP meeting, the evaluations discussed, and the decisions made by the IEP team all occurred outside the statutory timeframe at issue in this case. Thus, this information is provided to provide context only.

administered in a one-on-one setting where a student reads a story aloud and then retells it. The Student ranked at a DRA level 6, which denotes a beginning first grade level. The DRA is a summative assessment which takes into account both decoding and reading comprehension skills.

40. On January 31, 2018, an annual IEP meeting was held to plan for the beginning of the Student's fourth grade year. The IEP provided that the Student would receive consultative OT services monthly, which included both classroom observations of the Student and consultation with the teacher. The Student's special education services were to be provided by a special education teacher, in a general education classroom, for a total of twenty-two hours and thirty minutes per week. The Student met eligibility requirements for ESY.¹⁸ (Parent Ex. 35).

41. The January 31, 2018 IEP provided the Student with the following instructional and testing accommodations: headphones or noise buffers, redirect student to test, graphic organizer, text to speech, human reader or human signer, small group testing, frequent breaks, reduce distractions to self, calculation device, human scribe, monitor test response, answer recorded in test book and extended time. (Parent Ex. 35).

42. The January 31, 2018 IEP team drafted the following reading phonics goal: "when shown a list of 20 initial consonant blends (s blends, l blends and r blends), [the Student] will be able to identify 18 out of 20 initial consonant blends with eighty percent accuracy in 3 out of 4 trials as measured by classroom-based assessments by annual review 2018." The IEP team drafted three objectives in furtherance of the reading phonics goal. (Parent Ex. 34).

43. The January 31, 2018 IEP team drafted the following math calculation goal: "given 10 addition problems within 20, [the Student] will solve addition problems 80% accuracy in 4 out of 5 times as measured by classroom-based assessments and/or teacher observations by

¹⁸ It seems unusual to find the Student eligible for ESY services at the midway point in the school year, with six months until summer. However, the Parent did not challenge ESY, so I will not discuss it any further or make any additional reference to it.

annual review 2019.” The IEP team drafted three objectives in furtherance of the math calculation goal. (Parent Ex. 34).

44. The January 31, 2018 IEP team drafted the following written language expression goal: “after participating in a grade level literacy lessons and activities across content areas, [the Student] will write to communicate by writing one 5-8 word sentences using phonetically appropriate spelling related to the topic for a variety of purposes with 100% accuracy in 4 out of 5 trials as measured by teacher’s observations and work samples.” Two objectives were written in furtherance of this goal. The IEP team drafted two objectives in furtherance of the written language expression goal. (Parent Ex. 34).

45. On January 31, 2018, the IEP Team discussed returning the Student to the [REDACTED] program as the most appropriate placement to implement her IEP. The Parent disagreed with returning the Student to [REDACTED] and stated that she wanted her daughter to remain on the diploma track for high school (Parent Ex. 35).

46. Placement in the [REDACTED] program does not require that a student be taken off the diploma track.

47. An IEP Progress Report was issued on April 20, 2018 which indicated the Student was making sufficient progress to meet her written expressions goals as assessed by the OT, but not by her special education teacher. The Student was making sufficient progress towards her math calculation goal. The Student was not making sufficient progress towards her reading phonics goal. No IEP team meeting was held to address the areas of insufficient progress. (Parent Ex. 8).

48. On May 15, 2018, the Student’s IEP was amended without a meeting to add ESY. (Parent Exs. 37 and 38).

49. An IEP Progress Report was issued on June 20, 2018 which indicated the Student was not making sufficient progress towards her written expression, math calculation and reading phonics goals. No IEP team meeting was held to address the areas of insufficient progress. (Parent Ex. 8).

50. During the 2018-2019 school year, the Student was in the fourth grade. Her placement remained the [REDACTED] at [REDACTED].

51. During the 2018-2019 school year, the [REDACTED] class was reconfigured again. It returned to a class with only [REDACTED] students. There were no general education students in the class, thus the class was no longer reverse mainstreamed.

52. In the fourth grade the Student received special individualized reading intervention using iReady and S.P.I.R.E., a research-based intervention program. In September 2018, the Student remained ranked at a DRA level 6, which denotes a beginning first grade level.

53. An IEP Progress Report was issued on November 20, 2018 which indicated the Student was making sufficient progress towards her written expression, math calculation and reading phonics goals. (Parent Ex. 8).

54. On January 24, 2019, an annual IEP meeting was held to plan for the beginning of the Student's fifth grade year. The Student's disability code remained ID. The Student received monthly consultative OT services. The Student's special education services were to be provided outside general education, provided by a special education teacher, for a total of twenty-two hours and thirty minutes per week. (Parent's Ex. 44).

55. The January 24, 2019 IEP provided the Student with the following instructional and testing accommodations: blank scratch paper, highlight tool, headphones or noise buffers, redirect student, graphic organizer, text to speech, human reader or human signer, small group,

frequent breaks, reduce distractions to self, calculation device and mathematics tools, monitor test response, and extended time. (Parent's Ex. 44).

56. The January 24, 2019 IEP team drafted the following written language expression goal: "by the next annual review in January 2020, when given (5) (oral or written) writing prompts [the Student] will answer in writing using correct language conventions (capitalization, commas, quotation marks and periods) on (4 out of 5) sentences as measured by a (teacher-created rubric) with 80% accuracy. The IEP team drafted two objectives in furtherance of the written language expression goal. (Parent's Ex. 44).

57. The January 24, 2019 IEP team drafted the following math calculation goal: "by the next annual review in January 2020, given an array with no more than (5) rows and (5) columns, and asked to write a corresponding repeated addition equation, [the Student] will use the number of rows and columns in the array to write and solve the equation, for (4 out of 5) arrays with 80% accuracy." The IEP team drafted two objectives in furtherance of the math calculation goal. (Parent's Ex. 44).

58. The January 24, 2019 IEP team drafted the following reading phonics goal: "by the next annual review in January 2020, given an unfamiliar grade level passage with (15) teacher-selected words (e.g. words with common prefixes and suffixes, multisyllabic, or irregularly spelled words), [the Student] will read the passage aloud and correctly decode the selected words with (80) % accuracy (i.e. 12/15 words)." The IEP team drafted three objectives in furtherance of the reading phonics goal. (Parent's Ex. 44).

59. The January 24, 2019 IEP team drafted the following reading comprehension goal: "by the next annual review in January 2020, given a grade level literacy text and a prompt to identify the central message, [the Student] will use sentence starters to state the central message of the text and (2) supporting details of the central message, accurately stating the

central message and (2) details of support on (3 out of 4) trials with 80% accuracy.” The IEP team drafted two objectives in furtherance of the reading comprehension goal. (Parent’s Ex. 44).

60. In January 2019, the Student began receiving one hour of special individualized reading intervention daily utilizing SpellRead.

61. SpellRead is a strong evidence-based reading intervention program which only came on the market and became available in January 2019. The Student was evaluated and found qualified to use the program. The Student has improved three levels while using the SpellRead intervention.

62. An IEP Progress Report was issued on April 11, 2019 which indicated the Student was making sufficient progress to meet all academic goals as written in the January 24, 2019 IEP. (Parent Ex. 7, PGCPs Ex. 30).

63. An IEP Progress Report was issued on June 14, 2019 which indicated the Student was making sufficient progress to meet all academic goals as written in the January 24, 2019 IEP. The IEP Progress reports also indicates the Student was receiving monthly consultative OT services, and the occupational therapist assisted in drafting the written language expression goal and objectives, to incorporate OT strategies. (Parent Ex. 7, PGCPs Ex. 30).

64. During the 2019-2020 school year, the Student was in the fifth grade. Her placement remained the [REDACTED] at [REDACTED]

65. During the 2019-2020 school year, the [REDACTED] class contained only [REDACTED] students.

66. In September 2019, a DRA was administered, which assessed the Student to be at DRA level 8, a first-grade reading level. (PGCPs Ex. 45).

67. On September 19, 2019, an IEP meeting was held to consider re-evaluations for the Student. The Parent attended the meeting and expressed concerns the Student was not receiving the level of specialized instruction to meet her academic needs, that she “has lots of

gaps and is not being pushed to her full ability.” The Parent indicated the Student was now prescribed [REDACTED] for ADHD. The Parent requested the administration of the Fiefer Assessment of Reading. (PGCPS Ex. 23).

68. On October 14, 2019, the Student participated in an OT assessment conducted by [REDACTED]. The assessment included a record review, interviews, an assessment of occupational performance and participation in the educational program; and the administration of the Beery VMI-6. On the overall visual-motor skills section, the Student received a standard score of 59 which ranked her in the second percentile, very low range. On the visual-perception section, the Student received a standard score of 45 which ranked her in the .02 percentile, very low range. On the motor coordination section, the Student received a standard score of 47 which ranked her in the .04 percentile, very low range. (PGCPS Ex. 24).

69. The OT assessment recommended visual supports such as a near-point model, adaptive writing paper, a word box to assist with spelling, and typing modifications such as text to speech for extended writing. There was also a recommendation for the Parent to consider keyboarding and handwriting practice for the Student at home. (PGCPS Ex. 24).

70. On October 25, 2019, the Student participated in a speech and language assessment conducted by [REDACTED]. The CELF-5 was administered to the Student, along with the Goldman-Fristoe Test of Articulation- Third Edition (GFTA-3), which measures a child’s ability to articulate consonant sounds. (PGCPS Ex. 25A).

71. On the CELF-5 the Student received a core language standard score of 68, which ranked her in the second percentile, falling in the deficient range. The Student achieved a standard score of 67 in receptive language, which ranked her in the first percentile, or the deficient range; she received a standard score of 59 in expressive language, which ranked her in the three-hundredths of the first percentile, that is, in the deficient range. (PGCPS Ex. 25A).

72. On the GFTA-3 the Student received a standard score of 75, which ranked her in the fifth percentile, which is in the borderline range. (PGCPS Ex. 25A).

73. Comparing the results of the November 2017 speech and language evaluation with the one that was done in October 2019, revealed a slight decline in the Student's expressive language scores. The slight decline in scores is attributed to the higher demands of the test as the Student gets older. Ms [REDACTED]'s report recommended providing positive reinforcement, provide exposure in learning new vocabulary and word meanings, provide word cards with word meanings to assist with understanding language, provide visual and verbal cues, remind the Student to swallow before speaking to reduce saliva buildup and assist with clarity of speech, decrease thumb sucking and teach proper positioning of head and posture, proper lip closure and increase swallowing behavior. (PGCPS Ex. 25A).

74. On October 31, 2019, the Student participated in a psychological assessment conducted by [REDACTED], Ph.D. The assessment included the following test/ assessment procedures: a record review, behavioral observation of the Student, the WISC-V, Woodcock Johnson- Fourth Edition (WJ-IV) Test of Oral Language and ABAS-3. (Parent Ex. 20, PGCPS Ex. 26).

75. On the WISC-V the Student received a FSIQ of 60, which placed her below the first percentile, in the extremely low range for cognition. (Parent Ex. 20, PGCPS Ex. 26).

76. The WJ-IV test of oral language is designed to assess language-based academic skills and is comprised of several individual subtests, which are described and indicate results as follows:

- Picture Vocabulary- This picture labeling task measures word knowledge and on-demand retrieval words. The Student scored very low, below the first percentile, on this task (standard score 64).

- Oral Comprehension- This task assesses language comprehension by requiring the examinee to listen to and then complete a sentence with a single word answer that demonstrates comprehension. The Student also struggled on this task (standard score 66).
- Segmentation- This task includes three parts, all of which examined the skills involved in breaking words into parts and into sounds (phonemes). The Student earned a low average score on this task, reflecting a relatively strong foundation on this sound knowledge task (standard score 84).
- Sound Blending- This test requires the examinee to blend together isolated sounds to form complete words. The Student earned an average score, again reflecting a relative strength for the Student (standard score 89).
- Retrieval Fluency- A measure of verbal fluency that requires individuals to rapidly generate words within specific categories (e.g., food/drinks, names, types of animals.) Weak performance on this measure tends to be indicative of underlying problems with: (1) mental activation and perseverance (e.g., the ability to “get” and “keep” one's mind going in order to produce a reasonable amount of work in a given time period); and/or (2) mental organization and strategizing skills (generally needed to come-up with an effective word-finding strategy on short notice). The Student struggled with this task (standard score 52), suggesting that it is very hard for her to generate vocabulary and access the words that she knows.
- Sound Awareness- This task assesses both the ability to hear and generate running words and the ability to isolate and delete sounds from words. The Student struggled on this task and was consistent with her cognitive test findings (standard score 65).

