

██████████,
STUDENT
v.
BALTIMORE COUNTY
PUBLIC SCHOOLS

BEFORE LORRAINE E. FRASER,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-BCNY-OT-22-24179

DECISION

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ORDER

STATEMENT OF THE CASE

On October 4, 2022, ██████████ and ██████████ (Parents), on behalf of their child, ██████████ ██████████ (Student), filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by Baltimore County Public Schools (BCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017);¹ 34 C.F.R. § 300.511(a) (2021);² Md. Code Ann., Educ. § 8-413(d)(1) (2022);³ Code of Maryland Regulations (COMAR) 13A.05.01.15C(1).

¹ “U.S.C.A.” is an abbreviation for the United States Code Annotated. Unless otherwise noted, all citations herein to the U.S.C.A. are to the 2017 bound volume.

² “C.F.R.” is an abbreviation for the Code of Federal Regulations. Unless otherwise noted, all citations herein to the C.F.R. are to the 2021 bound volume.

³ Unless otherwise noted, all citations herein to the Education Article are to the 2022 Replacement Volume of the Maryland Annotated Code.

I held a video prehearing conference on November 17, 2022. I held the hearing in person on January 9, 10, and 11, 2023 at OAH in Hunt Valley, Maryland. The Parents were represented by Holly Parker, Esquire. Pamela Foresman, Esquire, represented the BCPS.

Under the applicable law, the decision in this case normally would be due on December 16, 2022, which is the last business day that is not more than forty-five days after the November 3, 2022 expiration of the thirty-day resolution period. 34 C.F.R. § 300.515(a). When scheduling this matter, the parties agreed to November 17, 2022 as the date for mediation and the prehearing conference. November 17, 2022 was outside of the thirty-day resolution period; the prehearing conference was held immediately following the mediation. At the start of the pre-hearing conference, the parties advised me that no settlement was reached during the mediation session conducted that morning by a separate administrative law judge.

During the prehearing conference, the parties reviewed their calendars, noting the time needed to exchange documents, dates they were scheduled for other matters, and BCPS's winter break. Based on their schedule constraints, the parties jointly requested an extension of time to hold the hearing and issue the decision, agreeing that the first dates they were available for hearing were January 9, 10, 11, and 12, 2023. The regulations authorize me to grant a specific extension of time at the request of either party. *Id.* § 300.515(c). Based on the availability of the parties, counsel, and witnesses, I found good cause to extend the timeframe. The parties also jointly requested that my decision be issued by Monday February 13, 2023. However, the hearing concluded a day early, on January 11, 2023. At the end of the hearing, the parties jointly requested that my decision be issued in thirty days from January 11, 2023, i.e., by Friday February 10, 2023.

Procedure is governed by the contested case provisions of the Administrative Procedure Act; the Education Article; the Maryland State Department of Education (MSDE) procedural regulations; and the Rules of Procedure of the OAH. Educ. § 8-413(e)(1); Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 13A.05.01.15C; COMAR 28.02.01.

ISSUE

Did BCPS fail to offer the Student an appropriate Individualized Education Program (IEP), including related services and placement, for the 2022-2023 school year?

SUMMARY OF THE EVIDENCE

Exhibits⁴

I admitted the following exhibits on behalf of the Parents:

- Parents Ex. 8 Emails between the Parents and ██████████, 5/4/22-5/5/22
- Parents Ex. 9 Emails between the Parents and ██████████, 5/12/22-5/17/22
- Parents Ex. 10 Settlement agreement between the Parents and BCPS, 7/23/21
- Parents Ex. A Curriculum vitae for ██████████, Ph.D., ABN⁵

I admitted the following exhibits on behalf of BCPS:

- BCPS Ex. 1 Parent notification of IEP Team Meeting for 12/16/21, 12/6/21
- BCPS Ex. 2 Parent notification of IEP Team Meeting for 1/3/22, 12/6/21
- BCPS Ex. 3 Parental Rights Maryland Procedural Safeguards Notice, revised July 2021
- BCPS Ex. 4 ██████████ Middle School Report Card, 1st quarter, 11/8/21
- BCPS Ex. 5 Neuropsychological Re-Evaluation, ██████████, Ph.D., ABN, Licensed Psychologist, and ██████████, M.S., Psychology Associate, 6/9/20 & 6/17/20
- BCPS Ex. 6 Individualized Education Program Team Summary, 1/31/22

⁴ The exhibits were pre-marked by the parties. I retained the original numbering to reduce confusion. Only the exhibits listed here were admitted into evidence.

⁵ American Board of Professional Neuropsychology

- BCPS Ex. 7 Parent notification of IEP Team Meeting for 1/20/22, 12/6/21
- BCPS Ex. 8 Parent notification of IEP Team Meeting for 1/31/22, 12/6/21
- BCPS Ex. 9 Parent Permission for Assessment, 2/1/22
- BCPS Ex. 11 Educational Assessment 3/15/22, [REDACTED], [REDACTED] Middle School, BCPS, 3/21/22
- BCPS Ex. 12 Notice of Documents, 3/22/22
- BCPS Ex. 13 Individualized Education Program Team Summary, 3/29/22
- BCPS Ex. 14 Specific Learning Disability Team Report, 3/29/22
- BCPS Ex. 17 Student Interest Sheet, 5/2/22
- BCPS Ex. 19 Individualized Education Program Team Summary, 5/4/22
- BCPS Ex. 20 Individualized Education Program, 5/4/22
- BCPS Ex. 21 [REDACTED] School 9th Grade 1st Quarter Report Card, 11/9/22
- BCPS Ex. 22 Emails between the Parents and [REDACTED], copied to counsel for the Parents, 12/7/21-5/5/22; Individualized Education Program Team Summary, 5/4/22, mailed 5/12/22; Individualized Education Program, 5/4/22
- BCPS Ex. 23 [REDACTED] [REDACTED] [REDACTED] Handbook 2022-2023
- BCPS Ex. 24 [REDACTED] Support Plan, 8/2021 (8th grade); Learning Support Plan, 9/2022 (9th grade)
- BCPS Ex. 25 [REDACTED] Services, 5-12 Manual
- BCPS Ex. 26 Emails between the Parents and [REDACTED] School, 2/19/21-12/6/22
- BCPS Ex. 27A Resume for [REDACTED]
- BCPS Ex. 27B Resume for [REDACTED]
- BCPS Ex. 27C Resume for [REDACTED]

Testimony

The Parents both testified and presented the following witnesses:

- [REDACTED], Reading Teacher, [REDACTED] School

- [REDACTED], School Psychologist, [REDACTED] Middle School
- [REDACTED], Ph.D., ABN, accepted as an expert in psychology

The BCPS presented the following witnesses:

- [REDACTED], Reading Teacher, [REDACTED] Middle School, accepted as an expert in general education, special education, and reading instruction
- [REDACTED], School Psychologist, [REDACTED] Middle School, accepted as an expert in school psychology
- [REDACTED], IEP Facilitator and Special Education Chair, [REDACTED] Middle School, accepted as an expert in special education and school administration

FINDINGS OF FACT

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

1. The Student is fourteen years old and will turn fifteen in [REDACTED] 2023. The Student has a specific learning disorder with impairment in reading (dyslexia), a specific learning disorder with impairment in written expression (dysgraphia), and attention deficit hyperactivity disorder (ADHD).

2. The Student currently attends the ninth grade at [REDACTED], a private school, for the 2022-2023 school year. He attended eighth grade at [REDACTED] during the 2021-2022 school year. From third through seventh grade, the Student attended the [REDACTED], a private school for students with learning disabilities. From Kindergarten through second grade, he attended [REDACTED] Elementary School, a Baltimore County public school. The Student's home school for middle school would have been [REDACTED] Middle School; his home school for high school would be [REDACTED] High School.

3. On November 29, 2021 and December 6, 2021, ██████ called the Parents and left voice mail messages attempting to schedule an IEP meeting in order to conduct reevaluation planning. On December 6, 2021, Ms. ██████ also mailed a notice to the Parents scheduling an IEP meeting for December 16, 2021. On the evening of December 6, 2021, the Parents directed Ms. ██████ to contact their attorney Holly Parker in order to schedule the meeting.

4. On December 10, 2021, the Parents confirmed the rescheduled date of January 3, 2022 for the IEP meeting. Due to inclement weather, BCPS was closed January 3, 2022 and the meeting was rescheduled for January 31, 2022.

5. On January 31, 2022, an IEP meeting was held including the following: Ms. ██████, as the administrator; ██████, as the general educator; ██████, School Psychologist; ██████, Guidance; ██████, Special Educator; the Parents; and Ms. Parker.

