

██████████,

STUDENT

v.

QUEEN ANNE'S COUNTY

PUBLIC SCHOOLS

BEFORE PATRICK E. MAHER,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-QANN-OT-22-31189

DECISION

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STATEMENT OF THE CASE

██████████ (Student), who was previously identified as a student with a disability under the Individuals with Disabilities Education Act (IDEA), attends Queen Anne's County Public Schools (QACPS). On September 13, 2022, the Student engaged in behavior which allegedly violated the QACPS Student Code of Conduct. The Student was suspended for ten days on September 19, 2022, with a recommendation for an extended suspension or expulsion.

A Manifestation Determination Review (MDR) meeting was held on September 26, 2022, and the Student's Individualized Education Program (IEP) team determined that the behavior which resulted in the Student's discipline was not a manifestation of the Student's disability. On September 27, 2022, the Student was expelled¹ for the remainder of the 2022-2023 school year.

¹ Expulsion is defined as the exclusion of the student from the student's regular school program for forty-five school days or longer. Code of Maryland Regulations (COMAR) 13A.08.01.11B(2).

On November 15, 2022, the Student's parent, [REDACTED] (Parent), through counsel, filed a Due Process Complaint requesting an expedited hearing to challenge the IEP team's MDR decision.

After the filing, the Parent's counsel sent additional treatment records to the IEP team and asked that another MDR meeting be scheduled to review the new information that was provided. The IEP team agreed to hold another MDR meeting on December 16, 2022. On December 7, 2022, counsel withdrew the Due Process Complaint on behalf of the Parent.

On December 16, 2022, the second MDR meeting was held, and the IEP team again determined that the behavior that resulted in the Student's discipline was not a manifestation of the Student's disability. On December 19, 2022, the Parent, through counsel, filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting an expedited hearing to challenge the IEP team's MDR decision. In addition, the Parent alleged that the QACPS failed to provide the Student with educational services during the period of expulsion so as to enable him to continue to participate in the general education curriculum and to make progress toward meeting the goals set out in his IEP. Finally, the Parent alleged that the QACPS provided the Student with educational services during the period of disciplinary removal in his home, in violation of COMAR 13A.05.01.10C(6).

I held a prehearing conference on January 13, 2023, at 4:00 p.m., via the Webex online videoconferencing platform (Webex). The Parent was present and represented by Megan Berger, Esquire. Manisha Kavadi, Esquire, represented the QACPS. As the Due Process Complaint included a dispute over a manifestation determination, the hearing was required to be expedited and must occur within twenty school days of the filing of the complaint.²

² 34 Code of Federal Regulations (C.F.R.) § 300.532(c)(2) (2021). All references hereafter to 34 C.F.R. are to the 2021 volume.

Accordingly, I determined that the hearing was required to be concluded by January 27, 2023.³ In order to comply with the federal five-business-day disclosure rule,⁴ I determined that the first available hearing date was January 24, 2023.⁵ After reviewing the parties' availability and my schedule, the parties mutually agreed to schedule the hearing dates on January 24 and 26, 2023. In the event an additional hearing date was necessary, the parties agreed to reconvene on January 27, 2023, at 1:30 p.m.

I held the hearing on January 24, 26, and 27, 2023⁶ via Webex. COMAR 28.02.01.20B(1)(b). Ms. Berger represented the Parent.⁷ Ms. Kavadi represented the QACPS. I am required to issue a decision within ten school days after the hearing, which is February 10, 2023.⁸

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.⁹

³ The following dates were non-instructional dates in QACPS and were excluded: December 23-30, 2022 (winter break); January 16, 2023 (Dr. Martin Luther King, Jr., holiday); and January 23-24, 2023 (professional days – all schools closed). *See* 34 C.F.R. § 300.11(c) (“[s]chool day means any day, including a partial day that children are in attendance at school for instructional purposes”).

⁴ 34 C.F.R. § 300.512.

⁵ January 14, 15, 21 and 22, 2023, were weekend dates, and January 16, 2023, was a federal holiday. I determined that the five business days were Tuesday, January 17 through Friday, January 20, and Monday, January 23, 2023.

⁶ The hearing was not concluded on January 26, 2023, and was continued to January 27, 2023.

⁷ Leslie Margolis, Esquire, and Megan Jones, Esquire, also entered their appearance on behalf of the Parent and were present at various times throughout the hearing but did not otherwise actively participate in the hearing.

⁸ 34 C.F.R. § 300.532(c)(2); January 28, 29, and February 4, 5, 2023, are weekend (non-school-day) dates, and are therefore not included in the ten-school-day calculation. 34 C.F.R. § 300.11(c).

⁹ Md. Code Ann., Educ. § 8-413(e)(1) (2022) (All references hereinafter to the Education Article are to the 2022 Replacement Volume of the Maryland Annotated Code and identified as “Educ.”); State Gov’t §§ 10-201 through 10-226 (2021); COMAR 13A.05.01.15C; COMAR 28.02.01.

ISSUES

1. Did the QACPS improperly determine that the Student's behavior on September 13, 2022, was not caused by, or did not have a direct and substantial relationship to, his disability?
2. Did the QACPS fail to provide the Student with educational services during the period of expulsion so as to enable him to continue to participate in the general education curriculum and to make progress toward meeting the goals set out in his IEP?
3. Did the QACPS provide the Student with educational services during the period of disciplinary removal in his home in violation of COMAR 13A.05.01.10.C(6)?