- Rapid Picture Naming- This task requires the examinee to efficiently retrieve the names or labels for pictures as quickly as he/she can. The Student performed below average on this task (standard score 59).
- Sentence Repetition- A test of immediate rote memorization for inherently meaningful verbal material. Requires verbatim repetition of verbally dictated sentences. Strong performance tends to be dependent upon: (1) attention to and memory for the specific details of what one was just told and (2) an intact sense of verbal grammar and sentence structure to help guide immediate recall and repetition of the longer and more syntactically complex sentence. The Student scored well below average (standard score 73).
- Understanding Directions- This subtest requires individuals to comprehend and then carry-out multiple step oral directions by pointing to parts of the picture in a directed sequence after hearing a set of directions. It demands general language comprehension skills, as well as auditory sequential memory and auditory working memory skills. The Student struggled with the language and working memory demands of this task (scaled score 51).

77. The Student's overall performance on the WISC-V and the WJ-IV was extremely low, and she requires intensive instruction in a small group, frequent repetition of instruction, and a slower pace of instruction to allow her the time she needs to master new skills. (Parent Ex. 20).

78. On the ABAS-3 the Student received a standard score of 71 for the teacher ratings and 68 for the Parents ratings. These scores are consistent and reflect a pattern of adaptive behavior which is commensurate with the Student's current and previous cognitive results. (Parent Ex. 20, PGCPS Ex. 26).

79. The NEPSY- Second Edition (NEPSY-2) was also administered to the Student at the request of the Parent. The NEPSY-2 examines attention-related skills. The Student received an auditory attention score in the second percentile and a response set total correct score in the first percentile. (Parent Ex. 20, PGCPS Ex. 26).

80. An IEP Progress Report was issued on November 19, 2019. The Student achieved her math calculation goal and was making sufficient progress towards her written language expression, reading phonics, and reading comprehension goals. (Parent Ex. 7, PGCPS Ex. 30).

81. On December 10, 2019, an IEP meeting was held to discuss evaluations and assessments conducted. The Student's father was present, and the Parent participated by telephone. The IEP team decided to provide direct OT and speech and language services. The Parent reported the Student also received speech and language services outside of school. (PGCPS Ex. 29).

82. A DRA was administered to the Student in January 2020. The Student was assessed to be at DRA level 10, which is a first-grade reading level but she demonstrated progress (two levels from 8 to 10) in reading from the September 2019 DRA. (PGCPS Ex. 45).

83. An IEP Progress Report was issued on January 14, 2020. The Student achieved her math calculation goal as of November 19, 2019 and was making sufficient progress towards her written language expression, reading phonics, and reading comprehension goals. (Parent Ex. 7, PGCPS Ex. 30).

84. On January 14, 2020, an annual IEP meeting was held to plan for the beginning of the Student's sixth grade year. The team discussed the Student's present levels of performance. The Student's father and the Parent were present. The Parent expressed that although the Student's IQ is low, she should still be making more progress. The IEP team agreed to

reconvene the meeting on a later date, to provide additional documentation as to the Student's IEP progress. (PGCPS Ex. 32).

85. On January 30, 2020, the IEP team reconvened the annual IEP meeting. The Student's father attended the meeting, but the Parent was absent. The IEP team discussed and decided the Student needed accommodations of text to speech and human reader for academic instruction and testing, as well as related services (speech and language and OT). The IEP team agreed the Student would remain in the [REDACTED] at [REDACTED] for the remainder of the fifth-grade school year. They determined the Student's IEP could not be implemented in the boundary area or neighborhood school for sixth grade. The Parent requested removal of the Student from PGCPS and placement in a non-public school at public expense. The IEP team agreed to refer the Student's case for a Central IEP meeting for a placement determination, because the Parent requested removal from PGCPS, and that the Student be placed in a non-public placement. (PGCPS Ex. 35).

86. On the January 14, 2020 IEP¹⁹ the Student was provided direct OT services of two sessions per month, thirty minutes per session. The Student was provided direct speech/language therapy services of three sessions per month, thirty minutes per session. She was eligible for special education services, outside general education, provided by a special education teacher, for a total of twenty-two hours and thirty minutes per week. The Student was eligible for ESY. (Parent Ex. 43).

87. The January 14, 2020 IEP provide the Student with the following instructional and testing accommodations: scratch paper, general administration directions read aloud and repeated as needed, highlight tool, redirect student, spell check with external spell check device,

¹⁹ Although the January 14, 2020 IEP meeting was reconvened on January 30, 2020, the IEP is dated and approved as January 14, 2020 according to Parent Ex. 43, which was admitted into evidence without objection from PGCPS.

graphic organizer, text to speech, human reader or human signer, small group, frequent breaks, reduce distractions to self, calculation device and mathematics tools, response human scribe, monitor test response, extended time. (Parent Ex. 43).

88. The January 14, 2020 IEP team drafted the following speech and language articulation goal: the Student “will demonstrate increased speech intelligibility by producing target sound initial /v/, /sh/, /s/ in words, in 4 out of 5 trials, with 80% accuracy.” Two objectives were written in furtherance of this goal. (Parent Ex. 43).

89. The January 14, 2020 IEP team drafted the following speech and language pragmatics goal: “[the Student] will demonstrate understanding and use of a variety of strategies for effective comprehension and expression of language in social situations in 4 out of 5 trials with 80% accuracy.” Two objectives were written in furtherance of this goal. (Parent Ex. 43).

90. The January 14, 2020 IEP team drafted the following math calculation goal: “given a multiplication problem up to 3-digit by 2-digit numbers, the student will determine the product by using a visual strategy (e.g. area model, manipulatives) with 80% accuracy (i.e. 4 out of 5 problems correct) for (2 out of 3 sets) of problems as measured by teacher based assessments by annual review 2021.” Three objectives were written in furtherance of this goal. (Parent Ex. 43).

91. The January 14, 2020 IEP team drafted the following written language expression goal: “given a real or imagined event, [the Student] will write a narrative paragraph using at least sentences with a beginning, middle, and end with correct command of the conventions of standard English (capitalization including dates and proper nouns; punctuation including commas, periods and question marks) with no more than 2 errors in 4 out of 5 trials as measured by classroom based assessment by annual review 2021.” Three objectives were written in furtherance of this goal. (Parent Ex. 43).

92. The January 14, 2020 IEP team drafted the following reading phonics goal: “given a list of 10 unfamiliar multisyllabic words in context and out of context, [the Student] will use a combined knowledge of all letter-sound correspondences, syllabication patterns, and morphology (e.g. roots and affixes) to read accurately with 80% accuracy in 3 out of 4 trials as measured by informal procedures by annual review 2021.” Three objectives were written in furtherance of this goal. (Parent Ex. 43).

93. The January 14, 2020 IEP team drafted the following reading comprehension goal: “given an instructional level text, graphic organizer, highlighter and adult support [the Student] will answer WH questions such as who, what, where, when, why and how to demonstrate understanding in a text with 80% accuracy in 3 out of 4 trials as measured by informal procedures by annual review 2021.” Three objectives were written in furtherance of this goal. (Parent Ex. 43).

94. The January 14, 2020 IEP team drafted the following written language mechanics goal: “given an instructional writing assignment and graphic organizer, [the Student] will use conventional spelling for high frequency and other studied words and for adding suffixes to base words (e.g. sitting, smiled, cries, happiness) with 80% accuracy as measured by informal procedures by annual 2021.” Four objectives were written in furtherance of this goal. (Parent Ex. 43).

95. On February 20, 2020, the Student’s IEP was amended without a meeting to add a written language expression objective with OT support that was inadvertently deleted between the time the IEP was drafted and when it was approved. (Parent Ex. 46).

96. The IEP team referred the Student to a Central IEP meeting to determine the placement where the IEP could be implemented for the Student. On March 11, 2020, the Student’s father attended the Central IEP meeting, but the Parent did not attend. During the

meeting, the Central IEP team discussed the Student's present levels of performance, the most recent evaluations and assessments, the math and reading interventions that have been used with the Student, and the IEP drafted on January 14, 2020. (Parent Ex. 47, PGCPs Ex. 38).

97. During the Central IEP meeting, the team, including the Student's father, completed an Alternative Appendix A: alternate assessment eligibility checklist. The checklist is designed to determine whether a significant cognitive disability is present which would warrant use of an alternative curriculum framework and alternative assessments for a student instead of the PGCPs grade-level curriculum and standardized testing that all students in that grade complete. The Central IEP team determined that the Student has a significant cognitive disability and is eligible for the alternative curriculum and the alternative standardized testing. (Parent Ex. 50). The Student's father was in agreement with each determination on the checklist and his input was considered along with the input from the other members of the Central IEP team in deciding that the Student should receive the alternative curriculum and testing.

98. The Central IEP considered the least restrictive environment (LRE) for the Student. A review of LRE starts with a student's neighborhood school, in a general education setting where a student would be included in classrooms with non-disabled peers. The next environment that would be more restrictive on the LRE continuum would be a self-contained classroom with other disabled students, with an opportunity to engage with non-disabled peers during recess, lunch and non-academic subject areas. The most restrictive environment would be a separate, non-public special education school, where a student no longer has the opportunity to engage with non-disabled peers.

99. The Central IEP recommended the Student continue to receive twenty-two hours and thirty minutes of special education instruction weekly, three- thirty minute sessions of

speech/language therapy monthly, two- thirty minute sessions of OT service monthly and continued transportation to and from school daily. (Parent Ex. 47, PGCPS Ex. 38).

100. The Central IEP team members agreed²⁰ that the Student should be placed in the [REDACTED] program, which offers the alternative modified curriculum, the small class size, the opportunities for a slower paced instruction with constant reinforcement of skills and access to a functional life skills curriculum. The Student's neighborhood school, [REDACTED], offered the [REDACTED] program for sixth grade, but not for seventh or eighth grade so the Student would have to transfer schools again for seventh grade. The team proposed a special education transfer to [REDACTED] Middle School ([REDACTED]) to reduce the number of transitions. (Parent Ex. 47, PGCPS Ex. 38).

101. The Central IEP team gave the Student's father the Parental Consent form for the alternative curriculum and standardized tests; he told the Central IEP team he was in agreement with the Student being placed in an alternative curriculum program, but wanted to discuss it with the Parent prior to signing.

102. On March 12, 2020, the Parent returned the Parental Consent form. On the form the Parent wrote that she did not agree with the proposed placement of her daughter at the [REDACTED] program at [REDACTED]. The Parent did not want the Student placed in a program that did not prepare for the Student for a Maryland High School Diploma. She did not want the Student to take alternative education assessment that are not aligned with the PGCPS grade-level curriculum. (Parent Ex. 48, PGCPS Ex. 39).

103. On May 5, 2020, the Parent received a letter from PGCPS indicating the Student was being transferred from [REDACTED] to [REDACTED] Middle. (Parent Ex. 51). This transfer placed the Student in her neighborhood middle school, as the Parent declined the special transfer

²⁰ With the exception of [REDACTED] who was present as part of the IEP team. Ms. [REDACTED] dissented to the Alternative Appendix A: alternate assessment eligibility checklist and was insistent the Student be placed in a non-public placement. The rest of the IEP team was uncertain as to on whose behalf Ms. [REDACTED] was advocating.

to [REDACTED] initiated by the Central IEP team when she tendered the written refusal on March 12, 2020.

104. The Student was promoted to the sixth grade and will attend middle school for the 2020-2021 school year.

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 in an administrative hearing under the IDEA is placed upon the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005). In this case, the Parent is seeking relief and bears the burden of proof to show that PGCPS failed to provide the Student with a FAPE for the 2017-2018, 2018-2019 and 2019-2020 school years, failed to implement, revise and report IEP progress during the same time frame and that placement is proper at a private non-public school. COMAR 28.02.01.21K(1), (2)(a).

Legal Framework

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. The IDEA defines a FAPE as special education and related services that:

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U.S.C.A. § 1401(9); *see also* Educ. § 8-401(a)(3).

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 statute provides as follows:

(A) In General

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

- (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
- (ii) who, by reason thereof, needs special education and related services.