6. During the meeting, the IEP team requested an educational assessment be conducted to determine the Student's "current academic strengths and needs in the areas of reading, writing, and mathematics."⁶ The IEP team also recommended a classroom observation to observe the Student's current classroom strengths, needs, and behaviors. Ms. Parker stated that ██████ was not allowing visitors or virtual observations. Staff at ██████ were to work with the Parents to arrange for staff at ██████ to provide a classroom observation. The team agreed ██████'s June 2020 Neuropsychological Re-Evaluation was current, the Student's scores were consistent with Dr. ██████'s prior evaluation, and a cognitive assessment was not needed. The team discussed Dr. ██████'s evaluation at length including test scores.⁷

⁶ BCPS Ex. 6.

⁷ See BCPS Ex. 5, Dr. ██████'s assessment, for all of the test scores.

7. The IEP team noted Dr. [REDACTED] found that the Student continued to meet the criteria for specific learning disorders with impairments in reading and written expression, and for ADHD. The team also noted Dr. [REDACTED] did not find that the Student met the criteria for an adjustment disorder with anxiety, although he had mild symptoms of anxiety. Dr. [REDACTED] recommended continued monitoring.

8. In his June 2020 evaluation, Dr. [REDACTED] made eleven recommendations.

1) The Student should continue consultation with his physician regarding his prescribed medication for ADHD.

2) The Student should remain at [REDACTED] through the seventh grade, with its modifications and interventions, and should focus on “greater academic autonomy, task initiation, organizational skills and study skills.”⁸

3) If the Student transitioned from [REDACTED] at the end of seventh grade, he should move directly into eighth grade.

4) Strategies to promote executive functioning and organizational skills, including: concrete descriptions and rehearsal of appropriate behaviors in specific situations; step-by-step explanations of the differences between new and old situations; rehearsal of alternate responses to specific situations; increased list making, and use of visual cues and graphic organizers; monitored assignments with poor performance reviewed and differences between expectations and performance emphasized; and liberal positive feedback that rewards effort and a desire to improve.

⁸ BCPS Ex. 5.

5) A three-tier approach to reading.⁹ Tier 1: Reading books the Student can easily decode to improve fluency. Tier 2: Reading instructional level texts provided at school. Tier 3: Listening to recorded material that the Student comprehends but may not be able to read to improve comprehension and higher-order language processing.

6) Contact Learning Ally for recorded books.

7) Assistive technologies to promote written expression, such as DRAFT:Builder, CO:Writer, Dragon Naturally Speaking, and EmPower.

8) Accommodations on the High School Placement Test or the Independent School Educational Evaluation, including: extended time (50%), testing in a low-distraction environment, allowing movement breaks during testing, using highlighters on test booklets, marking answers directly on test booklets, and using a calculator.

9) If the Student transitioned to a traditional academically rigorous high school for eighth grade, accommodations including: extended time on tests and quizzes (50%); testing in a low-distraction environment; breakdown of longer assignments and projects into smaller segments with frequent feedback; access to a laptop, iPad, or notebook for all written work; access to spell-check and grammar-check; access to audiobooks; foreign language exemption or substitution; checks to ensure comprehension of written instructions; and reliable home-school communication.

10) Participation in extra-curricular activities to develop appropriate peer relationships, confidence, and self-advocacy skills. Regular, consistent, vigorous exercise to enhance attention skills and anxiety management.

⁹ Dr. [REDACTED] mentions recreational reading may address comprehension and fluency in this recommendation but Tier 2 clearly references academic instructional level texts.

11) Neuropsychological re-evaluation within three years to assess cognitive, academic, and emotional development.

9. On February 15, 2022, the Parents emailed Ms. [REDACTED] and Ms. [REDACTED] that they did not give BCPS permission to contact [REDACTED] for a classroom observation. Instead, the Parents said they would forward the classroom observation form to [REDACTED] for staff there to complete. The Parents never provided a completed classroom observation form from [REDACTED] to BCPS.

10. On March 15, 2022, Ms. [REDACTED] assessed the Student's educational performance in reading, mathematics, and spelling and written language based on his chronological age of thirteen years [REDACTED] months. Ms. [REDACTED] observed the Student worked "extremely"¹⁰ hard on all of the subtests and concluded the evaluation was a valid indication of the Student's ability.

11. The Student scored in the high average range on the calculation and writing samples subtests, and the mathematics and math calculation skills clusters.

12. The Student scored in the average range on the applied problems, passage comprehension, word attack, math facts fluency, and sentence writing fluency subtests, and the reading, broad mathematics, written language, broad written language, and written expression clusters.

13. The Student scored in the low average range on the letter word identification and sentence reading fluency subtests, and the broad reading and basic reading skills clusters.

14. The Student scored in the low range in spelling.

15. Ms. [REDACTED] identified the Student's strengths. In math calculation and problem solving, the Student completed math calculations and word problems involving

¹⁰ BCPS Ex. 11.

fractions, decimals, and exponents, solved linear equations, and determined the slope and y intercept of lines. He had strong reading comprehension was able to complete complex passages with the missing word. In writing, he wrote complete sentences to fill in parts of a paragraph with relevant, appropriate vocabulary.

16. Ms. [REDACTED] identified the Student's needs. In spelling and word identification, he had difficulty applying sounds of some vowel blends and other spelling patterns such as silent letters. He also had difficulty blending parts of three and four syllable words together. He had difficulty applying patterns to spell words with more complex spelling patterns. He performed in the average range on fluency subtests but had relatively more difficulty completing the timed subtests as compared to non-timed subtests.

17. Ms. [REDACTED] recommended the Student receive:

- Research based intervention to address recognition of vowel blends and other spelling patterns, as well as blending word parts together
- Access to word prediction/other spelling aids when completing writing assignments
- Extended time on reading and writing assignment[s].¹¹

18. The Student's standard scores on the Woodcock Johnson IV Tests of Achievement Form A, administered by Dr. [REDACTED] in June 2020, and Form B, administered by Ms. [REDACTED] in March 2022, are as follows:

	June 2020	March 2022
<u>Subtest Scores</u>		
Letter Word Identification	95	85
Applied Problems	129	106
Spelling	84	78
Passage Comprehension	101	105
Calculation	119	118
Writing Samples	116	116
Word Attack	94	90
Oral Reading	92	none stated
Sentence Reading Fluency	83	82

¹¹ *Id.*

Math Facts Fluency	105	102
Sentence Writing Fluency	89	92
Cluster Scores ¹²		
Reading	98	93
Broad Reading	89	86
Basic Reading Skills	95	87
Reading Fluency	84	none stated
Mathematics	125	113
Broad Mathematics	119	110
Math Calculation Skills	112	111
Written Language	97	94
Broad Written Language	95	93
Written Expression	105	107
Academic Skills	98	none stated
Academic Fluency	90	none stated
Academic Applications	121	none stated
Brief Achievement	101	none stated
Broad Achievement	100	none stated

19. On March 29, 2022, an IEP team meeting was held including the following: Ms. [REDACTED], as the administrator; Ms. [REDACTED], as the general educator; Ms. [REDACTED], School Psychologist; Ms. [REDACTED], Special Educator; the Parents; and Ms. Parker.

20. During the IEP meeting, the IEP team discussed Ms. [REDACTED]'s educational assessment and recommendations. The team noted that a classroom observation had not yet been performed by [REDACTED]. The Parents stated [REDACTED] would conduct an observation that week and they would share it with the team. The team reviewed the Student's second quarter report card and his first and second quarter grades, which were all As and Bs. The team noted the Student's work habits met or exceeded expectations, except he needed improvement in completing and submitting work timely in Science. The Student's Academic Skills teacher commented that the Student needed to improve his use of his homework planner by crossing out completed work so that he knew what remained to be completed. That teacher noted the Student

¹² Composites of various subtest scores.

had a few missing assignments that he had to complete at the end of the semester and encouraged him to be more proactive checking with his teachers about late or missing work.

21. The IEP team concluded that the Student had specific learning disabilities that impacted his basic reading skills, reading fluency skills, and written expression/spelling. The team also concluded that the Student had ADHD that impacted his executive functioning. The team found the Student's primary disability was his specific learning disabilities. The team found the Student eligible for special education and related services.

22. On April 27, 2022, Ms. [REDACTED] emailed the Parents asking for their input regarding the Student's educational program and for them to identify the Student's strengths, interest areas, significant personal attributes and personal accomplishments. Ms. [REDACTED] also noted the need to begin transition planning for after high school and asked the Student to complete an interest survey.