SUMMARY OF THE EVIDENCE

I have attached a complete Exhibit List as an Appendix.

Testimony¹⁰

The Parent testified and presented the following witnesses:

- ██████████, Behavior Specialist, ██████████ High School.
- ██████████, Ph.D., School Psychologist, QACPS.
- ██████████, Supervisor, Office of Special Education, QACPS.
- ██████████, Licensed Masters Social Worker (LMSW), ██████████
██████████.

¹⁰ After the conclusion of the first day of the hearing, counsel for the Parent advised that their expert witness was not available until 2:45 p.m. on the next hearing date. The Parent had two remaining witnesses to present in her case-in-chief. I was concerned that there would be insufficient time to complete the hearing within the statutory timeframe with a several hour gap between the Parent's last two witnesses. After hearing from both parties' position on the issue, I directed the QACPS to present their first witness in their case-in-chief after the conclusion of the Parent's penultimate witness on the second day of the hearing. The QACPS objected to calling their witnesses prior to the testimony from the Parent's expert witness. I overruled the objection, as I determined there was no prejudice to the QACPS for proceeding in this manner. The QACPS was afforded the opportunity to recall their witnesses on the final day of the hearing to rebut the testimony of the Parent's expert witness. The QACPS called ██████████ and ██████████, Ph.D., on the second day of the hearing between the testimony of the Parent's final two witnesses. Both of the QACPS' witnesses had previously testified in the Parent's case-in-chief. Dr. ██████████ was recalled by the QACPS in rebuttal on the final day of the hearing.

- [REDACTED], Licensed Clinical Professional Counselor (LCPC), [REDACTED]
[REDACTED].
- [REDACTED], Special Education Teacher, [REDACTED] High School.
- [REDACTED], Ph.D., admitted as an expert witness in psychology, psychological assessment, and special education.

The QACPS presented the following witnesses:

- Ms. [REDACTED], Behavior Specialist, [REDACTED] High School, admitted as an expert in psychology.
- Dr. [REDACTED], School Psychologist, QACPS, admitted as an expert in psychology.
- Ms. [REDACTED], Supervisor, Office of Special Education, QACPS, admitted as an expert in special education, and education of children with emotional dysregulation.

FINDINGS OF FACT

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

1. The Student is sixteen years old. The Student lives with the Parent and one sibling in Queen Anne’s County, Maryland.
2. From pre-school through the sixth grade, the Student attended schools in the QACPS system.
3. In March 2015, a QACPS school psychologist administered a psychological assessment of the Student as part of a comprehensive evaluation due to parental concerns with the Student’s academic progress and anxiety in school. The summary of the assessment included concerns with depressive symptoms, worries, inattention, aggression, defiance, and peer relationships. The assessment referenced a prior diagnosis of a mood disorder and anxiety

disorder from the Student's treating therapist. The recommendations to the IEP team suggested consideration of the psychological assessment in making the eligibility decision for special education services, and that a functional behavioral assessment (FBA) may be helpful in developing a behavioral intervention plan (BIP) to address the Student's inappropriate behaviors.

4. An IEP meeting was held on April 29, 2015, and the Student was identified as a student with a disability who required special education services. The Student's primary disability was identified by the IEP team as a specific learning disability, and he began to receive special education services pursuant to his IEP with goals in written language and behavior.

5. In May 2015, the QACPS conducted a FBA of the Student and as a result a BIP was developed to address the Student's behaviors, including defiance, non-compliance, and the use of inappropriate language.

6. The Student was re-evaluated for special education services in January 2017, and an evaluation to assess the Student's social/emotional/behavior functioning was completed by a QACPS school psychologist on January 16, 2017.

7. The January 16, 2017, evaluation noted that the Student appeared to demonstrate an emotional condition characterized by significant levels of emotional dysregulation resulting in inappropriate types of behavior under normal circumstances. The evaluation suggested that the IEP team consider if this condition results in a continued need for special education on the basis of emotional disability.

8. In December 2017, the QACPS referred the Student for a psycho-educational re-assessment to determine the continued appropriateness of his IEP services and accommodations and modifications that he was receiving. The assessment indicated that the Student has an IEP as

a student with an emotional disability.¹¹ The assessment identified that the Student's services at that time included special education classroom instruction for one hour daily in the area of written language and math as well as special education classroom instruction for three hours weekly, and counseling.¹²

9. The Student was home-schooled for the 2018-2019 and 2019-2020 school years, his seventh and eighth grade years.

10. In 2019, the Student began meeting with Mr. [REDACTED], LCPC, for outpatient family and individual therapy once per week for ninety minutes.

11. The Student was referred to Mr. [REDACTED] from the Student's prior therapist who believed Mr. [REDACTED] was better able to address the Student's mental health issues.

12. The Student re-enrolled in the QACPS for the 2020-2021 school year for ninth grade and attended [REDACTED] High School.