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

The Supreme Court was first called upon to address the requirement of a FAPE in *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. *Id.* at 204; 20 U.S.C.A. § 1401(9). Further the Court found "if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a 'free appropriate public education' as defined by the [IDEA]." *Id.* at 189. The Court explicitly rejected the petitioner's argument that the IDEA requires the provision of services "sufficient to maximize each child's potential commensurate with the opportunity provided other children." *Id.* at 198 (internal quotation marks omitted). Instead, the Court concluded that the "'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the . . . child." *Id.* at 201 (footnote omitted). The Court did not seek to define educational benefit, but held that an IEP "should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." *Id.* at 203-04 (footnote omitted).

In 2017, the Supreme Court revisited the meaning of a FAPE, holding that for an educational agency to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a student to make progress appropriate in light of the student's circumstances. *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017). Consideration of the student's particular circumstances is key to this analysis; the Court emphasized in *Endrew F.* that the "adequacy of a given IEP turns on the unique circumstances of the child for whom it was created." *Id.* at 1001.

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

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

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

20 U.S.C.A. § 1414(d)(3)(A).

IEP teams must consider the student’s evolving needs when developing their educational programs. The student’s IEP must include “[a] statement of the child’s present levels of academic achievement and functional performance, including . . . [h]ow the child’s disability affects the child’s involvement and progress in the general education curriculum (i.e., the same curriculum as for non-disabled children) . . .” 34 C.F.R. § 300.320(a)(1)(i).

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

Thirty-five years after *Rowley*, 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 *Rowley*’s “some educational benefit,” which construed the level of benefit as “merely . . . ‘more than *de minimis*.’” *Andrew F. v. Douglas Cty. Sch. Dist. RE-I*, 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 “*specially designed*” to meet a child’s “*unique needs*” through an “[i]ndividualized education program.”

Endrew F., 137 S. Ct. at 998-99 (citations omitted; emphasis in original).

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

At the beginning of each school year, each local education agency is required to have in effect an IEP for each child with a disability in the agency’s jurisdiction. 20 U.S.C.A. § 1414(d)(2)(A). At least annually, the IEP team is required to review a child’s IEP to determine whether the goals are being met. *Id.* § 1414(d)(4)(A)(i); 34 C.F.R. § 300.324(b)(1).

The development of an IEP is a prospective process. *See Andrew F.*, 137 S. Ct. at 999. The test of the appropriateness of the IEP is *ex ante* and not *post hoc*. *Adams v. State*, 195 F.3d 1141, 1149 (9th Cir.1999); *Fuhrmann v. E. Hanover Bd. of Educ.*, 993 F.2d 1031, 1041 (3d Cir. 1993); *J.P. ex rel. Popson v. W. Clark Cmty. Sch.*, 230 F. Supp. 2d 910, 919 (S.D. Ind. 2002) (“[T]he measure of appropriateness for an IEP does not lie in the outcomes achieved. While outcomes may shed some light on appropriateness, the proper question is whether the IEP was objectively reasonable at the time it was drafted.” (Citation omitted)). Thus, a judge in a due process hearing must look to what the IEP team knew when it developed the IEP, and whether that IEP, as designed, was reasonably calculated to enable the child to receive educational benefit. An IEP is essentially a “snapshot” in time and “cannot be judged exclusively in hindsight.” *See K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d. 795, 818 (8th Cir. 2011); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990). However, evidence of actual

progress during the period of an IEP may also be a factor in determining whether a challenged IEP was reasonably calculated to confer educational benefit. *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 327 (4th Cir. 2009); *see also M.M. v. Sch. Dist. of Greenville Cty.*, 303 F.3d 523, 532 (4th Cir. 2002).

Motion for Judgement

At the conclusion of the Parent's case on July 15, 2020, PGCPS raised a Motion for Judgement as to issues four and six of the Complaint. *See* COMAR 28.02.01.12E. I held my ruling *sub curia* and declined to render judgment on the issues until the close of all the evidence. *Id.* At this time after reviewing all of the evidence in the light most favorable to the nonmoving party (i.e., the Parent), I am granting PGCPS' Motion for Judgement as to counts four and six of the Complaint.

Did PGCPS fail to implement the Student's IEPs dated January 31, 2018, March 5, 2018, January 24, 2019, and January 14, 2020 and the amendments thereof?

PGCPS in its Motion for Judgement argued count four of the Complaint deals with implementation, does not address any perceived deficiency of the IEPs, and the Parent presented no evidence that the services as outlined in the IEPs were not provided to the Student. PGCPS argued that the failure to implement the IEPs must be limited to the four corners of the IEPs, and that at no time did any witness presented by the Parent testify that something in the IEPs was not implemented. PGCPS stated the testimony regarding the classroom observations proved that the IEPs were implemented.

The Parent argued that dismissing a count of the Complaint is "the most extreme action that can be put forth" and stated she presented evidence through Dr. [REDACTED] and Dr. [REDACTED] [REDACTED] that had the Student received academic instruction as needed and requested under the IEP, and had the Student's placement been appropriate, the Student would have made more significant academic progress. The Parent further argued there was a failure to implement the

IEP when the Student's classroom environment changed to a general classroom of thirty students in third grade.

Dr. [REDACTED] reviewed several psychological evaluations and educational assessments of the Student. Dr. [REDACTED] was retained to provide an opinion as to the appropriateness and sufficiency of services based upon her review of documents presented to her by the Parent. She has never observed the Student and has no firsthand knowledge regarding the implementation of the IEPs for the Student. Although she testified extensively and offered her opinion as to the appropriateness of the IEPs for the Student, she offered no testimony regarding any alleged lack of implementation of the IEPs. Therefore, for the purpose of analyzing PGCPs' motion as to this count of the complaint, Dr. [REDACTED]'s testimony is irrelevant as to whether or not the IEPs were implemented.

The Parent also presented the testimony of [REDACTED], Ph.D., [REDACTED] Coordinator at PGCPs, who has been the [REDACTED] Coordinator at [REDACTED] for twenty-two years. She participated in the IEP team meetings for the Student, has observed the Student in the classroom, and is familiar with the services being provided to the Student. Dr. [REDACTED] explained that as [REDACTED] Coordinator, it is her responsibility to ensure that IEPs are implemented properly and services are provided to students. Dr. [REDACTED] testified as to the progress made by the Student in her third, fourth and fifth grade year, indicated that she was familiar with the IEPs for the Student, and that the IEPs were implemented for the Student.

Dr. [REDACTED] testified as to the difference between special education services delivered inside a general education setting and those provided to a student in a self-contained classroom. In a general education setting, a general education teacher is present with a special education teacher and other services providers who come in and out of the general education classroom to provide instruction for a student with an IEP. She described services provided outside of a

general education classroom, or in a self-contained classroom, with a special education teacher and service providers delivering services only to special education students.

Dr. [REDACTED] explained that in the transition between the Student's second and third grade years, [REDACTED] sought to prepare all students for the state assessments, offer inclusive opportunities, combine students to offer more support by consolidating classes. General education students were reverse mainstreamed, by placing them in the same classroom as disabled students, to allow the disabled students to learn from their typically developing peers. There was an increase in the number of students in the Student's third grade class, but the student to teacher ratio remained the same. There were seventeen [REDACTED] students, including ten students from the Student's second grade class, six general education students and two students with disabilities, who were not enrolled in the [REDACTED]

Dr. [REDACTED] explained the class was taught by one general education teacher, two special education teachers, and two paraprofessionals. All the students in the class received instruction in the general education curriculum from the general education teacher. Following the general education instruction, the special education students received specialized and appropriately modified instruction in a small group with a special education teacher or resource teacher, and with additional assistance from a paraprofessional. The special educator, and the paraprofessionals under the supervision of a special educator, were charged with ensuring that each child's IEP goals and objectives were being implemented and worked on within the daily curriculum. Dr. [REDACTED] testified that consideration was given as to whether these changes to the classroom structure had the potential to cause any unintended harmful effects to the Student and the other students in the [REDACTED] program. Dr. [REDACTED] explained the Student continued to receive the same twenty-two hours and thirty minutes of special education services and the IEPs were fully implemented in the third, fourth and fifth grade. Therefore, Dr. [REDACTED]'s credible and

first-hand testimony does not support the Parent's position that the IEPs were not implemented.

The Parent presented the testimony of the Student's father, who explained how he taught the Student her multiplication tables using the box method,²¹ which he stated was the "old school way" of teaching. On cross examination the Student's father stated that he was not implementing any of the Student's IEP goals and objectives when he instructed her in multiplication. The Student's father did not provide any relevant testimony as to the implementation of the Student's IEPs or regarding any of the issues of relevancy in this case as they relate to whether the Student was denied a FAPE.

The Parent testified she has been engaged in the Student's education, attends most IEP meetings, reviews the IEPs and the PWNs, which summarize the discussion and recommendations from the IEP team meetings. The Parent offered a lot of testimony regarding the homework the Student received and her disapproval of Ms. [REDACTED]'s teaching methods and stated that based on her experience "the Student learns, based on how she is taught." The Parent conceded however that she had not observed any of the Student's classroom instruction since March 2018 and that, although she observed the Student's classroom instruction on at least one occasion during the third, fourth or fifth grade, she could not recall whether she had ever observed Ms. [REDACTED]'s instruction.

The Parent, through her testimony, offered no concrete examples of what aspects of the IEPs were not being implemented, but instead spoke in abstractions and offered her generalized opinion that the IEPs were not being implemented because the Student was not making the progress she felt the Student should be making. The Parent essentially argued that because in her view the Student was not making progress, PGCPs must not have been implementing the IEPs. These bold assertions, without evidence to support the assumption, are not persuasive.

²¹ There was no explanation provided as to the specifics of the box method.

The Parent presented the testimony of [REDACTED], Occupational Therapist at PGCPS. Ms. [REDACTED]'s unrefuted testimony was she provided the direct and consultative services that were specified in the Student's IEPs. Ms. [REDACTED] offered testimony as to the sufficiency of OT services provided in the Student's various IEPs and that those services were implemented. Ms. [REDACTED] credibly testified that in the IEPs where no direct services were provided, consultative services were provided to the Student. She further explained she provided direct OT services to the Student twice per month, thirty minutes per session, pursuant to the January 14, 2020 IEP, in addition to consultative services. Ms. [REDACTED] explained that she provided both direct and consultative services prior to the COVID-19 school closure and has continued to provide consultative services to the Student in the distance learning environment. Based on Ms. [REDACTED]'s testimony I find that the PGCPS implemented the Student's OT services pursuant to the IEPs.

The Parent presented no witness testimony or evidence to support the contention that the Student's IEPs dated January 31, 2018, March 5, 2018, January 24, 2019, and January 14, 2020, and the amendments thereof, were not implemented by the PGCPS. Thus, I grant the PGCPS Motion for Judgement as to count four of the Complaint. COMAR 28.02.01.12(E)(2).

Did PGCPS fail to provide accurate quarterly IEP progress reports?

PGCPS in its Motion for Judgement argued there was not a scintilla of evidence presented by the Parent to support her allegation that the quarterly IEP progress reports were inaccurate. The PGCPS argued the Parent did not note any inaccuracies in the stated progress made by the Student as reflected in the IEP progress reports. Further the PGCPS argued that Dr. [REDACTED] testified regarding the sufficiency of the progress made by the Student.

The Parent argued the IEP progress reports provided by the PGCPS could not possibly be accurate because they reflect the Student was "making sufficient progress to meet goal" but the

Student did not meet the goal by the end of the IEP review period. The Parent misunderstands the meaning of the various progress report terms. Simply because the Student did not accomplish the goal by the end of the IEP period does not mean that they were inaccurate. It is also of note that the Student's IEPs run from January of one year through January of the next year, and therefore spans two halves of separate school years. Nevertheless, the IEP is not a contract and there is no guarantee that a child will meet a specific goal or goals.

The Parent testified generally as to three IEP Progress Reports from the Student's third and fourth grade years. (Parent Ex. 8). She also testified generally regarding four IEP Progress Reports from the Student's fifth grade year. (Parent Ex. 7, PGCPS Ex. 30). The Parent made no attempt to match any statements in the IEP Progress Reports to the goals in her IEP and demonstrate that the statements regarding the Student's progress were inaccurate. In fact, the Parent did not dispute that the Student demonstrated the skills listed under the objectives. Instead the Parent's testimony centered around homework that she felt was too difficult for the Student and did not appear to correspond to the lessons taught in the classroom.