23. On May 2, 2022, Ms. [REDACTED] interviewed the Student regarding his interests and preferences to be included in his IEP. The Student stated that he wanted to become an [REDACTED], attend a four-year college, and his favorite subject was math. He identified his strengths as math, being hardworking, punctual, and focused, and thinking critically. He said he needed to improve his initiation and planning of tasks, time management and organization, preciseness, taking time to complete assignments, handwriting, and spelling. He identified his interests as baseball, basketball, soccer, video games, robotics, and attending church groups.

24. On May 4, 2022, an IEP meeting was held including the following: Ms. [REDACTED], as the administrator; Ms. [REDACTED], as the general educator; Ms. [REDACTED], School Psychologist; Ms. [REDACTED], Guidance; Ms. [REDACTED], Special Educator; the Parents; and Ms. Parker.

25. The IEP team reviewed the Student's third quarter grades from [REDACTED], which were all Bs and an A in Science. His work habits met or exceeded expectations in all areas except completing and submitting work timely in Art. His math teacher noted that he struggled to show all his work and do so neatly.

26. The IEP team discussed the draft IEP. The Parents and Ms. [REDACTED] agreed to most of the IEP but disagreed with services and placement. Specifically, the Parents stated that no services should be delivered inside of the general education setting even with the provision of supplementary aids. In addition, the Parents disagreed with placement at a BCPS school.

27. The Parents expressed dissatisfaction with their perceived failure of BCPS to identify the Student with dyslexia and dysgraphia when he attended BCPS.¹³ The Student's father stated that the small group instruction that the Student received at [REDACTED] was the intervention he needed for his entire school day. He said the Student's plan at [REDACTED] was very sophisticated compared to the IEP. The Parents expressed concerns about the social-emotional impact on the Student if he were to enroll in a BCPS school and said BCPS was not considering his anxiety. The Parents expressed concerns about transferring the Student from [REDACTED], which they described as a prestigious school that prepares students to attend schools like [REDACTED], to a BCPS school where he would not receive the challenging, higher level instruction he is entitled to receive. The Parents stated that the Student wants to be an [REDACTED] and attend a four-year college, which requires higher level classes with other intelligent students. The Parents requested information about Advanced Placement classes and how the Student's IEP could be implemented if he were taking those classes. The Parents felt the high school should have been invited to the IEP meeting. Ms. [REDACTED] offered to contact the high school to discuss the Parents'

¹³ The Student attended BCPS Kindergarten through second grade.

concerns. The Parents rejected her offer and stated that the team wasted their time and that they intended to request a due process hearing.

28. The May 4, 2022 IEP identifies the Student's present level of academic achievement and functional performance in his areas of need based on Dr. [REDACTED]'s and Ms. [REDACTED]'s assessments and comments from the Student's eighth grade teachers on his report cards. Specifically in March 2022, the Student was performing at approximately the end of fourth grade level in the areas of phonics and basic reading. He was performing at approximately the mid fourth grade level in the areas of reading fluency and basic reading. He was performing at approximately the beginning fourth grade level in written language mechanics. He was performing below grade level in executive functioning, organization, and attention. The IEP also identifies the Student's strengths in math calculation and problem solving, reading comprehension, and writing complete sentences with appropriate vocabulary. The IEP notes the Student's interests in sports and robotics, participation in church groups, and his strong work ethic and positive attitude toward learning.

29. The IEP notes the Student requires assistive technology devices but does not require assistive technology services. Specifically, he requires text-to-speech software and word processing software.

30. For Mathematics, Science, and Government assessments, the IEP provides accommodations of text to speech, small group, and reduced distractions to self.

31. For all assignments, the IEP provides extra time for completion.

32. The IEP offers instructional supports, including use of organizational aids, access to word processing software, audiobooks, student repetition or paraphrasing of information (e.g., multi-step instructions), and use of highlighters in all academic and non-academic areas.

33. The IEP provides program modification in all academic and non-academic areas through breaking down assignments into smaller segments with frequent feedback from staff to ensure understanding of directions and the completions of individual steps.

34. The IEP offers social and behavior supports in all academic and non-academic areas. The Student is encouraged to ask for assistance when needed, and staff will monitor his use of his agenda to write assignments and due dates and his completion and submission of work. Staff will use lists, visual cues, and graphic organizers to assist the Student with planning and organizing. Staff will provide the Student with brief movement breaks. Staff will use concrete descriptions of appropriate behavior for specific situations and rehearse with the Student, proximity control, verbal and non-verbal prompts, frequent check ins, and frequent praise.

35. The IEP provides preferential seating in all academic and non-academic areas, including near the point of instruction, with reduced distractions, and easy access to staff.

36. The IEP notes the Student's expressed interest in a career as an [REDACTED] and that he will graduate with a high school diploma.

37. The IEP includes specific, measurable goals and objectives for reading phonics, reading fluency, reading skills, written language mechanics, written language, and self-management.

38. The reading phonics annual goal states: "Given a written list of 20 grade-level multisyllabic words with vowel digraphs and dip[h]thongs, [the Student] will accurately decode to read the words aloud with 90% accuracy in 4 out of 5 trials."¹⁴ The goal is to be measured by informal procedures and word lists. The goal's timeframe ends April 28, 2023. The goal has two objectives: 70% accuracy on 20 grade level multisyllabic words in 4 out of five trials by

¹⁴ BCPS Ex. 20 pp. 25-26.

November 2022; and 80% accuracy on 20 grade level multisyllabic words in 4 out of five trials by January 2023.

39. The reading fluency annual goal states: “Given 70 written simple sentences and a three-minute time limit, [the Student] will accurately identify whether statements are true or false (by circling true/yes or false/no) with at least 95% accuracy.”¹⁵ The goal is to be measured by informal procedures and true and false statements. The goal’s timeframe ends April 28, 2023. The goal has three objectives: 95% accuracy on 55 written simple sentences and a three-minute time limit by November 2022; 95% accuracy on 60 written simple sentences and a three-minute time limit by January 2023; and 95% accuracy on 66 written simple sentences and a three-minute time limit by March 2023.

40. The reading skills annual goal states: “When given a grade-level text, a prompt, and success criteria/rubric, [the Student] will identify (in writing) a claim from the text (1 point), 2 pieces of textual evidence (2 points), the reasons each piece of evidence supports the claim (2 points), and a conclusion statement or section that supports the claim (1 point), scoring 5 points out of 6 as measured by success criteria/rubric standards in 3 out of 3 targeted trials.”¹⁶ The goal is to be measured by informal procedures, targeted probes, and classroom assessments. The goal’s timeframe ends May 4, 2023. The goal has three objectives. By November 2022, the Student will be able to identify in writing two pieces of textual evidence and the reasons each piece of evidence supports the claim in three out of three trials using grade-level text. By January 2023, the Student will be able to identify two pieces of textual evidence, the reasons each piece of evidence supports the claim, and a conclusion statement or section that supports the claim in three out of three trials. By March 2023, the Student will be able to identify a claim

¹⁵ BCPS Ex. 20 pp. 27-28.

¹⁶ BCPS Ex. 20 pp. 29-30.

from the text, two pieces of textual evidence, the reasons each piece of evidence supports the claim, and a conclusion statement or section that supports the claim in two out of three trials.

41. The written language mechanics annual goal states: “Given an orally presented list of 20 grade-level multisyllabic words with irregular/non-phonetic spelling patterns, [the Student] will spell words with 80% accuracy in 4 out of 5 targeted trials.”¹⁷ The goal is to be measured by informal procedures and word lists. The goal’s timeframe ends April 29, 2023. The goal has two objectives. By November 2022, the Student will be able to spell 20 grade-level multisyllabic words with irregular/non-phonetic spelling patterns with 60% accuracy in four out of five trials. By January 2023, the Student will be able to spell 20 grade-level multisyllabic words with irregular/non-phonetic spelling patterns with 70% accuracy in four out of five trials.

42. The written language annual goal states: “Given a grade-level writing prompt and after writing an essay, [the Student] will use resources (e.g. dictionary, spell-check, word banks, etc.) to edit his writing for correct punctuation, capitalization, and spelling with no more than 2 errors on his final draft as measured by success criteria/rubrics in 3 out of 3 targeted trials.”¹⁸ The goal is to be measured by informal procedures, targeted probes, and classroom assessments. The goal’s timeframe ends May 4, 2023. The goal has three objectives. One, the Student will be able to use resources to edit his writing for correct punctuation with no more than two errors in two out of three trials. Two, the Student will be able to use resources to edit his writing for correct capitalization with no more than two errors in two out of three trials. Three, the Student will be able to use resources to edit his writing for correct spelling with no more than two errors in two out of three trials.