13. The Parent requested another referral for initial eligibility for special education services due to the Student's re-enrollment in the QACPS, and the Student was evaluated in October 2020. The IEP team obtained consent to conduct a psycho-educational evaluation of the Student, which was completed on October 30, 2020. The evaluation revealed behaviors consistent with the diagnosis of anxiety and depressive disorder. Noted symptoms of depressive disorder included disliking oneself, rapid and sudden changes in mood, getting easily upset and struggling with emotional regulation, talking about suicide and overall feelings of being lonely and sad.

¹¹ Although the February 2017 IEP was not entered into the record, the IEP team apparently followed the recommendation of the January 2017 psychological evaluation and identified the Student's primary disability as emotional disability.

¹² The specific number of hours of counseling was not specified.

14. The IEP team developed a new initial IEP for the Student, effective November 17, 2020.

15. In 2020, the Student was experiencing cycles of significant anger that correlated with intrusive thoughts of suicidal and homicidal ideation as well as subsequent shame and self-injurious behaviors. These cycles would last for approximately one day.

16. In 2020, the Student was hospitalized on three separate occasions for suicidal ideation and self-injurious behavior.

17. On February 17, 2021, the Student was admitted to the [REDACTED] [REDACTED] ([REDACTED]), a non-public special education school and residential treatment center for adolescents with severe emotional and behavioral disabilities. The Student was admitted to [REDACTED] due to his history of self-injurious behavior, suicidal ideation, depression, homicidal ideation, and threats of violence towards his brother and peers at school.

18. The Student's Individualized Treatment Plan at [REDACTED], dated February 25, 2021, noted a psychiatric diagnosis of disruptive mood dysregulation disorder and major depressive disorder.

19. The Student was discharged from [REDACTED] on October 21, 2021, and re-enrolled in the QACPS for the 2021-2022 school year where he was placed in the [REDACTED] [REDACTED] ([REDACTED]), a special education program located at the [REDACTED] High School.

20. The IEP meeting was conducted on October 14, 2021, for the purposes of the annual review, discharge planning, and educational placement. The Student's primary disability

was identified as emotional disability. The IEP team consisted of members from [REDACTED], the QACPS, and the Parent.

21. The October 14, 2021, IEP included behavioral goals related to the Student's self-management and social-emotional needs.

22. The self-management goal was for the Student to "display productive school behavior and self-management skills on a daily basis as measured by observation in 4 out of 5 trials." The objectives were: "1. [Student] will ask for and receive help appropriately after starting tasks independently. 2. [Student] will receive and utilize feedback about his work appropriately in order to complete assigned tasks."¹³

23. The social emotional goal stated that the Student "will identify healthy and appropriate coping skills and strategies to manage and de-escalate his emotions when feeling overwhelmed, frustrated, or anxious within the classroom environment as measured by observation in 4 out of 5 trials." The objectives were: "1. [Student] will utilize a classroom appropriate coping skill such as deep breathing or utilizing a fidget when he is unsure of an answer. 2. [Student] will advocate for a check-in with a trusted adult when he is unable to re-focus on a task/test."¹⁴

24. The October 14, 2021, IEP indicated that the Student shall receive special education services outside of the general education classroom. The services were described as four, one-hour sessions per week. Each one-hour session allotted thirty minutes for social/emotional services and thirty minutes for mathematics services.

25. The October 14, 2021, IEP noted that services are not being provided in the Student's home school, ([REDACTED] High School), as the Student requires participation in a

¹³ QACPS Ex. 9-30.

¹⁴ QACPS Exs. 9-32, 9-33.

regional program (the [REDACTED] program at [REDACTED] High School) that provides access to structure and the support of a classroom with reduced class size, and predictable schedule with a reinforcement schedule that informs him of appropriate social/emotional choices.

26. As part of his supplementary aids, services, program modifications and supports, the Student was provided a calm classroom setting to prevent and manage disruptive behaviors and have a daily check-in with a designated adult to discuss school assignments and behavioral challenges in his classes.

27. The Student attended all classes and lunch inside the [REDACTED] classroom in the second quarter (November 2021 through January 20, 2022) of the school year.

28. The Student attended one class and lunch in the general education environment during the third quarter (January 26, 2022 through April 1, 2022) of the school year, and during the following school year up to the date of his removal.

29. On February 17, 2022, another student, who severely bullied the Student when he was six to eight years old, bumped into the Student in the hallway. In response, the Student “rushed” into Ms. [REDACTED]’s classroom, grabbed a pair of scissors, and announced that he was going to stab the other student. Another staff member blocked the door which stopped the Student, and Ms. [REDACTED] was able to get the Student to hand over the scissors. The Student and Ms. [REDACTED] created a safety plan for the rest of the day.

30. On February 18, 2022, the Student snuck out of lunch and left the [REDACTED] program area to a school hallway to look for the peer. He was seen in the hallway by school personnel and returned to his classroom and did not have contact with the peer. He discussed his plan with another student when he was escorted back to the classroom; another student asked

him “did you do it?”, to which the Student replied “no, I got caught.” The school put a safety plan in place and increased the level of supervision of the Student.

31. The Student was not disciplined for either of these two incidents.

32. For the 2022-2023 school year, the Student started tenth grade and continued in the [REDACTED] program at [REDACTED] High School.

33. The IEP team did not believe the Student’s presentation at the beginning of the 2022-2023 school year required updated assessments as he was making progress on the goals and objectives in his IEP.