The Parent produced one email she sent to the Student's teacher on October 29, 2019, where she inquired about the correlation between classroom instruction and homework. However, in the email, she did not inquire as to how the homework related to the Student's IEP goals or objectives and she did not produce the teacher's response, if any. The Parent testified that since March 2018 she has only observed instruction in the Student's classroom once, did not recall the date and was unsure whether the observation occurred in the Student's third, fourth or fifth grade year. I do not give any weight to her bald allegations that the IEP Progress Reports were inaccurate as she did not give any examples of specific statements of progress made that were demonstrably proven false.

Dr. [REDACTED] testified that the Student's progress, as reflected in the IEP Progress Reports, was an accurate depiction of the skills the Student had mastered, the skills the Student was continuing to work on, and the skills with which the Student was not making sufficient progress. Dr. [REDACTED] did not note any discrepancies between what was contained in the reports, what she observed in the classroom and what was communicated by the Student's teachers.

No other witnesses were presented by the Parent to support the Parent's contention that The IEP Progress Reports are inaccurate. As the Parent has not presented any persuasive evidence that the Progress Reports were inaccurate, I grant the PGCPS' Motion for Judgment as to count six of the Complaint. COMAR 28.02.01.12(E)(2).

Merits of the Case

Having found that the PGCPS implemented the IEPs at issue in this case and having found that the PGCPS did not issue inaccurate IEP Progress Reports, I now turn my attention to the other issues raised by the Parent. The Parent argued that PGCPS failed to provide the Student with FAPE because it did not provide her with appropriate IEPs and failed to convene IEP meetings to review and revise the Student's IEPs to address her failure to make expected progress on her IEP goals.

The Parent attempted to prove her allegations by introducing documentary evidence in the form of four years of IEPs, multiple amended IEPs, multiple evaluations and re-evaluations, tests, re-tests, and numerous assessments. The Student was evaluated and assessed and received specialized instruction from a regular education teacher and a special education teacher as well as services from an Occupational Therapist, Speech Language Pathologist, and Reading Specialist. Multiple accommodations were written into her IEP to address the weakness that she exhibited in reading, math, writing, etc. Unfortunately, instead of presenting an organized (by chronology or topic) picture of why the Parent maintained the Student did not receive FAPE, the

presentation jumped from one IEP, to an assessment, to another IEP, to an evaluation, back to the first IEP, without sufficient analysis and without any apparent logic. After carefully considering all of the testimony and reviewing every exhibit, I considered the IEPs and amended IEPs as a whole to see if they reflect progress by the Student. The Parent argued they do not reflect progress and argued the IEPs were not appropriate. I disagree and find the Student's progress, although slow and at times minimal, was appropriate in light of her circumstances.

Did PGCPS fail to provide appropriate IEPs on January 31, 2018, March 5, 2018, January 24, 2019, January 14, 2020 and the amendments?

I have already discussed the Parent's testimony which I characterize as generalized and vague as it pertains to the implementation and appropriateness of the IEPs drafted for the Student. The Parent called Dr. [REDACTED], who testified she reviewed three psychological evaluations dated March 12, 2015, October 19, 2017 and October 30, 2019; two educational assessments dated November 15, 2017 and October 31, 2019; and three IEPs dated January 31, 2018, January 24, 2019 and January 24, 2020.²² Dr. [REDACTED] testified as to the various tests used in each of the psychological evaluations and noted from 2015-2017 the Student's cognitive scores remained similar and consistently ranked the Student in the first percentile, extremely low range.

Dr. [REDACTED] testified that cognitive assessments estimate the range of a person's ability and are not "the end all be all," but help to determine the appropriate educational program for the person. For the Student in this case, her cognitive assessments revealed she is deficient in verbal and non-verbal abilities, and that she has the ability to learn but at a slower pace as compared to other children.

²² The March 12, 2015 psychological evaluation occurred well before the statutory timeframe at issue in this case. The October 19, 2017 psychological evaluation and the November 30, 2017 educational assessment also occurred well before the statutory timeframe at issue in this case. To the extent that they provide background information and may have been used in making educational decisions in IEPs covered by the statutory timeframe, I have considered the testimony.

Dr. [REDACTED] compared the scores on the Student's educational assessments to her cognitive assessments and opined the Student was "not learning at the level she could be." She explained that the NEPSY is an individual test of attention, which suggested a severe attention problem may exist. Dr. [REDACTED] stated that more assessments of attention abilities and behavioral observations would be needed, and that she would have performed additional assessments if she were evaluating the Student. I am unpersuaded by her opinion as she did not perform observations or speak with any of the Student's teachers or service providers to obtain information regarding whether the Student had interfering behaviors or difficulties sustaining attention in the educational setting which would warrant further testing.

Dr. [REDACTED] testified that in the third grade the Student had limited access to interventions but noted the Student's IEP listed a variety of accommodations such as human signer and voice to text. Dr. [REDACTED] felt these accommodations were appropriate, but only for a limited time, as she felt they did not address or treat the Students' issues. She stated the accommodations provide the Student with a means of communication but can be overly relied upon and did not allow the Student to practice her skills. Dr. [REDACTED] described the use of accommodations as "band-aids."

Dr. [REDACTED] testified that the Student's IEPs consistently provided that she receive instruction at grade level despite the fact that her psychological and educational testing indicated that she was performing at the kindergarten or first grade level. However, Dr. [REDACTED]'s understanding of how the [REDACTED] is implemented was incomplete. Dr. [REDACTED] testified that the general educator introduced a grade level curriculum topic which was done with the whole class. Then the students were divided into small groups which worked on the grade level topic or subject but on an instructional level that was appropriate to the Student and with the supports and accommodations that were specified in her IEP.

I give less weight to Dr. [REDACTED]'s testimony because she has never met the Student, never observed her in any educational setting, never spoke to any of the Student's teachers or service providers, and only understood the [REDACTED] through her document review without observing the program or speaking with anyone at PGCPS regarding the program. Dr. [REDACTED]'s opinions are based upon her personal views of the appropriateness and her perceived overreliance on accommodations for students in special education. I do not agree with Dr. [REDACTED]'s view that the use of accommodations and services as outlined in the IEP to assist the Student with basic skills in which she is deficient, while the Student is receiving instruction on grade level curriculum are a "band-aid." The accommodations were used to assist the Student with accessing the grade level curriculum. For example, by using the accommodation of voice to text during grade level curriculum instruction, the Student was able to quickly express her thoughts without having to write and thus be encumbered by the deficiencies in her fine motor skills. This does not mean that the occupational therapist was not working with the Student on fine motor skills needed to improve her writing mechanics.

The Parent presented the testimony of Dr. [REDACTED], who testified she reviewed approximately six documents in connection with this case: the Complaint; two speech and language evaluations administered by [REDACTED]; one speech and language evaluation administered by the [REDACTED] ([REDACTED]); and, the IEPs dated January 31, 2018 and January 24, 2019. She opined that speech and language delays would affect a student's ability to perform in the classroom. Dr. [REDACTED] testified as to the various tests administered to the Student, including the CELF-5, the Goldman-Fristoe and Castle-2.

In reviewing the January 31, 2018 IEP, Dr. [REDACTED] noted the IEP was developed two to three months after the speech and language evaluation conducted by Ms. [REDACTED] on November 20, 2017. (PGCPS Ex. 13). She testified that the CELF-5 was administered, and the Student

received a receptive language Standard Score of 72, which ranked her below average and an expressive language score of 67, which ranked her very low. Dr. [REDACTED] explained that in her opinion, the results of the speech and language evaluation warranted direct services to address the areas of deficit identified for the Student, because she believed the deficits as revealed may affect the Student's ability to perform in the classroom and access the general education curriculum. Upon reviewing the IEP, Dr [REDACTED] noted direct services were not provided in the IEP, and therefore concluded the IEP was not appropriate. I note the January 31, 2018 IEP was not objected to by the Parent and is outside the statutory lookback period permitted in this case; therefore, the Parent is time barred from now raising an issue as to how the speech and language services were delivered (i.e., consultative vs. direct) as written into the January 31, 2018 IEP.

In reviewing the January 24, 2019 IEP, Dr. [REDACTED] noted the IEP team used the same November 20, 2017 speech and language evaluation by Ms. [REDACTED] (PGCPS Ex. 13). She explained that the speech and language evaluation was still valid, and the intervening time was not an issue. Dr. [REDACTED] stated again that in her opinion, the results of the speech and language evaluation warranted direct services to address the areas of deficit identified for the Student, because she believed the deficits – as revealed in the assessment – may affect the Student's ability to perform in the classroom and access the general education curriculum. Therefore, she again concluded the IEP was not appropriate, because direct speech and language services were not included in the IEP.

Dr [REDACTED] testified she also reviewed the speech and language evaluation conducted by the [REDACTED] on February 26, 2019. (Parent Ex. 21). She noted this evaluation occurred after the Student's annual IEP review meeting. The evaluation diagnosed the Student as having a mixed expressive-receptive language disorder as well as a speech sound disorder and recommended the Student receive speech therapy twice a week for thirty minutes. (Parent Ex. 21). Dr. [REDACTED]

agreed with the recommendations of the [REDACTED] evaluation, which recommended direct speech and language services for the Student.

Dr. [REDACTED] reviewed the speech and language therapy assessment administered by Ms. [REDACTED] on October 25, 2019, noting that the first page of the evaluation appeared to be missing.²³ (PGCPS Ex. 25). She noted a decrease in scores between the 2017 and 2019 evaluations. Dr. [REDACTED] testified that in the Student's subsequent January 14, 2020 IEP, direct related speech and language services were provided, three times per month for thirty minutes per session. (Parent Ex. 43). However, Dr. [REDACTED] opined the level of services were not sufficient to address the Student's deficits, because speech and language goals were drafted to address the Student's deficits in the areas of articulation and pragmatics, but not to address the deficits in the areas of receptive and expressive language. (Parent Ex. 43).

I found Dr. [REDACTED]'s testimony to be credible and give weight to her opinion that the Student should have received direct speech and language therapy services under the January 31, 2018 and January 24, 2019 IEPs. Although I have considered the fact that Dr. [REDACTED] has never met the Student, administered any testing to her, or provided the Student with any speech and language services, Dr. [REDACTED] was qualified as an expert to offer her opinion based upon her review of documents and assessments conducted by other speech language pathology professionals. Dr. [REDACTED]'s opinion is valid because there is no dispute between the parties that the relevant testing indicated the Student had significant deficits which would affect her ability to perform in the classroom, but no direct speech and language therapy was provided to the Student for a period of two years. Furthermore, Ms. [REDACTED], the PGCPS Speech and Language Pathologist, was unable to give a cogent and reasoned explanation as to why only consultative

²³ The first page of PGCPS Ex. 25 was in fact missing. Counsel for PGCPS offered a complete exhibit later in the proceedings, which I admitted at PGCPS Ex. 25A.

services, as opposed to direct services, were specified in the January 31, 2019 and January 24, 2019 IEPs.

PGCPS presented the testimony of [REDACTED], Ph.D., School Psychologist PGCPS, who testified extensively and in great detail regarding the multiple psychological assessment and tests administered to the Student throughout her tenure at PGCPS and the interpretation of the test results. Dr. [REDACTED] explained the range of disabilities of the students in the [REDACTED] at [REDACTED]. She testified that she reviewed the March 19, 2015 psychological evaluation which was relied upon in forming her opinion that the Student's disability code should be changed from ID to SLD. Dr. [REDACTED] explained the Student's FSIQ was 67, which placed her below the first percentile in the extremely low range, indicative of ID. The assessment of the Student's adaptive skills was completed by the Parent answering a questionnaire, not by the Student's teachers. There was no significant discrepancy between the Student's FSIQ scores and the parent-reported adaptive scores.

Dr. [REDACTED] testified regarding the psychological report and assessment dated October 19, 2017 by her predecessor [REDACTED], Ph.D., NCSP.²⁴ (Parent Ex. 17). She explained the various tests used in formulating the report and stated the WISC-V was the most reliable as it provides more confirming sources of data. Dr. [REDACTED] testified the Student received a FSIQ of 52, which ranked her in the extremely low range at one tenth of a percentile (.1%). She described the Student's adaptive scores as rated on the ABAS-3 as a General Adaptive Composite Scaled Score of 63, which ranked her in the first percentile, extremely low range. Dr. [REDACTED] testified that based on the assessments, the Student's adaptive functioning was commensurate with her cognitive ability. She explained the Student's disability code was changed back to ID by the IEP team, based on the October 19, 2017 psychological report. Dr.

²⁴ National Council of School Psychologists

██████ testified the third grade is an important time during which students must make a cognitive and conceptual jump and the academic work becomes more difficult and many students begin to struggle.