¹⁷ BCPS Ex. 20 pp. 31-32.

¹⁸ BCPS Ex. 20 pp. 33-34.

43. The self-management annual goal states: “When given a preferred organizer/agenda system, [the Student] will complete the organizer/agenda by writing assignments and their due dates and by indicating when assignments have been completed and submitted (e.g., checking, writing an x, crossing out, etc.) with 100% accuracy in 4 out of 4 targeted trials as measured by informal teacher observation records.”¹⁹ The goal’s timeframe ends April 29, 2023. The goal has three objectives. By November 2022, the Student will complete his organizer/agenda by writing assignments and their due dates with 100% accuracy in three out of four trials. By November 2022, the Student will complete his organizer/agenda by indicating when assignments have been completed and submitted with 100% accuracy in three out of four trials. By January 2023, the Student will complete his organizer/agenda by writing assignments and their due dates, and indicating when they are complete and submitted with 100% accuracy in three out of four trials.

44. The IEP offers fifty minutes of specialized instruction in phonics per day by a special educator outside of the general education setting using “an explicit, multi-sensory, systematic, and sequential approach to reading.”²⁰

45. The IEP offers fifty minutes of specialized instruction in reading skills and fluency per day by a special educator outside of the general education setting.

46. The IEP offers twenty minutes of specialized instruction in written language mechanics (spelling) per day by a special educator outside of the general education setting using an explicit, multi-sensory, systematic, and sequential approach to encoding.”²¹

¹⁹ BCPS Ex. 20 pp. 35-36.

²⁰ BCPS Ex. 20 p.37.

²¹ *Id.*

47. The IEP offers forty-five minutes of specialized instruction in written expression per day by a special educator outside of the general education setting.

48. The IEP offers ten forty-five minute sessions per month of specialized instruction to address executive functioning by a special educator outside of the general education setting.

49. During the classes taught by a special educator outside of the general education setting, the Student would be instructed in a class of approximately eight to ten students.

50. The IEP offers three forty-five minute sessions daily of specialized instruction to support reading, written language, and executive functioning throughout the general education curriculum. A special educator will provide the instruction with support from an instructional assistant outside of the general education setting.

51. In total, the IEP offers twenty-six hours and forty-three minutes per week of specialized academic instruction outside of the general education setting. The IEP also offers supports through supplementary aids and accommodations for five hours and forty-six minutes per week in general education for special areas and elective classes, such as physical education, art, and music.

52. The IEP describes the Student's placement outside general education for twenty-six hours and forty-three minutes per week and inside general education for five hours and forty-six minutes per week as the least restrictive environment for the Student. The IEP explains the Student is performing at approximately the fourth grade level in reading and writing, with deficits in phonics, spelling and executive functioning that impact him academically. The IEP explains further that the Student requires specialized instruction to access the general curriculum.

53. The IEP offers to provide the services to the Student in his home school.

54. The May 4, 2022 IEP is reasonably calculated to provide the Student with educational benefit.

55. On May 12, 2022, Ms. [REDACTED] again emailed the Parents asking for their input regarding the Student's educational program and for them to identify the Student's strengths, interest areas, significant personal attributes and personal accomplishments so that she could add their information to the Student's IEP. The Parents did not respond.

56. On May 12, 2022, Ms. [REDACTED] sent to the Parents the May 4, 2022 IEP Team Summary and approved IEP.

57. During eighth grade, [REDACTED] provided the Student with a Learning Support Plan. The one page document identified accommodations, student and family responsibilities, the Student's strengths and challenges, and "Considerations for the Classroom."²²

58. Under accommodations for tests and quizzes, the plan listed: 50% extended time, testing in a low-distraction environment, allow movement breaks during testing, allow use of highlighters on test booklet, mark answers directly on test booklet, and allow use of calculator.

59. Under accommodations for class, the plan listed: allow frequent, brief breaks to support attention and focus, use of calculator, use of computer and spell and grammar check, and preferential seating.

60. Under student responsibilities, the plan listed: use homework planner daily to record, plan, and track assignments; create checklists to use for editing, task completion, and response criteria; advocate for breaks as needed; read daily for pleasure and school; consider audio books to support comprehension and higher-order language processing; and take ownership of Learning Support Plan and self-advocate with teachers.

²² BCPS Ex. 24.

61. Under considerations for the classroom, the plan listed: consistent home school communication; clear explanation of task and situation demands and expectations; chunking information and assignments; frequent check-ins to ensure understanding and to provide specific feedback; monitor assignments and review poor performance by emphasizing differences between what is expected versus what is produced; liberal positive feedback that rewards effort and a desire to improve; encourage making lists, and using visual cues and graphic organizers; and permit use of audio books and dictation software.

62. During ninth grade, [REDACTED] provided the Student with a Learning Support Plan. The one page document identified accommodations, student responsibilities, the Student's strengths and challenges, and support provided "In the Classroom."²³

63. Under accommodations for tests and quizzes, the plan listed: "50% extended time," "breaks," "distraction free," "computer," and "calculator."²⁴

64. Under accommodations for class, the plan listed: "breaks," "computer," "calculator," and "preferential seating."²⁵

65. Under accommodations for standardized tests, the plan listed: "50% extended time," "distraction free," "computer," "calculator," and "mark in test booklet."²⁶

66. Under student responsibilities, the plan listed: provide frequent feedback to teachers, advisor, and learning services faculty to foster self-advocacy development; meet regularly with learning services faculty and use weekly goal setting sheet to structure appointments; use organizational and planning strategies; self-advocate and meet with teachers,

²³ BCPS Ex. 24.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

advisors, and learning services faculty as needed; review and discuss procedures to establish clear expectations with educational team and family.

67. Under the classroom, the plan listed: when possible, chunk information into smaller pieces; when possible, utilize checklists and guided notes in along with classroom content and information; when possible, provide positive feedback on content; if possible, check in with the Student during class to confirm content retention and ensure understanding; meet with teacher individually, regularly to check progress; and encourage the Student to work with faculty in the Math and Writing Center for additional support.

68. In grades nine through twelve, [REDACTED] explicitly does not offer students with Learning Support Plans the following: a reader; a scribe; reduced workload; curricular modifications; no penalty for spelling errors; multisensory manipulatives and learning tasks; advanced access to course material; extended time for classwork; or opportunities for frequent repetition, preview, or a review of course content.²⁷

69. During the ninth grade at [REDACTED], the Student is receiving accommodations that support his attention deficit needs; however, he is not receiving any specially designed instruction to address his learning disorders in reading and writing.

DISCUSSION

Legal Framework

The identification, assessment and placement of students in special education are governed by IDEA. 20 U.S.C.A. §§ 1400-1482; 34 C.F.R. pt. 300; Md. Code Ann., Educ. §§ 8-401 through 8-417; and COMAR 13A.05.01. IDEA provides that all children with disabilities have the right to a free, appropriate public education (FAPE). 20 U.S.C.A. § 1412(a)(1)(A).

²⁷ See BCPS Ex. 23, p. 11.

The requirement to provide FAPE is satisfied by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. *Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982). In *Rowley*, the Supreme Court defined FAPE as follows:

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

Rowley, 458 U.S. at 200-201 (footnote omitted). In *Rowley*, the Supreme Court set out a two-part inquiry to determine if a local education agency satisfied its obligation to provide FAPE to a student with disabilities. First, a determination must be made as to 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 206-207. *See also A.B. ex rel. D.B. v. Lawson*, 354 F.3d 315, 319 (4th Cir. 2004).

An individualized education program is defined as follows:

(A) Individualized education program

(i) In general

The term “individualized education program” or “IEP” means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes--

(I) a statement of the child's present levels of academic achievement and functional performance, including--

(aa) how the child's disability affects the child's involvement and progress in the general education curriculum;

(bb) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and

(cc) for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(II) a statement of measurable annual goals, including academic and functional goals, designed to--

(aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(bb) meet each of the child's other educational needs that result from the child's disability;

(III) a description of how the child's progress toward meeting the annual goals described in subclause (II) will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

(IV) a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child--

(aa) to advance appropriately toward attaining the annual goals;

(bb) to be involved in and make progress in the general education curriculum in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and

(cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this subparagraph;

(V) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in subclause (IV)(cc);

(VI)(aa) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 1412(a)(16)(A) of this title; and

(bb) if the IEP Team determines that the child shall take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why--

(AA) the child cannot participate in the regular assessment; and

(BB) the particular alternate assessment selected is appropriate for the child;

(VII) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services and modifications; and

(VIII) beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter--

(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;

(bb) the transition services (including courses of study) needed to assist the child in reaching those goals; and

(cc) beginning not later than 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under this chapter, if any, that will transfer to the child on reaching the age of majority under section 1415(m) of this title.