34. In early September 2022, the Student expressed concern to his Parent and teachers about the declining health of his great grandmother, with whom he is very close.

35. Also in early September 2022, the Student’s level of work started to decrease, and he began to need more support. Although he requested those supports from teachers and staff at the [REDACTED] program, he spent less time “on-task.”

36. Ms. [REDACTED] is the behavioral specialist for the [REDACTED] program at [REDACTED] High School. The behavior specialist assists students in the [REDACTED] classroom with learning, coping skills and strategies, and emotional and behavior disruptions in the class.

37. Ms. [REDACTED] worked with the Student a minimum of ninety minutes per day in the [REDACTED] classroom, providing assistance with school work, and therapeutic support as needed.

38. Ms. [REDACTED] was a trusted adult as described in the Student’s 2021 IEP, and she had a good connection with the Student. The Student was comfortable sharing information with Ms. [REDACTED].

39. The Student has expressed homicidal and suicidal ideations in the past with Ms. [REDACTED] that were consistent with his diagnosis of mood dysregulation, and were accompanied by fleeting thoughts, angry mood, fidgeting, shaking of his leg, and fear in his voice.

40. On September 13, 2022, the Student went to Ms. [REDACTED] classroom at approximately 7:35 a.m., at the beginning of the school day, and asked to speak with her.

41. Ms. [REDACTED] was unavailable to speak with the Student because she was beginning the morning meditation session with other students.

42. The Student declined to participate in the meditation session when offered, but stated that he would wait until the meditation session was completed to speak with Ms. [REDACTED].

43. The Student advised Ms. [REDACTED] that he was “okay” and that he could go to class. Ms. [REDACTED] advised the Student that she would get him from class when the meditation session was done. The Student was calm, respectful, and did not express any anger or sadness.

44. Ms. [REDACTED] went to the Student’s classroom after meditation at approximately 7:50 a.m., and the Student excused himself from class.

45. The Student asked Ms. [REDACTED] if they could take a “lap” around the school hallways before going to her classroom, which was a supplementary aid and support in his IEP.

46. While taking their lap, the Student shared with Ms. [REDACTED] that he was experiencing dark thoughts.

47. Ms. [REDACTED] asked the Student to explain further to help her understand, but he was unwilling to do so while other teachers and students were in the hallway. Ms. [REDACTED] took the Student’s reluctance to discuss the matter as an ideation of suicide or to harm others.

48. Ms. [REDACTED] asked the Student to differentiate these thoughts with the ones he had in February 2022. The Student responded that these were different, and this was something that

he was planning since the end of the 2021-2022 school year. He indicated that it no longer mattered if he went to prison. He stated that he did not have the support of the Parent and he was going to enact his thoughts and plans.

49. When Ms. [REDACTED] and the Student went to her classroom to further discuss the Student's thoughts, the Student expressed his detailed plan for how he would bring weapons to school for a school shooting and then commit suicide. The Student told Ms. [REDACTED] the following:

- he often thought about this plan, it felt different, and he did not want to stop those thoughts or get supports;
- he had access to a .38 caliber revolver and a shotgun at his grandmother's house where he often stays;
- he planned to place the guns in a guitar case and bring it to school, as that would not be unusual for him to have a guitar case with him;
- he would take a route with the largest school population—the lunch shift, where he was not required to be escorted;
- he would carry out this plan because the suffering of innocent people is comical to him, and that innocent people should suffer;
- he was going to tell three people to not come to school on the day he would carry out the shooting, but would not identify them by name;
- to ensure that the three people would not tell someone, he stated he would threaten the individuals to ensure his plan remained intact;
- if he felt the three people were a threat to his plan and would still report the incident even after his threat to them, then he would take their lives to keep them quiet, and would not be remorseful;
- the plan was conceived to receive an accomplishment, and after his plan he would have an escape route to get far enough away from the police so that he could end his life;
- he found the suffering of innocent people funny and that this was a reward; and
- he did not indicate that the homicidal thoughts were scaring him.

50. The Student advised that he was aware that Ms. [REDACTED] would be required to report the conversation and he informed Ms. [REDACTED] that he would allow the public to believe that he

could receive help and that he could be “okay,” and will then enact his plan, even if it is months later.

51. Ms. [REDACTED] advised the Student that she would have to inform the school officials about their conversation and instructed the Student to go to his classroom and remain there.

52. Ms. [REDACTED] immediately and simultaneously informed the principal and the school resource officer, who were both in another area, about the conversation.

53. The principal and the school resource officer spoke with the Student. Afterwards, the Student was determined to be at risk and was transported by a school resource officer to [REDACTED] Hospital where an emergency petition was completed.

54. On the same date, the Student was committed to the inpatient psychiatric unit at [REDACTED] in [REDACTED].

55. On September 19, 2022, the Student was suspended from school for ten days with a recommendation for extended suspension or expulsion for making a threat to harm the students and staff in violation of the QACPS Student Code of Conduct.

56. The statements made by the Student to Ms. [REDACTED] on September 13, 2022, was a threat to harm the students and staff in violation of the QACPS Student Code of Conduct.