Dr. ██████ also testified extensively and in great detail regarding the psychological report and assessment she authored and conducted, dated October 31, 2019. (Parent Ex. 20, PGCPS Ex. 26). She explained the tests administered to the Student and noted that there were no significant changes in the assessments she performed compared to those performed in October 2017. Dr. ██████ testified the Student received a FSIQ of 60 on the WISC-V, which ranked her below the first percentile in the extremely low range. She stated the Parent requested the WJ-IV be performed, the scores on the WJ-IV were commensurate with the scores on the WISC-V. Dr. ██████ explained there were no areas in which the Student had a statistically significant increase in her scores, the ██████ class continued to be appropriate, and the IEP team decided the Student's disability code would remain ID.

Dr. ██████ testified the IEP team also began to plan for the Student's next transition to middle school. She explained the Student placed far below grade level in her academic performance, therefore a decision was made by the IEP team to slow down her rate of instruction so she could make slow, but incremental, progress. Dr. ██████ stated the IEP team provided SpellRead and the Student was pulled out into a small group with Ms ██████, a reading intervention specialist, for more intensive reading intervention. Dr. ██████ reported her psychological report to the IEP team at an IEP meeting on December 10, 2019, and explained that the Student's scores were consistent with a diagnosis of ID. (PGCPS Ex. 29). She explained that the Student has strengths and skills, but a lower rate of learning and acquisition of skills and development, and that her lack of progress is not a teaching issue. She testified the

Student's level of intellectual functioning has always been in the deficient range, below the first percentile, that IQ testing is reliable and will yield the same results over time.

I give Dr. [REDACTED]'s testimony great weight. She was extremely knowledgeable regarding the psychological testing and assessments performed on the Student and provided very detailed information on how those scores translate into academic and ADLs.

PGCPS presented the testimony of [REDACTED], Speech Pathologist at PGCPS, who testified that cognitive function equals mental ability, which is intertwined with language. She stated cognitive function is a predictor of speech language skills and that IQ is important to assessing ability level. Ms. [REDACTED] testified she became involved with the Student in 2017. She conducted a speech and language evaluation on November 20, 2017, using the CELF-5. (PGCPS Ex. 13). Ms. [REDACTED] explained the results of the assessment revealed the Student was "functioning above her ability level" therefore there was no discrepancy and no need for services, as no language disorder was indicated. She testified the Student did not qualify for speech language services in the third grade because her cognition was below her language ability.

Ms. [REDACTED] testified the [REDACTED] speech evaluation performed on February 26, 2019 was provided at the January 14, 2020 IEP meeting, she reviewed it, but did not have an opportunity to discuss the report at the IEP meeting. Ms. [REDACTED] stated that she conducted a speech and language assessment on the Student on October 25, 2019. (PGCPS Ex. 25A). She described the results of the 2019 assessment as not being significantly different from the results of the 2017 assessment, with the exception of articulation and pragmatic skills. Ms. [REDACTED] indicated the assessments are discussed by the IEP team so that her findings can be considered in conjunction with the findings on the Student's psychological testing.

Ms. [REDACTED] testified she reported the results of the October 25, 2019 speech and language assessment to the IEP team at a meeting on December 10, 2019, at which time the IEP

team recommended the Student receive speech and language services for articulation and pragmatics. (PGCPS Ex. 29). She stated the recommendations were incorporated into the Student's January 14, 2020 IEP and were appropriate. The Student received services delivered outside general education in the speech room and was provided intensive speech therapy. Ms. [REDACTED] testified she continued to provide the Student with speech therapy online as part of distance learning to address her articulation goal, but pragmatic skills (which require the Student to practice with her peers) could not be provided online.

Ms. [REDACTED] testified that she has provided the Student direct speech and language services since February 2020, following the January 14, 2020 IEP meeting. She stated direct language services were not provided earlier because there was no presence of a language disorder. Ms. [REDACTED] explained for the Student to have a language disorder her language skills would have to rank below her cognitive disorder and that she learned this through experience. She stated, "language is all day long," so the Student was never hampered in receiving language skills. Ms. [REDACTED] explained she was unsure if whether speech and language services were offered earlier it would have resulted in improved speech and language skills for the Student.

The assessment and CELF-5 from November 20, 2017 clearly show the Student had deficits in receptive language earning a standard score of 72, which ranked her in the third percentile, below average range and she had deficits in expressive language skills earning a scaled score of 67, which were ranked in the first percentile, very low range. As evidenced by the results of the October 25, 2019 assessment and CELF-5, the Student's receptive language scaled score decreased to a 67, which ranked her in the first percentile and her expressive language scaled score decreased to a 59, which ranked her below the first percentile at three-hundredths of the first percentile. Clearly the deficits the Student displayed in speech and language increased from 2017 to 2019.

PGCPS presented the testimony of [REDACTED], Special Education Chair/ Resource Teacher/ Intervention Specialist/ Team Leader at PGCPS, who testified as to the Student's present levels of performance in reading as measured on the DRA. Ms. [REDACTED] testified in the third grade the Student received reading intervention using the S.P.I.R.E. program, in the fourth grade both S.P.I.R.E. and iReady were used. Ms. [REDACTED] explained in the spring of the Student's fourth grade year, in January 2019, she began working with the Student using a new evidence-based reading intervention, SpellRead. She testified the SpellRead program was new to the market and was a strong evidence-based program. Not all [REDACTED] students qualified to use SpellRead, but the Student qualified.

Ms. [REDACTED] described SpellRead as a one-hour program administered daily in three parts: linguistic foundation building; multisensory approach; and, guided reading. She stated when she began working with the Student, she was assessed at a DRA level 8. Ms. [REDACTED] testified she keeps a running record of how the Student performs in reading. The running record is a formative assessment of how the Student is performing as to decoding, as opposed to the DRA which is a summative assessment. Ms. [REDACTED] testified that during the time she has worked with the Student using SpellRead her DRA level has increased from DRA level 8 to DRA level 10, and according to the running record the Student has increased even further to a DRA level 14 and was beginning to approach DRA level 16. Ms. [REDACTED] explained DRA level 18 is a second-grade level.

Ms. [REDACTED] characterized the Student's reading progress as commensurate with her cognitive ability and stated she is making great progress based on where she was. Ms. [REDACTED] also explained the Student has gained things that are immeasurable on a test, such as self-esteem and a willingness to learn.

Ms. [REDACTED] testified she has seen the accommodations used in the fifth grade [REDACTED] class and they are predominantly used to support the Student during grade level instruction, so her

deficits do not interfere with her ability to gain benefit from the grade level curriculum. She stated that she cannot speak to the daily implementation, but she has witnessed someone acting as a scribe for the Student during two of her visits to the classroom. Ms. [REDACTED] explained the Student's writing skills can still be assessed through the use of a scribe because the Student must state when she wants to use a capital letters and punctuation. She testified she does not allow the Student to use any accommodations during her guided reading while using SpellRead, the Student must do her own writing. I found Ms [REDACTED]' testimony to be credible and informative as related to the reading intervention provided to the Student and the use of accommodations. I give her testimony weight on these issues.

Taking the testimony of the witnesses and evidence under advisement, I am persuaded that the PGCPS failed to provide appropriate IEPs on January 31, 2018, March 5, 2018, January 24, 2019, January 14, 2020 and the amendments, based on PGCPS' failure to provide the Student with direct speech language services in the January 31, 2018 and January 24, 2019 IEPs and the PGCPS failure to draft goals to address the Student's deficits in receptive and expressive language in the January 14, 2020 IEP. Thereby rendering all three IEPs inappropriate, as related to services. The inappropriateness of the IEPs based on their failure to provide direct services to address the Student's speech and language deficits amounts to a denial of FAPE on this issue.

“When a FAPE is not provided to a disabled student, the student's parents may seek an award of compensatory education. These educational services are ordered by the court to be provided prospectively to compensate for a past deficient program, i.e., the school system's failure to provide the student with a FAPE.” *Y.B. v. Bd. of Educ. of Prince George's Cty.*, 895 F. Supp. 2d 689, 693-94 (D. Md. 2012) (internal citation and quotation marks omitted).

Did PGCPS fail to convene IEP meetings to review and revise the Student's IEP to address her failure to make expected progress?

The Parent testified she did not feel the Student was reaching her full potential, as a result of the type of instruction she was receiving, the lack of consistency, the confusing teaching methods, and homework that was “all over the place.” The Parent pointed to the report cards and IEP Progress Reports to support her position that the Student had not made any progress over the three-year period spanning third, fourth and fifth grade. She explained her fear the Student likewise would not do well in middle school. The Parent testified the Student had educational gaps and would not be able to keep up with the work in middle school unless she had small group or one on one instruction. She stated the Student excelled in art and swimming and picked up skills well.

Dr. [REDACTED] testified extensively about the [REDACTED] and the level and types of services provided to the Student under the various IEPs and amended IEPs. She explained that she has observed the Student in the classroom and attended all the IEP meetings convened regarding the Student. Dr. [REDACTED] testified as to the IEP Progress Reports dated April 20, 2018, June 20, 2018, November 20, 2018, April 11, 2019, June 14, 2019, November 19, 2019 and January 14, 2020. She noted the Student was not making sufficient progress toward her IEP goals in the IEP Progress Reports dated April 20, 2018 and June 20, 2018. Dr. [REDACTED] acknowledged that no IEP meetings were held to address the Student's lack of progress. She noted the Student was making sufficient progress towards her IEP goals in the November 20, 2018, April 11, 2019, June 14, 2019, November 19, 2019 and January 14, 2020 IEP Progress Report.

Dr. [REDACTED] testified the Student's progress stalled in third grade and opined that her progress stalled because the third-grade curriculum is more rigorous than the curriculum in the first and second grades. She categorized the first and second grade curriculum as entry level and explained there is a precipitous jump, as third, fourth and fifth grade curriculum is considered

intermediate level curriculum. The IEP team decided the Student needed interventions and strategies to address the stalled progress.

The PGCPS presented the testimony of [REDACTED], Special Education Instructional Specialist (SEIS) for PGCPS, who testified regarding IEP goals and objectives. She stated that goals are written on grade level and objectives are written based on a student's level of skills and ability. Ms. [REDACTED] explained there is no guarantee that a student will meet the stated goal by the date defined and no law or policy that dictates every student will achieve every goal as written for them. In this case she specifically noted the Student is actively working on objectives within the goal and that her progress has been commensurate with her ability.

Ms. [REDACTED] explained that in drafting IEP goals, the goals should be achievable, however there exists no requirement that a student achieves all of the goals as stated and that goals can be changed or updated if progress is made or if the goals are not appropriate. She acknowledged that generally a meeting should be held if an IEP progress report states a student is not making sufficient progress towards achieving a goal. However, there was no specific testimony elicited as follow-up regarding why an IEP meeting was not held when the Student's IEP progress reports for April 20, 2018 and June 20, 2018 indicated the Student was not making specific progress towards certain goals. (Parent Ex. 8).

After a thorough review of all the testimony and evidence presented, I find PGCPS committed procedural errors in not convening IEP meetings following the April 20, 2018 and June 20, 2018 IEP Progress Reports which indicated the Student was "not making sufficient progress to meet goal" in the third and fourth quarters of the Student's third grade year in the areas of written language expression, math calculation and reading phonics. I find these procedural errors amount to a denial of FAPE because the PGCPS knew the Student was not making sufficient progress and did not schedule IEP meetings to discuss the Student's lack of

sufficient progress or to amend the IEP goals or objectives to enable the Student to make sufficient progress. However, there is no remedy that I can appropriately devise to address this procedural error. The Student made sufficient progress in the subsequent IEP Progress Report periods; and the IEP team held meetings to devise updated goals and objectives.

Did PGCPS fail to provide an appropriate location of services for the 2017-2018 school year dating back to March 2018, the 2018-2019 school year, and the 2019-2020 school year?

The Parent used location and placement interchangeably, but the terms mean distinctly different concepts. Dr. [REDACTED] testified that the placement of a student refers to the program the student is enrolled in. In the case of the Student, her placement at all times relevant to this proceeding was the [REDACTED]. The location of services refers to the physical school where the Student attended; the Student has attended [REDACTED] since March 2018. The Parent never disagreed that the Student's placement be the [REDACTED] or that the location of the school she attended be a school other than [REDACTED].²⁵

Although the Parent never challenged the placement or location, from the Parent's testimony it was clear that she was unhappy with how the [REDACTED] program was reconfigured in the Student's third grade year. She testified that there were no more than ten students in the Student's class in first grade and second grade; however, when she arrived at [REDACTED] on the first day of school in the Student's third grade year, she was surprised that there were approximately thirty students in the classroom. The Parent viewed the classroom of approximately thirty students as distracting for the Student.