20 U.S.C.A. § 1414(d)(1)(A).

Providing a student with access to specialized instruction and related services does not mean that a student is entitled to “the best education, public or non-public, that money can buy” or “all the services necessary” to maximize educational benefits. *Hessler v. State Bd. of Educ.*, 700 F.2d 134, 139 (4th Cir. 1983), citing *Rowley*, 458 U.S. at 176. Instead, FAPE entitles a student to an IEP that is reasonably calculated to enable that student to receive some educational benefit. The United States Court of Appeals for the Fourth Circuit declined to interpret IDEA to require “meaningful” benefit, rather than “some” benefit, reiterating that “a school provides a FAPE so long as a child receives some educational benefit, meaning a benefit that is more than minimal or trivial, from special instruction and services.” *O.S. v. Fairfax Cnty. Sch. Bd.*, 804 F.3d 354, 360 (4th Cir. 2015).

Determining whether a student has received educational benefit is not solely dependent on a finding that a student has advanced from grade to grade, or received passing marks, since it is quite possible that a student can advance in grade from year to year, yet not gain educational benefit. *See In Re Conklin*, 946 F.2d 306, 316 (4th Cir. 1991) (finding that a student’s passing grades and advancement does not resolve the inquiry as to whether FAPE has been afforded to the student). Similarly, a finding that a student is not progressing at the same speed as his or her

peers does not shed light on whether a student has failed to gain educational benefit. As discussed in *Rowley*, educational benefits that can be obtained by one student may differ dramatically from those obtained by another student, depending on the needs that are present in each student. *Rowley*, 458 U.S. at 202.

In addition to IDEA’s requirement that a child with a disability receive some educational benefit, the child must be placed in the “least restrictive environment” to the maximum extent appropriate, meaning that, ordinarily, disabled and non-disabled students should be educated in the same classroom. 20 U.S.C.A. § 1412(a)(5); 34 C.F.R. §§ 300.114(a)(2)(i). Indeed, instructing children with disabilities with non-disabled peers is generally preferred, if the student with disabilities can achieve educational benefit in the general education program. *DeVries v. Fairfax Cnty. Sch. Bd.*, 882 F.2d 876 (4th Cir. 1989). Placing children with disabilities into regular school programs may not be appropriate for every disabled child and removal of a child from a regular educational environment may be necessary when the nature or severity of a child’s disability is such that education in a regular classroom cannot be achieved. Nonetheless, the issue is not whether another placement is better for the student but whether the school district has offered FAPE.

In *Andrew F. v. Douglas Cnty. Sch. Dist.*, 137 S. Ct. 988 (2017), the Court upheld the standard it established in *Rowley*, specifically that “a child has received a FAPE, if the child’s IEP sets out an educational program that is ‘reasonably calculated to enable the child to receive educational benefits.’” 137 S. Ct. at 995-996 (quoting *Rowley*, 458 U.S. at 207). The Court explained, “For children receiving instruction in the regular classroom, this would generally require an IEP ‘reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.’” *Id.* at 996 (quoting *Rowley*, 458 U.S. at 204). The Court noted that the

student in *Rowley* was making excellent progress in the regular education classroom with the wireless transmitter and hearing aid provided by the school and declined to order a sign-language interpreter. *Id.* at 994-995. The Court found IDEA “guarantees a substantively adequate program of education to all eligible children.” *Id.* at 995.

The Court in *Andrew F.* explicitly rejected the Tenth Circuit’s diluted interpretation of *Rowley* that had found “a child’s IEP is adequate as long as it is calculated to confer an ‘educational benefit [that is] merely . . . more than de minimis.’” 137 S. Ct. at 991 (quoting the 10th Circuit in *Andrew F.*, 798 F.3d 1329, 1338). The Court held, “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.” 137 S. Ct. at 999. The Court declined to define what appropriate progress would be in a given case, noting that courts should not “substitute their own notions of sound educational policy for those of the school authorities which they review.” *Id.* at 1001 (quoting *Rowley* 458 U.S. at 206). The Court did not rule on the appropriateness of the IEP in *Andrew F.*, but remanded the case for further proceedings. *Id.* at 1002.

Burden of Proof

The standard of proof in this case is a preponderance of the evidence. Md. Code Ann., State Gov’t § 10-217 (2021); COMAR 28.02.01.21K(1). 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 Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002). The burden of proof in an administrative hearing under IDEA rests on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005). The Parents in this case are seeking relief and bear the burden of proof to show that the May 4, 2022 IEP offered by BCPS

failed to provide the Student a free, appropriate public education. For the reasons discussed below, I find in favor of BCPS.

Arguments of the Parties

The Parents argued that pursuant to a settlement agreement regarding the 2021-2022 school year, BCPS was to develop an IEP for the Student for the ninth grade (2022-2023) by March 2022 but that it was not developed until May 2022. The Parents asserted that the May 4, 2022 IEP was never finalized. They complained that the documents identified the Student as in the sixth grade and that a staff member from the high school did not attend the IEP meetings. They claimed that they did not receive any information regarding a high school IEP or coursework. They alleged that BCPS did not consider the Student's moderate to severe dyslexia, dysgraphia, and ADHD. They asserted that BCPS planned to place the Student in general education with pull-out services but did not give them data on inclusion classes. They maintained that the Student was not successful in general education in the second grade in BCPS but was successful at [REDACTED] and [REDACTED]. They argued that there is no data to show the IEP is appropriate. They maintained that they were concerned about the Student's anxiety about being successful in public school. They claimed that they have seen other children in public school and the effects it had on them. They alleged that Dr. [REDACTED] said that the Student needed a small class size and recommended placement at [REDACTED].

The Parents asserted that the class size at [REDACTED] is appropriate for the Student and that he cannot be educated in a large general education classroom or a large comprehensive school. They argued that the Student would not benefit from the proposed IEP and that it is not reasonably calculated to enable the Student to receive educational benefit. They claimed that there was no baseline data on which to base the IEP goals. They asserted that there was no data

to show the outcomes of the offered IEP. They maintained that the IEP should have identified the interventions to be used by name. They argued the Student needs a small, self-contained program like the one he attends at [REDACTED] and that he receives tutoring from [REDACTED]. They contended that the Student is successful at [REDACTED]. They asserted that the Student wants to be an [REDACTED] and the program must address his unique needs to allow him to reach his potential and be successful.

BCPS argued that it is the Parents' burden to prove that the IEP does not confer educational benefit. BCPS noted that the Student attends general education classes with non-disabled students at [REDACTED], a comprehensive high school. BCPS asserted that the Student struggles at [REDACTED] and the work is overwhelming for him. BCPS maintained that the Student must be trained to read and develop fluency. BCPS claimed that if the Student continues to read slowly, it will take him longer to complete his work and he will fall behind. BCPS contended that the Student had serious drops in his performance between the testing conducted in 2020 and in 2022. BCPS explained that if his scores had stayed the same that would show he was making progress the same as his same age peers. However, the majority of the Student's scores decreased, showing that he was not maintaining the skills he had developed at [REDACTED]. BCPS asserted that the Student's ninth grade Learning Supports Plan at [REDACTED] provided even less support than his eighth grade plan at [REDACTED] did. BCPS identified the Student's needs in reading (phonics and fluency) and writing (mechanics and spelling) and noted that the Parents identified the same needs. BCPS maintained that the IEP goals and objectives were based on data and identified the Student's baseline, and that his present levels identified him as in eighth grade. BCPS contended that the goals were appropriate for an eighth grade student transitioning to ninth grade. BCPS asserted that the IEP provided accommodations and supports,

supplementary aids, and program modifications designed to address the Student's reading, writing, and executive function needs.

BCPS noted that Dr. [REDACTED] did not address the appropriateness of the IEP; rather, he said that his recommendations in his evaluation were appropriate. BCPS argued that Dr. [REDACTED]'s recommendations were included in the IEP. BCPS noted that the IEP addresses the Student's dyslexia, dysgraphia, and ADHD; however, the [REDACTED] Learning Support Plan only addresses his executive functioning needs related to his ADHD. BCPS maintains that the IEP describes the Student's present levels of performance, includes measurable and attainable goals, and is reasonably calculated to allow the Student to make appropriate educational progress. Further, the IEP offers the Student educational benefit that is more than minimal. BCPS noted that a free, appropriate public education does not promise the best possible education or to maximize a child's potential.