57. Prior to the September 13, 2022 incident, the Student had no disciplinary removals for the 2022-2023 school year.

58. On September 13, 2022, the Student’s October 14, 2021, IEP was still in effect.

59. The Student was provided educational services while he was a patient at [REDACTED] from September 13-26, 2022.¹⁵

¹⁵ It was not clear from the record when the QACPS provided education services, or how many hours and what type of services were offered. A review of the MDR dated September 26, 2022, indicates that the Student had access to education services via home/hospital instruction while at [REDACTED]; therefore, I reasonably infer that this was at some time between September 13-26, 2022.

60. On September 26, 2022, the Student was discharged from [REDACTED] and returned home.

61. On September 26, 2022, the IEP team convened an MDR meeting. The participants in the meeting were:

- [REDACTED], Supervisor of Special Education, QACPS
- [REDACTED], Special Education Teacher, QACPS
- [REDACTED], Ph.D., School Psychologist, QACPS
- [REDACTED], Behavioral Specialist, QACPS
- [REDACTED], IEP Chairperson, QACPS
- [REDACTED], School Counselor, QACPS
- [REDACTED], Mental Health Coordinator, QACPS
- [REDACTED], Pupil Personnel Worker, QACPS
- [REDACTED], Principal, QACPS
- [REDACTED], the Student's Private Therapist
- The Parent – participated by phone
- The Student – participated by phone

62. Dr. [REDACTED] began the meeting by reviewing the incident that occurred on September 13, 2022. She captured a summary of events as reported by school staff and reviewed the written report prepared by Ms. [REDACTED]. The IEP team considered the description of the incident leading to the discipline, discipline and attendance records, formal and informal assessments, classroom performance, parent and teacher input and observations, information shared by the Student's therapist, as well as the following reports:

- The current IEP;
- Psychological assessment by School Psychologist, [REDACTED], dated May 27, 2015;
- Psychological assessment by School Psychologist, [REDACTED], dated January 12, 2018;
- Psycho-educational assessment by School Psychologist, [REDACTED], dated October 30, 2020;
- Review of FBA, dated May 19, 2015, and BIP, dated May 27, 2015; and
- Psychological assessment by School Psychologist, [REDACTED], dated January 16, 2017.

63. The Student acknowledged during the September 26, 2022, MDR meeting, that everything shared by Dr. [REDACTED] was correct.

64. The Parent commented in the September 26, 2022, MDR meeting that she saw an increase in agitation at home when the Student's great grandmother was in the hospital in early September 2022. She further noted that the Student became very quiet and shut down when his great grandmother went into the hospital, and cried daily which was atypical for him. She had not seen any aggression towards others, and the Student told her that everything was fine at school.

65. During the September 26, 2022, MDR meeting, the Parent advised the IEP team that the Student informed her that he went to Ms. [REDACTED] because he was scared of the thoughts and wanted help. He had been taught to seek out an adult when he is having really dark thoughts. The Parent believed that the Student's intention was to get the help he needed by going to an adult when he had dark thoughts.

66. The Student's treating therapist, Mr. [REDACTED], shared with the IEP team during the September 26, 2022, MDR meeting, that the Student had been working on homicidal ideation in therapy sessions. The thoughts would come up randomly, particularly in instances where the Student feels overwhelmed, and the Student would have hateful, murderous thoughts towards others and then he will "pull back" into a shame spiral and he may self-harm. Mr. [REDACTED] meets with the Student weekly, and advised the Student had not mentioned the thoughts or ideas leading to the incident on September 13, 2022. Mr. [REDACTED] ultimately concurred that the Student's thinking of shooting at the school several times a week since the prior school year was a premeditation, and should not be characterized as a fleeting thought, which was the usual presentation of homicidal ideation by the Student. Mr. [REDACTED] indicated that it was scary to think

that the Student can pretend to be okay when he is not, and this expression of a long-term plan was a surprise. Mr. [REDACTED] stated it was his opinion that the incident was an extreme expression of the Student's emotional condition. Mr. [REDACTED] emphasized his perception that the Student had not actually begun physically planning any aspects of the threat.

67. The IEP team found that the Student's behavior on September 13, 2022, was not a manifestation of his disability, and the disciplinary process should continue.

68. The IEP team reasoned that the Student's typical emotional dysregulation is sudden, impulsive, and reactionary. However, the plan indicated by the Student on September 13, 2022, was not quick or sudden, but premediated and dwelled upon over a period of time.

69. The IEP team compared and contrasted the September 13, 2022, incident with the February 17-18, 2022, incident and concluded the February incident was the result of intense emotions targeted at a specific student, and was consistent with his disability, whereas the September 13, 2022, incident was not.

70. On September 27, 2022, the Superintendent of the QACPS notified the Parent that in addition to the ten-day suspension, the Student was expelled for the remainder of the 2022-2023 school year for making a threat to harm students and staff of the school.

71. On October 11, 2022, the IEP team met to review and make revisions to the Student's IEP.

72. On November 18, 2022, a dispute resolution meeting was held pursuant to the Student's filing of the initial Due Process Complaint. At that time, the family of the Student declined the QACPS' offer to refer the Student to a non-public day school placement.

73. On December 1, 2022, the Student was admitted to [REDACTED], a psychiatric hospital, on a voluntary basis due to suicidal ideation and self-injurious behavior.