As stated earlier, Dr. [REDACTED] explained the difference in the Student's third grade class; the composition and size of the class changed, but it still provided the Student the same level of

²⁵ The issue of location of service is a red herring. The [REDACTED] program and its accompanying special education services were not available at the Student's home school and the Parent has never asked for the Student to be placed at her home school or any other school prior to the IEP meeting on January 30, 2020.

supports previously received, including large group and small group instruction. However regardless of the composition of the class and the presence of general education students, the Student's January 31, 2018 IEP did not specify that the Student would be placed in an overall class size of ten.

Dr. [REDACTED] testified that the Student received the same maximum number of hours of special education and related services (twenty-two hours and thirty minutes per week, five days per week) in her third grade [REDACTED] program. More importantly, as none of the Parent's witnesses observed the Student in the program, any opinions regarding the program's appropriateness given its size or distractions are not substantiated by credible evidence.

Additionally, the Parent is time barred from raising the issue of the inappropriateness of the placement in the Student's third grade year. At the time the Parent filed the Complaint at issue in this case, she was only permitted to appeal issues in the past two years (back to March 2018), which is six months into a nine-month school year. Although she is technically and legally permitted to challenge the placement as of March 2018, by that date the Student had completed two thirds of the academic year.

Furthermore, looking specifically at the placement of services, which is [REDACTED], there is clear, irrefutable evidence and testimony that the PGCPS, as early as the January 31, 2018 IEP meeting, recommended that the Student return to the [REDACTED] Program. The IEP team discussed the Student's most recent psychological report dated October 19, 2017 which noted the Student's cognitive test scores on the WISC-V and adaptive skills on the ABAS-3 were both in the extremely low range, placing the Student below the first percentile. (Parent Ex. 20, PGCPS Ex. 26). The psychological report also noted the Student had "difficulty with self-regulation and learning, even in the highly structured setting of the [REDACTED] class with a low student-to-teacher ratio and an adult assistant. She needs a high level of structure and support to manage her day-

to-day responsibilities in school and make academic and social progress. Consideration of a program that is designed to address the unique needs of the ID student should be made.” (Parent Ex. 20, PGCPs Ex. 26).

The Parent, who was adamant about having the Student continue on the “diploma track,” testified that she “walked out of the meeting,” and that she knew PGCPs “needed her permission to switch [the Student] back to [REDACTED].” In effect, the PGCPs apparently acquiesced to the desires of the Parent and continued to provide services, accommodations, and extra support to the Student in the [REDACTED], to ensure that her progress was commensurate with her cognitive abilities even though a return to the [REDACTED] program would have probably been a better fit for the Student. The PGCPs continued to deliver intensive specialized instruction designed to address the Student’s individualized needs, including the use of accommodations and supports to assist the Student with managing the grade level curriculum, which was far above her instructional level.

Dr. [REDACTED]’s testimony was in line with and supports the testimony of the other PGCPs witnesses as related to the appropriateness of the services offered to the Student in the [REDACTED], which were specially tailored to promote educational growth commensurate with the Student’s cognitive skills and abilities. I will adopt, but not repeat the previous testimony of Dr. [REDACTED] which I synthesized earlier to address the Parent’s argument regarding the inappropriateness of the IEPs.

The Parent cannot have it both ways. The Parent cannot withhold permission to have the Student’s placement changed and then argue that the PGCPs failed to provide an appropriate placement. The Parent objected to the recommendation that the Student return to the [REDACTED] program at [REDACTED] which may have better addressed her academic needs in fourth and fifth grade, yet still expected the Student to make more academic progress in the [REDACTED].

Therefore, I find the Parent has failed to meet her burden to prove the PGCPSS failed to provide an appropriate placement since March 2018.

Did PGCPSS fail to propose an appropriate placement for the Student in March 2020?

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 a general education school programs may not be appropriate for every disabled child and removal of a child from a regular educational environment may be necessary when the nature or severity of a child's disability is such that education in a regular classroom cannot be achieved.

Because including children with disabilities in regular school programs may not be appropriate for every child with a disability, the IDEA requires public agencies like PGCPSS to offer a continuum of alternative placements that meet the needs of children with disabilities. 34 C.F.R. § 300.115. The continuum must include instruction in general education classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, and make provision for supplementary services to be provided in conjunction with regular class placement. *Id.* § 300.115(b); COMAR 13A.05.01.10B(1). Consequently, removal of a child from a regular educational environment may be necessary when the nature or severity of a child's disability is

such that education in a regular classroom cannot be achieved. COMAR 13A.05.01.10A(2). In such a case, a FAPE might require placement of a child in a private school setting that would be fully funded by the child's school district.

Ms. [REDACTED] testified that when she was asked to become involved in the Student's case, she reviewed pertinent aspects of the Student's educational record, observed the Student on multiple occasions in her classroom, and spoke with the Student's teachers. She explained the Student was exposed to fifth grade curriculum and then received her special education services on her instructional grade level. Ms. [REDACTED] described the fifth grade [REDACTED] class as appropriate for the Student and at the times of her observations she noted the Student was able to "do the work with supports," and was being supported by the teacher and paraprofessionals in the classroom.

Ms. [REDACTED] explained the Student's entire fifth grade [REDACTED] class was comprised of disabled students with IEPs. The students had different disabilities, and that the Student functioned significantly below some of her classmates, but not all of them. Ms. [REDACTED]'s observation and review of the Student's educational records was mainly focused on the 2019-2020 school year. Ms. [REDACTED] characterized the Student's progress during the 2019-2020 school year in the [REDACTED] as commensurate with her skills and ability, after reviewing the Student's cognitive scores and her present levels of performance, as compared to the Student's progress towards her IEP goals and objectives as reflected in the IEP Progress Reports from April 11, 2019, June 14, 2019, November 19, 2019 and January 14, 2020.

Ms. [REDACTED] testified she attended the September 9, 2019 IEP meeting, the December 10, 2019 IEP meeting and the March 11, 2020 Central IEP meeting for the Student. She explained that though she does not currently manage any schools with [REDACTED] programs, she has managed schools with [REDACTED] programs in her twelve-year tenure as a SEIS. She described the

█ program as designed to provide both academic and functional skills curriculum, which would teach the Student life skills to be used beyond high school.

Ms. █ testified she became aware the Parent wanted the Student to be placed in a non-public special education school and wanted the Student to remain on the diploma track, at the January 30, 2020 IEP meeting. She indicated that the identity of the proposed non-public school was not shared with the IEP team. Ms. █ explained that in her experience, students with ID are generally taken off the diploma track at non-public schools and because all students attending a non-public school are disabled, there is no opportunity to interact with typically developing peers. She testified as to the importance of allowing disabled students the opportunity to interact with their non-disabled peers. She stated that the Student currently interacts with non-disabled peers at recess, lunch and during her non-academic specials. Ms. █ explained that non-public schools are not the LRE, but on the contrary are the most restrictive environment in which to place a disabled student. She stated the Student gained valuable social skills from interacting with her nondisabled peers.

Additionally, in this case, the Student's typically developing peers can serve as models for appropriate speech and language goals for the Student. If the Student were placed in a non-public separate special education school, she would not have the benefits of interacting with her typically developing peers and Ms. █ opined the Student might regress in some of the social skills she has developed by modeling her typically developing peers.

Ms. █ opined that the Student would find success and would not become as frustrated with the work under the modified curriculum taught in the █ program. All of the Student's work in the █ program would be tailored to her current instructional level and her cognitive abilities, and be taught at her current level of instruction, rather than at her grade level. Additionally, the Student would engage in experiences inside the classroom as well as outside in

the community to develop skills for after she graduates. Ms. [REDACTED] stated the [REDACTED] program would focus on Core Content Connectors, which is an alternative curriculum to the traditional Maryland College and Career Readiness standards. She explained the [REDACTED] program at [REDACTED] would be the LRE, which would enable the Student to engage with her typically developing, non-disabled peers during lunch, recess and non-academic classes (lunch, recess, art, etc.) and would be the most appropriate placement for the Student.

Overall, I found Ms. [REDACTED]'s testimony to be credible and gave it considerable weight in my consideration of the issues in this case. She personally observed the Student on multiple occasions at [REDACTED], spoke to the Student's teachers, reviewed the Student's educational records, attended two IEP meetings and the Central IEP meeting, and was familiar with the [REDACTED] program which was proposed as the Student's middle school placement.

The Parent attempted to impeach Ms. [REDACTED]'s testimony regarding whether private school placements provide a diploma track as well as a certificate track; however, the internet printouts read aloud by the witness, offered by the Parent, and not admitted, did not provide a sufficient basis to know if the students these schools admitted had cognitive profiles similar enough to the Student's to draw any valid comparisons. Further, the internet printouts did not provide any statistics on the percentage of students graduating from their schools obtained a high school diploma. The Parent failed to impeach Ms. [REDACTED]'s testimony.

The PGCPS offered the testimony of [REDACTED], Central IEP Chair at PGCPS, who testified a referral for the Student was sent to Central IEP at which time she personally reviewed the referral, with its attached supporting documents and she reviewed all additional relevant documents in preparation for the Central IEP meeting held on March 11, 2020.

Ms. [REDACTED] testified at length regarding her background and experience, and her understanding of all the various programs offered by all the schools in PGCPS, the supports

offered by the programs, and that she is intimately acquainted with all the non-public placements, including residential and day programs both within the State and outside the State of Maryland. She explained there are preconditions that must be met before Central IEP will recommend or approve a student's placement in a non-public placement. The Central IEP must assess the continuum of services and placement options available for a student, beginning first with the student's neighborhood school. If the student's needs cannot be met in the LRE, then a non-public placement option will be considered. Ms. [REDACTED] explained the cost of the non-public placement is not to be a factor which a Central IEP team considers in its determination and recommendations.

Ms. [REDACTED] noted in reviewing the Student's referral packet that there was a change in disability code in the first grade, that was changed back in the Student's third grade year. She explained that the Student's FSIQ remained consistent, in the significant low range or the first percentile. Ms. [REDACTED] described her review of the Student's cognitive scores. She indicated the WJ scores were commensurate with the Student's cognitive abilities. The Student's scores were slightly higher in some areas, which is an indicator that the Student is receiving appropriate instruction because if the Student were not receiving appropriate instruction, the scores would typically be lower.

Ms. [REDACTED] testified that the quality of information contained in the Student's referral packet was thorough and complete and could be considered reliable. Ms. [REDACTED] testified the referral was made to the Central IEP because the Parent and school team were not in agreement. Therefore, the school agreed to refer the case to Central IEP for further discussion and consideration. Ms. [REDACTED] testified the Parent requested a non-public placement for the Student, but she did not attend the Central IEP meeting. The Student's father was present, asked

a lot of thoughtful questions, and seemed interested in the programs and services PGCPs was offering for the Student.

Ms. [REDACTED] testified that during the Central IEP meeting an Alternative Appendix A: alternate assessment eligibility checklist was completed at the meeting by all who were present. She stated the Student's father agreed with the assessment as completed and agreed the Student met the criteria to be placed in an alternative curriculum program. Ms. [REDACTED] explained the Student's father asked clarifying questions regarding adaptive skills and various placement and location of services were discussed. Ms. [REDACTED] provided detailed testimony as to how the Alternative Appendix A is completed and that once completed, all Central IEP team members were in agreement, with the exception of Ms. [REDACTED] the Parent's advocate.

Ms. [REDACTED] testified that she was unclear on whose behalf Ms. [REDACTED] was advocating. She stated it was clear that Ms. [REDACTED] had no interest in hearing about any of the PGCPs' public offerings. Ms. [REDACTED] explained Ms. [REDACTED] disagreed with the Alternative Appendix A overall but failed to state why any specific part of the completed checklist was incorrect. Finally, she testified that Ms. [REDACTED] made a global statement at the meeting, without supporting evidence, that "the Student's cognition was the result of inadequate instruction." (Parent Ex. 47, PGCPs Ex. 38).