BCPS maintained that the Parents are not entitled to compensation for private school tuition when FAPE is offered. BCPS argued that the Student had no difficulty transitioning from [REDACTED] to [REDACTED], no difficulty participating in testing at [REDACTED], and Dr. [REDACTED] did not find the Student had difficulty with transitions. Moreover, the IEP included social, emotional, and behavioral supports. BCPS explained that the development of an IEP is prospective based on a current snapshot in time. BCPS maintained that the notation in the Student's identifying information that he was in sixth grade was a computer system error that would correct when he enrolled in public school and did not impede the development of the IEP or the provision of FAPE. BCPS asserted that the IEP identified the Student's present levels of performance as eighth grade and that the goals were appropriate for a ninth grade student. BCPS contends the Parents asked about advanced placement courses, which are only available in high school, and

discussed the Student's interests. BCPS offered to schedule an IEP meeting with high school staff but the Parents were not interested.

BCPS argued that private school tuition is awarded if the public school failed to provide FAPE and the current private school is appropriate; however, the Parents have failed to show either. BCPS noted that no one from ██████ testified regarding the appropriateness of the Student's placement there. BCPS noted further that Dr. ██████ stated that he had never been to ██████. BCPS maintained that ██████ does not have special educators, the Student only receives executive functioning supports, the learning center is optional, and the Student is not getting the specialized instruction that he needs. BCPS asserted that under the IEP the Student cannot skip supports and the IEP prepares him for further education and employment.

Analysis

To begin, compliance with the terms of a settlement agreement is not properly litigated in the context of an administrative hearing under IDEA. Further, what BCPS did or failed to do when the Student attended BCPS in second grade is irrelevant to the issue to be decided in this case. The parties have resolved those claims and the Student has been attending private school since third grade. The only issue before me is whether the May 4, 2022 offers the Student FAPE.

The Parents' assertion that the May 4, 2022 IEP does not offer FAPE is simply not supported by the evidence. As detailed in the findings of fact above, the IEP team relied on Dr. ██████'s evaluation (provided by the Parents), Ms. ██████'s assessment, and the Student's report cards from ██████ to determine the Student's present levels of performance and areas of need when developing the IEP. The testing conducted by Dr. ██████ and Ms. ██████ was in agreement as to the Student's areas of strength and weakness. The IEP team agreed with Dr.

██████'s conclusion that the Student met the criteria for specific learning disorders with impairments in reading and written expression, and for ADHD. The IEP accepted Dr. ██████'s conclusion that the Student did not meet the criteria for an adjustment disorder with anxiety, although he had mild symptoms of anxiety. BCPS staff on the IEP team wanted to conduct a classroom observation but the Parents stated that ██████ was not allowing outside visitors. The IEP team agreed to have ██████ staff conduct the evaluation. However, the Parents prohibited BCPS staff from contacting ██████ and never provided an observation from ██████ to the IEP team. The team considered comments on the Student's report cards from his eighth grade teachers at ██████.

Notably, the majority of the Student's scores on the Woodcock Johnson IV dropped from Dr. ██████'s testing in 2020 (when the Student was attending ██████) and Ms. ██████'s testing in 2022 (when the Student was attending ██████). Specifically, seven of the Student's subtest scores dropped, two increased, and one remained the same. The largest drops in subtest scores occurred in letter word identification (95 to 85), applied problems (129 to 106), and spelling (84 to 78). Ms. ██████ testified that if the Student's needs were being supported, his scores should have stayed the same or increased. The drop in the Student's scores shows his skills were not keeping pace with his same aged peers.

The May 4, 2022 IEP identified the Student's present level of academic achievement and functional performance. In March 2022, the Student was performing at approximately the end of fourth grade level in the areas of phonics and basic reading; the mid fourth grade level in the areas of reading fluency and basic reading; the beginning fourth grade level in written language mechanics; and below grade level in executive functioning, organization, and attention. The IEP identified the Student's strengths in math calculation and problem solving, reading

comprehension, and writing complete sentences with appropriate vocabulary – areas where the Student was performing at or above his age and grade level. The IEP noted the Student’s interests in sports and robotics, and participation in church groups, and his strong work ethic and positive attitude toward learning.

The IEP goals and objectives detailed in the findings of fact above were designed to address the Student’s areas of need in reading, writing, and executive function while instructing the Student on eighth and ninth grade level material. The IEP includes goals and objectives for reading phonics, reading fluency, reading skills, written language mechanics, written language, and self-management. The goals and objectives are specific and measurable.

The IEP provides program modification in all academic and non-academic areas by breaking down assignments into smaller segments with frequent feedback from staff to ensure the Student understands directions and completes individual steps. The IEP provides extra time for the Student to complete all assignments.

The IEP offers instructional supports to the Student, including organizational aids, access to word processing software and text-to-speech software, audiobooks, having the Student repeat or paraphrase information (e.g., multi-step instructions), and use of highlighters in all academic and non-academic areas.

The IEP provides preferential seating to the Student in all academic and non-academic areas, including near the point of instruction, reduced distractions, and easy access to staff.

The IEP offers social and behavioral supports to the Student in all academic and non-academic areas. The Student is encouraged to ask for assistance when needed. Staff will monitor his use of his agenda to record his assignments and timely submission of work. Staff will use lists, visual cues, and graphic organizers to assist the Student with planning and

organizing. Staff will provide the Student with brief movement breaks. Staff will describe and rehearse appropriate behavior with the Student for specific situations, and provide proximity control, verbal and non-verbal prompts, frequent check ins, and frequent praise.

The IEP offers twenty-six hours and forty-three minutes per week of specialized academic instruction outside of the general education setting as well as supplementary aids and accommodations. The IEP also offers supports through supplementary aids and accommodations for an additional five hours and forty-six minutes per week in general education for special areas and elective classes, such as physical education, art, and music. Ms. [REDACTED] testified that during the classes taught by a special educator outside of the general education setting, the Student would be instructed in a class of approximately eight to ten students. Ms. [REDACTED] explained that if the number of students were above ten students, additional staff would be added to keep a low teacher student ratio. The IEP offers to provide the services to the Student in his home school.

Ms. [REDACTED], Ms. [REDACTED], and Ms. [REDACTED] each testified regarding their participation in the development of the IEP, the discussions that occurred during the development of the IEP, and the appropriateness of the IEP that was developed based on the available data. The data relied upon included Dr. [REDACTED]'s evaluation, Ms. [REDACTED]'s assessment, and the Student's report cards from [REDACTED]. The team also considered statements made by the Parents.

Ms. [REDACTED] is an expert in general education, special education, and reading instruction. She reviewed Ms. [REDACTED]'s testing and noted the drop in the Student's scores when compared to Dr. [REDACTED]'s testing. She described the various research-based reading interventions a special educator may use and explained the IEP does not specify one particular intervention because different interventions may be used depending on a student's needs and performance. She stated that the IEP's goals, supports, services, and placement were appropriate to meet the Student's

needs in the least restrictive environment. She testified that the IEP was valid for the Student, who was in eighth grade at the time, remained valid for ninth grade in high school, and that a different IEP is not developed for high school.²⁸ She explained that if the IEP no longer met the Student's needs once he got to high school, it could be reviewed and changed at that time. Ms. [REDACTED] also reviewed the [REDACTED] Learning Support Plan and noted that the IEP provided the items identified on the Learning Support Plan. She noted that some of the supports on the Learning Support Plan stated that they were to be provided if possible, however, the IEP required that those supports be provided at all times. More importantly, Ms. [REDACTED] noted that the Learning Support Plan did not provide any research-based interventions for the Student's dyslexia or dysgraphia. She stated that the [REDACTED] plan did not provide supports for the Student's reading fluency, and the programming did not appear to be sufficient to ensure the Student's academic success.

Ms. [REDACTED] is an expert in school psychology. She noted that Dr. [REDACTED] explicitly found that the Student did not meet the criteria for an adjustment disorder with anxiety. She testified that the Student did not have an emotional disability. She explained that if the IEP team had significant concerns that the Student had anxiety which was impacting his ability to learn, the team could address the Student's needs in the IEP. She distinguished nervousness from anxiety and explained that some level of nervousness is expected but different from an anxiety disorder that significantly impacts a student's day to day functioning. She stated that the Student did not have a significant impact from anxiety. She noted that Dr. [REDACTED] did not recommend that the Student receive small group instruction throughout the entire school day and that Dr. [REDACTED] said the Student seemed to have adequate skills to move into eighth grade.²⁹ She

²⁸ IEPs are reviewed and developed on an annual basis.