74. The Student was discharged from [REDACTED] on December 9, 2022, as the treatment team concluded he had reached maximum hospital benefit and was not seen as an imminent danger to himself or others.

75. On December 16, 2022, the IEP team convened another MDR meeting to consider additional treatment records provided by the Parent after the first MDR meeting. The participants in the meeting were:

- [REDACTED], Supervisor of Special Education, QACPS
- [REDACTED], Special Education Teacher, QACPS
- [REDACTED], Ph.D., School Psychologist, QACPS
- [REDACTED], Behavioral Specialist, QACPS
- [REDACTED], IEP Chairperson, QACPS
- [REDACTED], Mental Health Coordinator, QACPS
- Manisha Kavadi, Esquire, QACPS Attorney
- Megan Berger, Esquire, Parent Attorney
- [REDACTED], Student's Private Therapist
- The Parent – participated by phone

76. During the December 16, 2022, MDR meeting, the IEP team considered the new information provided by the Parent: the complete discharge reports from the Student's hospitalizations at [REDACTED] in 2020, [REDACTED] in 2021, and [REDACTED] in 2022 (following the incident on September 13, 2022).

77. On December 16, 2022, the IEP team also considered in their MDR decision, formal and informal assessments, classroom performance, parent, teacher, therapist, and attorney input and observations.

78. During the December 16, 2022, MDR meeting, Dr. [REDACTED] provided a summary of information in each of the discharge reports and their relationship to the Student's disability. She noted that in each of the reports, that the Student was admitted due to suicidal ideation and self-harm. Dr. [REDACTED] noted that homicidal ideations referenced in the reports were thoughts that were not pervasive in nature, and noted that once the Student is calm after a state of anger, the

thoughts did not persist. Additionally, the Student's previous threats towards others have historically been unlikely to be carried out or were unrealistic in nature. Dr. [REDACTED] concluded that the information captured in the reports were continuations of previously known facts and descriptors.

79. Mr. [REDACTED] described to the IEP team that the Student's homicidal thoughts are associated with sudden rageful feelings, are impulsive and reactionary, and related to emotional dysregulation, after which the Student has an immense feeling of shame. Furthermore, Mr. [REDACTED] described that as a result of these sudden rageful feelings, the Student's aggressive behavior towards others or objects were sudden responses to his emotional dysregulation.

80. Mr. [REDACTED] indicated that the Student has never prepared, acted out, or rehearsed these thoughts. However, Mr. [REDACTED] acknowledged, as he had at the previous MDR meeting, that he was taken aback by the incident because historically the Student's pattern is that he has a storm of intrusive images of stabbing, cutting, killing, and then he feels bad, and then self-regulates. He added he was surprised, as this incident was behavior of having a plan that was different from the Student's previous historical presentation and profile.

81. Mr. [REDACTED] stated that he has seen the Student in therapy in the months since the incident. Mr. [REDACTED] advised that the Student now indicates that he was not going to carry out what he had planned. Mr. [REDACTED] noted that as he has talked through the incident with the Student in therapy, he feels the Student did not mean it. Mr. [REDACTED]'s opinion was that while the incident report was a departure from the historical presentation of the Student's symptoms, it did not accurately reflect what was in the Student's mind.

82. The IEP team determined on December 16, 2022, that the new information presented does not change the previous MDR decision that the Student's behavior on September 13, 2022, was not a manifestation of his disability. The IEP team reviewed the reasons why:

- unlike the Student's history of behavioral responses as sudden and impulsive in nature, the Student's behavior and presentation was qualitatively different in this incident;
- the Student's affect when he reported the incident was calm, he was not in a rage, and he did not express remorse or suicidal/self-injurious behaviors before, during, or after reporting the incident;
- the incident was not impulsive, sudden, or reactionary; and
- this was the only time the Student had reported having a long-term plan in detail that included months of thought and planning that was very different from his past profile of momentary feelings towards another which generally deescalate.

83. The Parent and Mr. ██████ disagreed and believed that the behavior was a manifestation of the Student's disability.

84. After the December 16, 2022, MDR meeting, the IEP team proposed another IEP team meeting to discuss placement in the first week of January 2023, but the Parent was not available. The parties agreed to meet on January 10, 2023.

85. Since October 17, 2022, up until the date of the Due Process hearing, QACPS special education teacher, ██████ provided the Student with four, fifty-minute class sessions of special education services per week, virtually, via the Zoom videoconferencing platform, while the student remained at home.

86. Mr. [REDACTED] worked with the Student on the goals stated in the October 11, 2022 IEP, and the Student was making progress on those goals. In addition, Mr. [REDACTED] worked with the Student on other subjects, including World History and journaling, an English III skill, when the Student needed a “recharge” or a “confidence boost.”¹⁶

87. At some unidentified date during the disciplinary period through the date of the Due Process hearing, the QACPS offered the Student the opportunity to participate in a virtual general education curriculum through [REDACTED], an MSDE approved online education program in use by the QACPS.¹⁷

88. [REDACTED] is used in the QACPS [REDACTED] program in conjunction with in-person live teaching.

89. The QACPS did not provide the Student with any teacher-related supports in conjunction with making [REDACTED] available during the disciplinary period.