Ms. [REDACTED] testified the Central IEP also discussed the Student's progress and noted the progress was slow but expected based upon the Student's abilities. She stated the Student had mastered some of the objectives, but the team had concerns about the Student's ability to progress in the general education curriculum in the sixth grade. Ms. [REDACTED] testified the Central IEP team recommended the Student remain in the [REDACTED] at [REDACTED] for the remainder of the fifth-grade school year, to avoid a disruption in placement.

Ms. [REDACTED] further explained that while there are two PGCPS elementary schools which offer the [REDACTED] program for sixth grade, because those schools are Kindergarten through sixth grade schools, the sixth-grade programs in those schools are being phased out. There are no PGCPS middle school [REDACTED] type programs, and even if there were a middle school [REDACTED] type program, the Student in this case would not be appropriate to continue in a [REDACTED] program based upon her present levels of performance and the need for more intensive support.

Ms. [REDACTED] explained the Central IEP team recommended that the Student be placed in a [REDACTED] program for the sixth grade, which would offer a small, structured class and a program which focused on academic, communication and social skills, and adaptive skills. She indicated she had worked in [REDACTED] programs for many years, prior to her nine and a half years in her current position. Ms. [REDACTED] explained the [REDACTED] program is designed to address the needs of students with significantly low cognitive levels and there would be students above, below and at the Student's cognitive level. The Central IEP team granted the Student a special transfer to enable her to attend the [REDACTED] program at [REDACTED], which is not her neighborhood school, because otherwise the Student would have to attend the [REDACTED] program at [REDACTED] for sixth grade and be transferred to another school for middle school. The Central IEP team wanted to limit the number of school transitions for the Student.

Ms. [REDACTED] explained the class size, structure and curriculum offered by the [REDACTED] program at [REDACTED]. She stated there are five [REDACTED] classrooms of approximately eight to twelve students per class, with three adults assigned to each class. The Student would be in a classroom with only sixth grade students, though some of the other classrooms contain students in a mix of grades. Ms. [REDACTED] testified the [REDACTED] program at [REDACTED] would be the most appropriate program to meet the Student's needs, her strengths and weakness, present level of performance and provide the services, accommodations and supportive aides. She explained there would be

no harmful effect to the Student and was confident the Student would make meaningful progress in the upcoming school year. Ms. [REDACTED] testified that a non-public placement would be more restrictive for the Student and would not enable her to interact and engage with her typically developing, non-disabled peers.

I found Ms. [REDACTED]' testimony to be credible, clear and concise. I give Ms. [REDACTED]' testimony considerable weight in deciding the appropriate placement for the Student for the 2020-2021 school year, when she will be transitioning to middle school.

The Parent attempted to use the internet printouts from the non-public schools, for impeachment purposes, purportedly to prove that there are in fact non-public placements that offer high school diplomas to their students, however; this information is generalized and speculative at best as it relates to the Student in this case. There was no testimony that the Parent had applied to any non-public placements for the Student or that the Student has been accepted by a non-public placement that would place her in a strictly academic diploma track program.²⁶

The Parent in this case refused to sign the parental consent to have the Student placed in an alternative curriculum program, such as the [REDACTED] program at [REDACTED]. A reasonable inference is that the Parent refused because she wanted to have the Student continue on the diploma track and she thought by moving the Student to the [REDACTED] program, the Student would not continue on the diploma track in high school.

Ms. [REDACTED] testified the decision as to whether students remain on the diploma track is one that is discussed annually. Per MSDE policy, a student may remain on the diploma track

²⁶ In the Parent's statement of points and authority submitted on July 29, 2020, in lieu of an oral closing argument, the Parent asked me to consider the COVID-19 global pandemic as a justification for why a private placement was not identified by the Parent during the hearing. While I took official notice that Maryland schools, including PGCPs, were physically closed from March 2020 and remained closed through the end of the 2019-2020 school year; and acknowledge that the COVID-19 global pandemic created hardships for everyone, the Parent requested a non-public placement for the Student long before March 2020 and presented absolutely no evidence as to what type of program or services any non-public placement could offer the Student that the PGCPs could not likewise offer. There is no justification for the Parent's complete lack of preparation and the failure to present any evidence to support the request for a non-public placement.

until such time as they reach high school, and even as late as the eleventh grade. However, PGCPs out of an abundance of caution has implemented a practice by which the ninth-grade year is the final year for consideration of diploma versus non-diploma track. Ms. [REDACTED] explained that PGCPs wanted to ensure that if a student is on the diploma track in high school, they are taking all standardized tests and meeting all the necessary academic requirements to obtain a high school diploma. Therefore, the Student in this case could in fact attend the [REDACTED] Program at [REDACTED] and remain on the diploma track, as the decision will be discussed and reviewed annually and the final determination would not be made until the Student is in her ninth grade year.

The ultimate determination regarding whether or not the Student should remain on the diploma track is not an issue that is properly before me. However, it is clear from the evidence and testimony the Parent desires the Student to remain on the diploma track and wants the Student to be placed in a program where she can obtain a high school diploma. The evidence is also clear that based on the Student's cognitive assessments, the Student has a FSIQ of 60, ranking her below the first percentile as compared to her typically developing peers. (Parent Ex. 20, PGCPs Ex. 26). The Student just completed the fifth grade. Her present levels of performance for reading place her at an end of first grade reading level. (PGCPs Ex. 45 and testimony of Ms. [REDACTED]). The Student's present levels of performance in math place her on the Kindergarten level. (Parent Ex. 43).

The Student will be transitioning to Middle School for the 2020-2021 school year. There was extensive testimony by Dr. [REDACTED] as to the Student's cognitive abilities and adaptive skills as demonstrated on the various psychoeducational tests administered, her observations of the Student, and the adaptive questionnaires completed by the Parent and the Student's teacher. Dr. [REDACTED] noted that the Parent struggled with understanding what it means for the Student to have ID; she further explained that the concept of "closing the gap" is specific to students with SLD.

For students with SLD, the purpose of the specialized instruction is to close the gap between their average or above-average abilities and their below-average functioning in reading, math or writing. For Students with ID, their cognitive abilities are below-average, and in the Student's case, significantly below average in the extremely low range. Due to the Student's pervasive cognitive deficits, which will remain consistent over time, one will hopefully see improvement academically, but not the "closing of the gap." The Student's extremely low cognitive abilities will remain consistent over time, while the content students are expected to master as they continue through middle school and high school becomes significantly more rigorous. Dr. [REDACTED] explained that every child should make progress every year, but it is not necessarily progress that will catch the Student up to her grade level or even one or two grade levels above where she is currently performing. Instead, educators must start where the Student is currently and provide her with instruction to grow her skills at a pace that she can master.

The Student's disability code was changed from SLD to ID at the January 31, 2018 annual IEP meeting. The Parent did not object to the change in the Student's disability code and the statutory timeframe to challenge the change in disability code has elapsed.

I find the IEPs and IEP Progress Reports indicate the Student has made progress, commensurate with her cognitive skills and abilities while in [REDACTED]. The overwhelming evidence indicates the Student, who will be entering middle school, is functioning well below grade level academically. As the work becomes more rigorous, there is no benefit to the Student of remaining on the grade level curriculum as she will continue to fall further and further behind. However, the Student can benefit from an alternative curriculum that is not tied to grade level, but rather is tailored to her instructional level and will provide the Student with the skills she needs to make progress relative to where she currently is.

All the PGCPS witnesses were in agreement that the Student could receive greater educational benefit from a program which focuses on both academics and adaptive skills in a small self-contained classroom, where services can be tailored and provided for her individual needs. Based upon the totality of the credible testimony and evidence presented, I find that the least restrictive and most appropriate placement for the Student is the [REDACTED] program at [REDACTED]. The [REDACTED] program at [REDACTED] can provide the Student with academic instruction at her present level of performance and teach the Student to apply the academic instruction to real life situations and circumstances and teach her adaptive skills, all tailored to the Student's cognitive abilities.

Therefore, I find the Parent has failed to meet her burden to prove the PGCPS failed to propose an appropriate placement in March 2020. The Student will prospectively be provided a FAPE in the [REDACTED] program at [REDACTED], the placement proposed by the Central IEP Team.

It is well-established that, in enacting the IDEA, and its predecessor, the Education of the Handicapped Act, Congress deliberately left the selection of education policy and methods to state and local officials. *Bd. of Educ. of Hendrick Hudson Cent. Dist. v. Rowley*, 458 U.S. at 207–08 (1982), *Barnett v. Fairfax County*, 927 F.2d 146, 152 (4th Cir. 1991), *cert. denied*, 502 U.S. 859 (1991). In reaching my decision that the Student was denied a FAPE, I “afford great deference to the judgment of education professionals.” *O.S. v. Fairfax Cty. Sch. Bd.*, 804 F.3d 354, 360 (4th Cir. 2015) (quoting *E.L. ex rel. Lorsson v. Chapel Hill-Carrboro Bd. of Educ.*, 773 F.3d 509, 517 (4th Cir. 2014)).

Indeed, judges should not substitute their own “notions of sound educational policy for those of the school authorities which they review.” *Andrew F.*, 137 S. Ct. at 1001 (quoting *Rowley*, 458 U.S. at 206). Additionally, I “should be reluctant . . . to second-guess the judgment of education professionals.” *Tice ex rel. Tice v. Botetourt Cty. Sch. Bd.*, 908 F.2d 1200, 1207 (4th Cir. 1990). Rather, I should be mindful that local educators “deserve latitude” in

determining the IEPs most appropriate for a disabled child, and that the “IDEA does not deprive these educators of the right to apply their professional judgment.” *See Hartmann ex rel. Hartmann v. Loudoun Cty. Bd. of Educ.*, 118 F.3d 996, 1001 (4th Cir. 1997). That said, I may fairly expect the school system’s professionals “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 or her] circumstances.” *Endrew F.*, 137 S. Ct. at 1002.

In this case I find the Student received educational benefit; made academic progress on her IEP objectives in furtherance of her IEP goals. The testimony of the PGCCPS witnesses, all of whom had personally observed the Student and/or provided services and assessments for the Student, were consistent that the Student’s progress was commensurate with her cognitive abilities during the two year period at issue in this case. The PGCCPS witnesses also persuasively testified that the Student gained benefit from being taught with her non-disabled peers, because she was 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.

The Parent testified and offered numerous exhibits, however, she failed to provide evidence relevant to the Student’s alleged failure to obtain any meaningful educational benefit from the implementation of the IEPs. The Parent’s testimony reflects, understandably, her frustrations with the apparent lack of grade level progress of the Student during her time with PGCCPS in the CSEP. The Parent believes the Student’s academic deficiencies are the result of inadequate implementation of the IEPs, the use of accommodations characterized by one of the Parent’s witnesses as “band-aids,” and a change in the classroom environment in the third grade. However, the Parent’s opinion, and her dissatisfaction with PGCCPS, are not sufficient alone to sustain the Parent’s burden in proving her claims. I find that the Parent obviously loves her child

but may be unable or unwilling to accept and understand the Student's cognitive abilities as they relate to her academic performance.

There is a lack of evidence from which I could reasonably find material facts to support the Parent's allegation that PGCPs failed to implement the Student's IEPs dated January 31, 2018, March 5, 2018, January 24, 2019, January 14, 2020 and the amendments; failed to provide accurate quarterly progress reports; failed to provide an appropriate placement since March 2018; and, failed to propose an appropriate placement in March 2020.

While I give deference to the educators in this case, the record is clear and I find the PGCPs failed to provide the Student with appropriate IEPs on January 31, 2018, March 5, 2018, January 24, 2019, January 14, 2020 and the amendments by failing to include the provision of direct speech and language services to address the Student's areas of deficits as outlined in the assessments performed. Further, I find the PGCPs failed to convene IEP meetings to review and address the Student's failure to make expected progress in April 2018 and June 2018, when the IEP Progress Reports note the Student was "not making sufficient progress" toward her written language expression, math calculation and reading phonics goals. The record as to these two issues presents evidence legally sufficient to demonstrate that PGCPs denied the Student a FAPE. The Parent has met her burden of production and persuasion as to these two issues. There was no discussion as to the level or number of hours of speech and language therapy services that would be appropriate to address the Student's deficits, based upon my review of the independent speech and language assessment from the [REDACTED] dated February 26, 2019 and the hours of service offered in the January 14, 2020 IEP pursuant to the October 25, 2019 speech and language assessment, I believe an additional sixty minutes of speech language services with a speech pathologist, per week, for twelve months to be appropriate to address the Student's speech and language deficits.