²⁹ The Student was at the end of sixth grade at the time of Dr. [REDACTED]'s evaluation.

discussed Ms. [REDACTED]'s testing, the decrease in the Student's scores from Dr. [REDACTED]'s testing, and Ms. [REDACTED]'s specific observation that the Student did not display any interfering behaviors or anxiety during testing. She stated that the IEP team reviewed all of Dr. [REDACTED]'s testing and recommendations, Ms. [REDACTED]'s assessment, informal teacher reports, and report cards when determining the Student's present levels of performance on the IEP and developing the goals and objectives. She explained that BCPS does not report age or grade equivalents on their testing results because those equivalents are not statistically reliable and are misleading. She said that BCPS relies on the standard scores and percentages from testing because those are reliable and interpretable.

Ms. [REDACTED] acknowledged that the identifying information on the first page of the IEP said the Student was in sixth grade and that it should have said eighth grade. She explained that the sixth grade notation was a clerical error in their computer system that occurred because the Student was not currently enrolled in BCPS and that this was explained to the Parents. She stated that the IEP team was clearly discussing implementation of the IEP in eighth and ninth grades and that no one was suggesting the Student be returned to sixth grade.

Ms. [REDACTED] testified that that during the May 4, 2022 IEP meeting the Parents and their attorney agreed with the goals, objectives, and supplementary aids and supports. Further, the Parents and their attorney agreed with services being provided outside general education. Rather, the Parents and their attorney disagreed with any services being provided inside general education and disagreed with placement at a public school. She said the Parents expressed concerns about the impact on the Student if he were to attend a public school and claimed he would have anxiety. She said the school staff explained that there was no data to show the Student had anxiety or difficulty with transitions, or that he was unable to participate with non-

disabled peers for any portion of his school day. She stated that if the Student did display anxiety that the IEP team could meet and add additional supports to his IEP to address his anxiety. She testified that the May 4, 2022 IEP was appropriate to meet the Student's needs, was based on data, and provided realistic and attainable time-bound goals and objectives to meet those goals. She said the IEP provided significant specialized instruction and the IEP's services would address the Student's needs inside and outside general education in the least restrictive environment.

Ms. [REDACTED] is an expert in special education and school administration. Ms. [REDACTED] served as the IEP team chair, facilitated the IEP development process, and took notes during the IEP team meetings. She testified that the Student was identified as having specific learning disabilities (dyslexia and dysgraphia) and ADHD. She said that the IEP team reviewed Dr. [REDACTED]'s evaluation and recommendations and accepted them. She stated that the IEP team wanted to conduct a classroom observation but that Ms. Parker said that [REDACTED] was not allowing visitors. The IEP team agreed that [REDACTED] staff would conduct an observation and provide the information to the team. After the meeting, the Parents emailed Ms. [REDACTED] saying that they did not give BCPS permission to contact [REDACTED]. Ms. [REDACTED] stated that the Parents never provided a classroom observation from [REDACTED] to the IEP team. She noted that Ms. [REDACTED]'s testing was based on the Student's chronological age, which was thirteen years and [REDACTED] months at the time of testing. She explained that the IEP team used Ms. [REDACTED]'s educational assessment, Dr. [REDACTED]'s evaluation, and teacher comments from the Student's eighth grade report cards to identify the Student's present levels of performance on the IEP. She explained further that the present levels of performance formed the baseline data for developing the goals and objectives. She stated that IEPs do not identify specific reading interventions by name because then only

that intervention can be used or the IEP has to be changed. She said the IEP specifies the use of explicit, multi-sensory, systematic, sequential interventions. She noted that Dr. [REDACTED] recommended that the Student be granted an exemption from taking a foreign language. She testified that BCPS has offered evidence based, research-based interventions to address the Student's dyslexia and dysgraphia.

Ms. [REDACTED] explained that the identifying information on the IEP stated that the Student was in the sixth grade because BCPS's IEP computer system relies on another computer system called Focus and that information in Focus automatically transfers to IEPs. She stated that staff cannot manually change that identifying information. However, once a student enrolls in BCPS, all of the information in both systems would be updated. She said that the computer problem was explained to the Parents during the IEP meetings. She stated that the IEP team members knew they were developing an IEP for the eighth and ninth grades. She explained that the Student could have enrolled in BCPS immediately and the IEP would have been implemented. She stated that the goals on the IEP were appropriate for a ninth grade student and the Student would not get a different IEP solely because he entered high school. She added that the Student's IEP could be revised at any point if necessary.

Ms. [REDACTED] reviewed the Student's Learning Support Plans for eighth and ninth grades at [REDACTED]. She noted that they did not contain any research-based interventions. She noted further that the plans did not contain any mental health accommodations or services, other than the mention in the eighth grade plan of monitoring the Student for anxiety. She said she asked the Parents for their input in advance of the May 4, 2022 IEP meeting regarding the Student's educational program and for them to identify the Student's strengths, interest areas, significant personal attributes and personal accomplishments. On May 2, 2022, the Student was interviewed

regarding his interests and preferences. He stated that he wanted to become an [REDACTED], attend a four-year college, and his favorite subject was math. He identified his strengths as math, being hardworking, punctual, and focused, and thinking critically. He said he needed to improve his initiation and planning of tasks, time management and organization, preciseness, taking time to complete assignments, handwriting, and spelling. During the May 4, 2022 IEP meeting the Parents stated that the Student wants to be an [REDACTED] and attend a four-year college, which they said requires the Student to attend higher level classes with other intelligent students. She said the Parents did not otherwise provide input for inclusion in the IEP. Ms. [REDACTED] reiterated that that there was no data showing the Student had anxiety. When the Parents asked why someone from the high school was not present at the IEP meeting, Ms. [REDACTED] offered to contact the high school and schedule a meeting. The Parents rejected her offer. Ms. [REDACTED] explained that the Student was in eighth grade at the time the IEP was being developed so it was developed at his present grade.

Dr. [REDACTED] is an expert in psychology. He conducted a neuropsychological evaluation of the Student in June 2020 and in 2017. Dr. [REDACTED] testified regarding his evaluation and diagnoses of the Student as having a specific learning disorder with impairment in reading, a specific learning disorder with impairment in written expression, and ADHD. He reviewed his evaluation and Ms. [REDACTED]'s testing. He explained that he did not conduct the testing himself, rather his assistant did. He described [REDACTED] as a small, highly structured environment with a number of evidence-based interventions that was appropriate for the Student in seventh grade. He said [REDACTED] provided individual attention with class sizes of four to eight students. He said the Parents wanted to consider transitioning the Student for eighth grade to a comprehensive school such as [REDACTED] or [REDACTED]³⁰ that offer learning plans, academic coaching, and reading tutoring. He described those schools as less restrictive than [REDACTED] but more restrictive

³⁰ Both are private schools.

than a comprehensive public school. He said class sizes are too big in public middle schools. He referenced the third recommendation in his evaluation,³¹ stating that he felt the Student was ready for eighth grade and noting that sometimes private schools want students to repeat a grade. He said the five and three-fourths hours a week the Student would spend inside general education as stated on the IEP was inappropriate based on the Student's need for supports. He stated that the Student needs a small class size throughout his day, cuing, rubrics for assignments, and access to materials. He said the class size at [REDACTED] was ten to twelve students. He stated that he was not involved in the development of the May 4, 2022 IEP, had not observed the Student at [REDACTED] or [REDACTED], and had never been to [REDACTED] to observe any student. He testified that the Student did not have any clinically significant behavioral concerns. He said he did not explicitly list small class size in his recommendations because the only schools he and the Parents discussed were private schools with small class sizes. He acknowledged that [REDACTED] Upper School³² did not offer curricular modifications, reduced workload, no penalty for spelling errors, or extended time for classwork. He acknowledged further that the Learning Support Plan did not have supports for learning disabilities and was more for executive functioning difficulties. He admitted that the Learning Support Plan did not offer research-based interventions for dyslexia or dysgraphia.

I found the testimony of Ms. [REDACTED], Ms. [REDACTED] and Ms. [REDACTED] more helpful and credible than Dr. [REDACTED]'s testimony regarding the Student's needs and the May 4, 2022 IEP. I found Dr. [REDACTED]'s testimony inconsistent and I cannot reconcile his statements. On the one hand, Dr. [REDACTED] discussed the severity of the Student's learning disabilities and his need for evidence-based interventions. Yet he acknowledged that the Student is not receiving any

³¹ "If [the Student] is to transition from [REDACTED] following the end of the seventh grade, he seems to have acquired adequate skills to move directly into the eighth grade." BCPS Ex. 5, p. 15.