90. The Student has not participated in the [REDACTED] online education program, while he has remained home during the period of expulsion.

91. The Student received an “E” on his first quarter 2022-2023 report card for two subjects, Introduction to Carpentry and English III. The Student’s World History class and Chemistry class did not have a grade associated with the course.¹⁸

92. The IEP team did not determine what educational services should be provided by Mr. [REDACTED] or through the [REDACTED] program for the Student’s period of disciplinary removal

¹⁷ It was not clear from the record when QACPS offered the Student the opportunity to participate in the general education curriculum. The MDR dated September 26, 2022, indicated that the Student was able to continue to work on academic classes through [REDACTED] while at [REDACTED], which would be at some time between September 13-26, 2022.

¹⁸ The Student was only enrolled in four classes.

during the September 26, 2022, MDR meeting and did not determine whether these services continued to be appropriate during the December 16, 2022, MDR meeting.

93. If a student is absent from a school day, the school is not required to make up those services.

94. The Student has not had access to his peers at school through the virtual education program provided by the QACPS.

95. At the IEP meeting held on January 10, 2023, the QACPS again proposed the least restrictive environment of a non-public day school. All IEP team members agreed and application packets to three non-public day schools were mailed out the same day.

DISCUSSION

Burden of Proof

The standard of proof in this case is a preponderance of the evidence.¹⁹ 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.²⁰ The burden of proof rests on the party seeking relief.²¹ The Parent is seeking relief and bears the burden of proof to show that the MDR decision by the QACPS was improper under the IDEA.

Legal Framework

Under the IDEA, a student identified with an educational disability is entitled to a free appropriate public education (FAPE), which entails those special education and related services individually and specially designed to meet the student’s unique needs.²² Under the IDEA, the means by which the local educational agency (LEA) provides a FAPE is through an

¹⁹ COMAR 28.02.01.21K(1).

²⁰ *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

²¹ *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005).

²² 20 U.S.C.A. §§1400(d)(1)(A), 1412(a)(1) (2017). All references hereafter to 20 U.S.C.A are to the 2017 volume.

appropriately developed IEP that is based on the individual needs of a student.²³ In situations where a student’s behavior impedes their learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports and other strategies in the IEP to address that behavior.²⁴ Such positive behavioral interventions and supports can be addressed in the IEP through specific social, emotional or behavior goals;²⁵ supplementary aids and supports;²⁶ through related services such as counseling,²⁷ psychological²⁸ or social work services;²⁹ in a FBA³⁰ or BIP;³¹ or any combination thereof.

For students with disabilities who violate the code of conduct or school rules, the IDEA authorizes school administrators to impose short-term disciplinary removals from the student’s current IEP placement, such as an out-of-school suspension of ten days or less.³² In such circumstances, the student with a disability may be disciplined the same as their non-disabled peers.³³ If a student with a disability is going to be disciplined for more than ten consecutive days; or has accumulated more than ten days of disciplinary removals in the same school year, it

²³ 34 C.F.R. §§ 300.17, 300.320-300.324

²⁴ 34 C.F.R. §§ 300.324(a)(2)(i) and (b)(2); and 300.320(a)(4).

²⁵ See 34 C.F.R. § 300.320(a)(2).

²⁶ See 34 C.F.R. § 300.320(a)(4).

²⁷ See 34 C.F.R. § 300.34(c)(2).

²⁸ See 34 C.F.R. § 300.34(c)(10).

²⁹ See 34 C.F.R. § 300.34(c)(14).

³⁰ An FBA “means the systematic process of gathering information to guide the development of an effective and efficient behavior intervention plan for the problem behavior” and includes “(i) Identification of the functions of the problem behavior for the student; (ii) Description of the problem behavior exhibited in the educational setting; and (iii) Identification of environmental and other factors and settings that contribute to or predict the occurrence, nonoccurrence, and maintenance of the behavior over time.” COMAR 13A.08.04.02B(5).

³¹ A BIP “means a proactive, data-based, structured plan that is developed as a result of a functional behavioral assessment which is consistently applied by trained staff to reduce or eliminate a student’s challenging behaviors and to support the development of appropriate behaviors and responses.” COMAR 13A.08.04.02B(1).

³² 34 C.F.R. § 300.530(b)(1).

³³ See COMAR 13A.08.03.03A (“A student with a disability may be removed from the student's current placement for not more than 10 consecutive school days for any violation of school rules to the same extent that removal is applied to students without disabilities.”).

is considered a change in placement,³⁴ and the IEP team must convene an MDR meeting within ten school days of the disciplinary removal.³⁵

During the MDR meeting, the Parent and relevant members of the IEP must “review all relevant information in the student’s file, including the child’s IEP, any teacher observations, and any relevant information provided by the parents.”³⁶ The purpose of the MDR meeting is “to determine - (i) [i]f the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability; or (ii) [i]f the conduct in question was the direct result of the LEA’s failure to implement the IEP.”³⁷

If the IEP team determines that the student’s behavior which resulted in the disciplinary removal was a manifestation of the student’s disability, the LEA must conduct a FBA (if not already conducted) and implement a BIP, or if a BIP already exists, review and revise the existing BIP.³⁸ Except under special circumstances,³⁹ the student must be returned to their previous educational placement, unless the Parent and the LEA agree to a change of placement

³⁴ COMAR 13A.08.03.05 provides that “A. Removal constitutes a change of placement if a student with a disability is: (1) Removed from the student’s current placement for more than 10 consecutive school days; or (2) Subjected to a series of removals that constitutes a pattern of removal that accumulates to more than 10 school days in a school year. B. To determine if the removal constitutes a pattern of removals, the IEP team shall consider the: (1) Length of each removal; (2) Total amount of time the student is removed; and (3) Proximity of the removals to one another. C. During any period of removal beyond 10 school days or its cumulative equivalent, the public agency shall provide services to the extent necessary in accordance with Regulation .03B(3) of this chapter.”