CONCLUSIONS OF LAW

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

1. The Prince George's County Public Schools did not fail to implement the Student's Individualized Education Programs dated January 31, 2018, March 5, 2018, January 24, 2019, and January 14, 2020 and the amendments. 34 C.F.R. § 300.324.
2. The Prince George's County Public Schools did not fail to provide accurate quarterly Individualized Education Program progress reports. 34 C.F.R. § 300.320.
3. The Prince George's County Public Schools failed to provide appropriate Individualized Education Programs on January 31, 2018, March 5, 2018, January 24, 2019, January 14, 2020 and the amendments, which resulted in a denial of free appropriate public education to the Student. 34 C.F.R. § 300.324(a).
4. The Prince George's County Public Schools failed to convene IEP meetings to review and revise the Student's Individualized Education Programs to address her failure to make expected progress in April 2018 and June 2018, which though a procedural error, also resulted in a denial of a free appropriate public education to the Student. 34 CFR §300.324(b).
5. The Prince George's County Public Schools did not fail to provide an appropriate program for the 2017-2018 school year dating back to March 2018, the 2018-2019 school year, and the 2019-2020 school year. 34 C.F.R. § 300.114 and 116.
6. The Prince George's County Public Schools did not fail to propose an appropriate placement in March 2020. The Central Individualized Education Program Team's decision to propose placement for the Student in the [REDACTED] Program at [REDACTED] Middle School is appropriate and the least restrictive environment. Therefore, I need not address the Parent's request for a non-public placement. 34 C.F.R. §§ 300.114, 300.115 and 300.116.

ORDER

I **ORDER** that counts two and four of the due process complaint filed by the Parent on March 24, 2020 is **DENIED** and **DISMISSED**.

I **ORDER** an appropriate remedy under the IDEA is necessary to address the PGCPS' failure to provide the Student with direct speech and language services from March 2018 through the present.²⁷ I **ORDER** compensatory services for the Student equivalent to an additional sixty minutes of speech language services with a speech pathologist, per week, for twelve months. These services shall be provided by a provider of the Parent's choice.

I **ORDER** there exists no appropriate remedy to address the PGCPS' failure to promptly convene IEP meetings to review and revise the Student's IEP to address her failure to make progress in April 2018 and June 2018.

I **ORDER** the appropriate placement for the Student for the 2020-2021 school year is the [REDACTED] program at [REDACTED] Middle School, as this placement will prospectively provide the Student with FAPE.

If corrective action is required by this decision, the local education agency shall, within 30 days of the date of this decision, provide proof of compliance to the Chief of the Complaint Investigation and Due Process Branch, Division of Special Education and Early Intervention Services, the Maryland State Department of Education.

August 18, 2020
Date Decision Issued

Jocelyn L. Williams
Administrative Law Judge

JLW/cmj
#186798

²⁷ Although the lack of speech and language services dates back to the January 2018 IEP, the statutorily allowed look back period begins in March 2018.

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]

[REDACTED]

STUDENT

v.

PRINCE GEORGE'S COUNTY

PUBLIC SCHOOLS

BEFORE JOCELYN L. WILLIAMS,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-PGEO-OT-20-08662

APPENDIX: FILE EXHIBIT LIST

I admitted the following exhibits offered by the Parent:

- Parent Ex. 1 Due Process Complaint, 3/24/20
- Parent Ex. 2 Report Card, 2015/16
- Parent Ex. 3 Report Card, 2016/17
- Parent Ex. 4 Report Card, 2017/18
- Parent Ex. 5 Report Card, 2018/19
- Parent Ex. 6 Progress Report, 3/3/20
- Parent Ex. 7 IEP Progress Report, 1/14/20
- Parent Ex. 8 IEP Progress Report, 11/20/18
- Parent Ex. 9 2nd & 3rd grade Measure of Academic Progress (MAP) scores
- Parent Ex. 10 K-2 Comprehensive Reading/Language Arts Data System, 2016/17
- Parent Ex. 11 K-2 Comprehensive Reading/Language Arts Data System, 2015/16
- Parent Ex. 12 PGCPs Email Assessment Data
- Parent Ex. 13 Email to [REDACTED] and Dr. [REDACTED] from [REDACTED]
Literacy Placement Test, 1/14/20
- Parent Ex. 14 Literacy Placement Test, 10/24/19
- Parent Ex. 15 MAP & iReady Data
- Parent Ex. 16 Psychological Report, 3/12/15
- Parent Ex. 17 Psychological Report, 10/19/17
- Parent Ex. 18 Educational Assessment, 11/15/17
- Parent Ex. 19 Occupational Therapy Evaluation, 11/17/17
- Parent Ex. 20 Psychological Report, 10/31/19
- Parent Ex. 21 [REDACTED] Speech and Language Evaluation, 2/26/19
- Parent Ex. 22 NOT OFFERED
- Parent Ex. 23 NOT OFFERED
- Parent Ex. 24 NOT OFFERED
- Parent Ex. 25 Sign-in Sheet, 10/18/17
- Parent Ex. 26 Prior Written Notice (PWN), 10/18/17
- Parent Ex. 27 NOT OFFERED
- Parent Ex. 28 Amendment/Modification to Current IEP Without a Meeting, 11/9/17
- Parent Ex. 29 NOT OFFERED
- Parent Ex. 30 NOT OFFERED
- Parent Ex. 31 IEP, 2/9/17

Parent Ex. 32	PWN, 2/14/17
Parent Ex. 33	Sign-in Sheet, 1/31/18
Parent Ex. 34	IEP, 1/31/18
Parent Ex. 35	PWN, 1/31/18
Parent Ex. 36	NOT OFFERED
Parent Ex. 37	Amended IEP, 5/15/18
Parent Ex. 38	Amendment/Modification to Current IEP without a meeting, 5/15/18
Parent Ex. 39	Email from Parent to [REDACTED], 10/29/19
Parent Ex. 40	NOT OFFERED
Parent Ex. 41	NOT OFFERED
Parent Ex. 42	NOT OFFERED
Parent Ex. 43	IEP, 1/14/20
Parent Ex. 44	IEP, 1/24/19
Parent Ex. 45	PWN, 1/30/20
Parent Ex. 46	Amendment/Modification to Current IEP Without a Meeting, 2/20/20
Parent Ex. 47	PWN, 3/11/20
Parent Ex. 48	Parental Refusal- Alternative Education, 3/11/20
Parent Ex. 49	Amended IEP, 3/11/20
Parent Ex. 50	Alternative Assessment Eligibility Tool, 3/11/20
Parent Ex. 51	PGCPS Placement Letter, 5/5/20
Parent Ex. 52	NOT OFFERED
Parent Ex. 53	OFFERED; NOT ADMITTED
Parent Ex. 54	NOT OFFERED
Parent Ex. 55	NOT OFFERED
Parent Ex. 56	[REDACTED], M.Ed. Resume
Parent Ex. 57	OFFERED; NOT ADMITTED
Parent Ex. 57A	[REDACTED], Ph.D. Resume
Parent Ex. 58	[REDACTED], Ph.D. Resume
Parent Ex. 59	NOT OFFERED
Parent Ex. 60	NOT OFFERED
Parent Ex. 61	NOT OFFERED
Parent Ex. 62	NOT OFFERED
Parent Ex. 63	NOT OFFERED
Parent Ex. 64	NOT OFFERED
Parent Ex. 65	NOT OFFERED
Parent Ex. 66	NOT OFFERED
Parent Ex. 67	NOT OFFERED
Parent Ex. 68	NOT OFFERED
Parent Ex. 69	OFFERED; NOT ADMITTED
Parent Ex. 70	OFFERED; NOT ADMITTED
Parent Ex. 71	OFFERED; NOT ADMITTED
Parent Ex. 72	NOT OFFERED
Parent Ex. 73	NOT OFFERED

I admitted the following exhibits offered by the PGCPs:²⁸

PGCPS Ex. 1	NOT OFFERED
PGCPS Ex. 2	NOT OFFERED
PGCPS Ex. 3	NOT OFFERED
PGCPS Ex. 4	NOT OFFERED
PGCPS Ex. 5	NOT OFFERED
PGCPS Ex. 6	Psychological Assessment, 3/19/15
PGCPS Ex. 7	NOT OFFERED
PGCPS Ex. 8	NOT OFFERED
PGCPS Ex. 9	NOT OFFERED
PGCPS Ex. 10	NOT OFFERED
PGCPS Ex. 11	NOT OFFERED
PGCPS Ex. 12	PWN and Sign-In Sheet, 10/18/17
PGCPS Ex. 13	Speech and Language Assessment, 11/20/17
PGCPS Ex. 14	NOT OFFERED
PGCPS Ex. 15	PWN, 12/13/17
PGCPS Ex. 16	NOT OFFERED
PGCPS Ex. 17	PWN and Sign-In Sheet, 1/31/18
PGCPS Ex. 18	NOT OFFERED
PGCPS Ex. 19	NOT OFFERED
PGCPS Ex. 20	NOT OFFERED
PGCPS Ex. 21	NOT OFFERED
PGCPS Ex. 22	NOT OFFERED
PGCPS Ex. 23	PWN and Sign-In Sheet, 9/19/19
PGCPS Ex. 24	Occupational Therapy Assessment, 10/14/19
PGCPS Ex. 25	Speech and Language Assessment, 10/25/19 (incomplete copy)
PGCPS Ex. 25A	Speech and Language Assessment, 10/25/19 (complete copy)
PGCPS Ex. 26	Psychological Assessment, 10/31/19
PGCPS Ex. 27	Educational Assessment, 10/31/19
PGCPS Ex. 28	IEP Progress Report, 11/19/19
PGCPS Ex. 29	PWN and Sign-In Sheet, 12/10/19
PGCPS Ex. 30	IEP Progress Report, 1/14/20
PGCPS Ex. 31	Email from the Parent to [REDACTED] and [REDACTED] 1/14/20
PGCPS Ex. 32	PWN, 1/14/20
PGCPS Ex. 33	IEP, 1/14/20
PGCPS Ex. 34	OFFERED; NOT ADMITTED
PGCPS Ex. 35	PWN and Sign-In Sheet, 1/30/20
PGCPS Ex. 36	Email from [REDACTED] to the Parent, 2/3/20
PGCPS Ex. 37	NOT OFFERED
PGCPS Ex. 38	PWN, 3/11/20
PGCPS Ex. 39	Parent Consent Form, 3/11/20
PGCPS Ex. 40	NOT OFFERED
PGCPS Ex. 41	NOT OFFERED
PGCPS Ex. 42	NOT OFFERED
PGCPS Ex. 43	NOT OFFERED

²⁸ The exhibits were pre-marked as “Board” exhibits.

PGCPS Ex. 44	Speech/Language Therapy Logs, 2/18/20-6/4/2020
PGCPS Ex. 45	Developmental Reading Report, undated
PGCPS Ex. 46	OFFERED; NOT ADMITTED
PGCPS Ex. 47	NOT OFFERED
PGCPS Ex. 48	MSDE Technical Assistance Bulletin 19-01, 11/2019
PGCPS Ex. 49	NOT OFFERED
PGCPS Ex. 50	NOT OFFERED
PGCPS Ex. 51	NOT OFFERED
PGCPS Ex. 52	Due Process Complaint, 3/24/20
PGCPS Ex. 53	Resumes:
	<ul style="list-style-type: none"> • [REDACTED] Pathologist (p. 1); • [REDACTED] Occupational Therapist (p.3); • [REDACTED], Ph.D.- [REDACTED]²⁹ Coordinator (p.4); • NOT OFFERED • NOT OFFERED • [REDACTED], Ph.D.- School Psychologist (p.8); • [REDACTED] - Special Education Instructional Specialist (p.13); • [REDACTED] - Special Education Chairperson/Resource Teacher/Intervention Specialist/Team Lead (p.18) • [REDACTED] - Central IEP Chairperson (p.21)
PGCPS Ex. 54	NOT OFFERED
PGCPS Ex. 55	NOT OFFERED
PGCPS Ex. 56	NOT OFFERED
PGCPS Ex. 57	NOT OFFERED
PGCPS Ex. 58	NOT OFFERED
PGCPS Ex. 59	[REDACTED] - ADHD videos (with accompanying thumb drive)
PGCPS Ex. 60	NOT OFFERED
PGCPS Ex. 61	NOT OFFERED
PGCPS Ex. 62	NOT OFFERED
PGCPS Ex. 63	NOT OFFERED
PGCPS Ex. 64	NOT OFFERED
PGCPS Ex. 65	NOT OFFERED

²⁹ [REDACTED]