³² Ninth through twelfth grades.

evidence-based interventions at [REDACTED]. Dr. [REDACTED] stated that the Student could not be in general education classroom at all in a public school, which means the Student cannot be educated with non-disabled peers and that he must be educated only with other students with disabilities at all times. Dr. [REDACTED] did not explain why the Student could not participate in non-academic classes such as physical education, art, and music with non-disabled peers in a public school. Moreover, he did not explain how the Student is able to be educated with non-disabled peers during his entire school day at [REDACTED]. The only distinction Dr. [REDACTED] seemed to draw is class size. Small class size does not equal specialized instruction. Small class size can enable a teacher to provide more attention to each student. However, the Student needs more than that. The Student needs evidence-based interventions and curriculum modifications that address his dyslexia and dysgraphia and allow him to access the substantive material. The Student needs instruction that is tailored to his learning differences not just fewer people in a room. Dr. [REDACTED] admitted that he has never been to [REDACTED] and seemed unaware that [REDACTED] was not providing specialized instruction to address the Student's dyslexia and dysgraphia. For all these reasons, I found Dr. [REDACTED]'s testimony unconvincing.

The credible evidence in this case shows the May 4, 2022 IEP was properly developed to address the Student's dyslexia, dysgraphia, and ADHD and his resulting need for specialized instruction and supports to access grade level material. The IEP sets forth specific, measurable, and attainable goals and objectives to measure the Student's progress. The IEP provides the Student with specialized instruction in the least restrictive environment and allows him to be educated with non-disabled peers in classes where he does not need specialized instruction. The IEP is reasonably calculated to provide the Student with educational benefit.

The May 4, 2022 IEP was complete at the end of the IEP meeting that day; however, Ms. [REDACTED] gave the Parents an opportunity to offer additional input after the meeting. The Parents did not do so; thus, the May 4, 2022 IEP is the final IEP. BCPS rationally explained why the IEP's identifying information section inaccurately said the Student was in the sixth grade and that it did not impact the development of an appropriate IEP for the Student for the eighth and ninth grades. BCPS offered to include a representative from the high school in an IEP meeting but the Parents declined. BCPS explained that a separate IEP is not developed for high school and that the IEP could be modified if changes needed to be made once the Student was in high school. BCPS explained why it was not advisable to identify a specific intervention by name in the IEP. BCPS fully considered the Student's moderate to severe dyslexia, dysgraphia, and ADHD and offered an IEP to meet his needs. It is unclear what data on inclusion classes the Parents were requesting, although there was mention of the Parents asking for data showing how many students went to college. Such generalized data is not relevant for inclusion in a specific student's IEP. It is also unclear what data the Parents believe BCPS should have produced to show the future outcomes of the offered IEP. The IEP is appropriate based on the data gathered through Dr. [REDACTED]'s evaluation, Ms. [REDACTED]'s assessment, and the Student's eighth grade report cards. There was no data in the record showing that the Student had an anxiety disorder that significantly impacted his education. The evidence shows the Student needs specialized instruction in a small class setting, not simply small classes at [REDACTED] without specialized instruction. The Student does not attend a small, self-contained special education program at [REDACTED] as the Parents claimed. [REDACTED] is not a special education school and explicitly does not offer specialized instruction in ninth through twelfth grades. The Student is in general education classes all day at [REDACTED] with non-disabled peers. In sum, the Parents' arguments are

unsupported by the evidence and without merit. The Parents have failed to prove that the May 4, 2022 IEP was inappropriate. Therefore, the Parents are not entitled to any remedy.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that BCPS offered the Student an appropriate Individualized Education Program, including related services and placement, for the 2022-2023 school year. 20 U.S.C.A. §§ 1412(a)(1)(A), 1412(a)(5), 1414(d)(1)(A) (2017); *Andrew F. v. Douglas Cnty. Sch. Dist.*, 137 S. Ct. 988 (2017); *Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982); *O.S. v. Fairfax Cnty. Sch. Bd.*, 804 F.3d 354, 360 (4th Cir. 2015); *A.B. ex rel. D.B. v. Lawson*, 354 F. 3d 315, 319 (4th Cir. 2004); *DeVries v. Fairfax Cnty. Sch. Bd.*, 882 F.2d 876 (4th Cir. 1989); *Hessler v. State Bd. of Educ.*, 700 F.2d 134, 139 (4th Cir. 1983).

ORDER

I **ORDER** that the due process complaint filed by the Parents on October 4, 2022 on behalf of the Student is hereby **DISMISSED**.

February 10, 2023
Date Decision Issued

Lorraine E. Fraser
Administrative Law Judge

LEF/ja
#202931

REVIEW RIGHTS

A party aggrieved by this final decision may file an appeal within 120 days of the issuance of this decision with the Circuit Court for Baltimore City, if the Student resides in Baltimore City; with the circuit court for the county where the Student resides; or with the United States District Court for the District of Maryland. Md. Code Ann., Educ. § 8-413(j) (2022). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence.

A party appealing this decision must notify the Assistant State Superintendent for Special Education, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, in writing of the filing of the appeal. The written notification must include the case name, docket number, and date of this decision, and the court case name and docket number of the appeal.

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

Copies Mailed To:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED],
STUDENT

v.

BALTIMORE COUNTY

PUBLIC SCHOOLS

BEFORE LORRAINE E. FRASER,
AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-BCNY-OT-22-24179

FILE EXHIBIT LIST¹

I admitted the following exhibits on behalf of the Parents:

- Parents Ex. 8 Emails between the Parents and [REDACTED], 5/4/22-5/5/22
Parents Ex. 9 Emails between the Parents and [REDACTED], 5/12/22-5/17/22
Parents Ex. 10 Settlement agreement between the Parents and BCPS, 7/23/21
Parents Ex. A Curriculum vitae for [REDACTED], Ph.D., ABN²

I admitted the following exhibits on behalf of BCPS:

- BCPS Ex. 1 Parent notification of IEP Team Meeting for 12/16/21, 12/6/21
BCPS Ex. 2 Parent notification of IEP Team Meeting for 1/3/22, 12/6/21
BCPS Ex. 3 Parental Rights Maryland Procedural Safeguards Notice, revised July 2021
BCPS Ex. 4 [REDACTED] Middle School Report Card, 1st quarter, 11/8/21
BCPS Ex. 5 Neuropsychological Re-Evaluation, [REDACTED], Ph.D., ABN, Licensed
Psychologist, and [REDACTED], M.S., Psychology Associate, 6/9/20 &
6/17/20
BCPS Ex. 6 Individualized Education Program Team Summary, 1/31/22
BCPS Ex. 7 Parent notification of IEP Team Meeting for 1/20/22, 12/6/21
BCPS Ex. 8 Parent notification of IEP Team Meeting for 1/31/22, 12/6/21

¹ The exhibits were pre-marked by the parties. I retained the original numbering to reduce confusion. Only the exhibits listed here were admitted into evidence.

² American Board of Professional Neuropsychology

- BCPS Ex. 9 Parent Permission for Assessment, 2/1/22
- BCPS Ex. 11 Educational Assessment 3/15/22, [REDACTED], [REDACTED] Middle School, BCPS, 3/21/22
- BCPS Ex. 12 Notice of Documents, 3/22/22
- BCPS Ex. 13 Individualized Education Program Team Summary, 3/29/22
- BCPS Ex. 14 Specific Learning Disability Team Report, 3/29/22
- BCPS Ex. 17 Student Interest Sheet, 5/2/22
- BCPS Ex. 19 Individualized Education Program Team Summary, 5/4/22
- BCPS Ex. 20 Individualized Education Program, 5/4/22
- BCPS Ex. 21 [REDACTED] 9th Grade 1st Quarter Report Card, 11/9/22
- BCPS Ex. 22 Emails between the Parents and [REDACTED] copied to counsel for the Parents, 12/7/21-5/5/22; Individualized Education Program Team Summary, 5/4/22, mailed 5/12/22; Individualized Education Program, 5/4/22
- BCPS Ex. 23 [REDACTED] Upper School Handbook 2022-2023
- BCPS Ex. 24 [REDACTED] Learning Support Plan, 8/2021 (8th grade); Learning Support Plan, 9/2022 (9th grade)
- BCPS Ex. 25 [REDACTED] Learning Services, 5-12 Manual
- BCPS Ex. 26 Emails between the Parents and [REDACTED], 2/19/21-12/6/22
- BCPS Ex. 27A Resume for [REDACTED]
- BCPS Ex. 27B Resume for [REDACTED]
- BCPS Ex. 27C Resume for [REDACTED]