³⁵ 34 C.F.R. §300.530(e)(1).

³⁶ *Id.*

³⁷ 34 C.F.R. § 300.530(e)(1)(i)-(ii).

³⁸ 34 C.F.R § 300.530(f)(1).

³⁹ *Id.* § 300.530(g) (“School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child’s disability, if the child—(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA; (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an [State Education Agency (SEA)] or an LEA; or (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.”).

as part of the modification of the BIP.⁴⁰ If the behavior was not a manifestation of the student's disability, then the student may be disciplined to the same extent as their non-disabled peers.⁴¹

During any period of disciplinary removal, the student with a disability is entitled to continue to "receive educational services . . . so as to enable the [student] to continue to participate in the general education curriculum . . . and to progress toward meeting the goals set out in the child's IEP."⁴² Additionally, the student must receive, as appropriate, a FBA, and "behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur."⁴³ In Maryland, "the instructional setting for the provision of educational services to a student who has been removed from school [for a disciplinary removal] may not be a student's home."⁴⁴

Parental rights regarding disciplinary removals are established by the IDEA and its implementing regulations. Under the IDEA, a parent may file an expedited due process complaint if he/she disagrees with the student's placement as a result of the disciplinary removal, with the MDR decision, or with the interim alternative educational setting.⁴⁵ During an expedited due process hearing on these issues, the administrative law judge may:

- (1) Return the student with a disability to the placement from which the student was removed; or
- (2) Order a change in placement of a student with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the administrative law judge determines that maintaining the current placement is substantially likely to result in injury to the student or others.⁴⁶

⁴⁰ 34 C.F.R. §300.530(f)(2).

⁴¹ COMAR 13A.08.03.08H(1).

⁴² 34 C.F.R. §300.530(d)(1)(i).

⁴³ 34 C.F.R. §300.530(d)(1)(ii).

⁴⁴ COMAR 13A.05.01.10C(6)(b).

⁴⁵ See 34 C.F.R. §300.532(a); see also COMAR 13A.08.03.09A.

⁴⁶ COMAR 13A.08.03.09E.

Positions of the Parties

The Parent contends that the IEP team's MDR decisions were improper. The Parent requested that I determine that the Student's behavior on September 13, 2022, was a manifestation of his disability because the behavior was consistent with his extensive psychiatric history of suicidal and homicidal ideation.

In addition, the Parent contends that the Student is not receiving appropriate educational services during the period of disciplinary removal so as to enable the Student to continue to participate in the general education curriculum and to progress toward meeting the goals set out in his IEP. The Parent requests that I order the QACPS to conduct a FBA and implement a BIP. The Parent is requesting an order for compensatory services to make up for the time the Student received inadequate educational services during the period of expulsion. The Parent is further requesting that I order the QACPS to pay for an Independent Education Evaluation to determine the appropriate education services for the Student, and is seeking attorney fees.⁴⁷

The Parent also contends that the QACPS is in violation of the Maryland regulation that prohibits students who have been removed from school for a disciplinary action from being provided educational services in the instructional setting of a student's home.⁴⁸ The Parent, through counsel, reiterated that the family has agreed to a non-public school placement that was proposed by the QACPS at the January 2023 IEP meeting, and that they are not requesting that the Student be returned to the [REDACTED] program at the [REDACTED] High School.

The QACPS contends that the IEP team properly determined in both MDR meetings that the Student's behavior on September 13, 2022, was not a manifestation of his disability and

⁴⁷ Attorney's fees of the prevailing party at a due process hearing are determined by a court of law and therefore, this remedy will not be addressed in this Decision. 34 C.F.R. § 300.517(a).

⁴⁸ COMAR 13A.05.01.10C(6)(b).

therefore, that the Student was properly disciplined. The QACPS argued that the two MDR meetings included the relevant members of the IEP team who considered all relevant data, including the IEP, teacher reports and observations, education and treatment records, and relevant information provided by the Parent and the Student's therapist. The QACPS pointed out that the behavior exhibited on the date of the incident was inconsistent with the Student's historical presentation of angry, impulsive, and sudden behavior. The QACPS requested that I uphold the IEP team's decisions as appropriate.

The QACPS argued that the Student was given the opportunity to participate in the general education curriculum during the period of disciplinary removal. In addition, the QACPS averred that the evidence supports that the Student was making progress in the goals of his IEP during the period of disciplinary removal.

With respect to the argument that the Maryland regulation prohibits the Student from receiving education services at home, the QACPS averred that all children are offered the option of virtual instruction in Queen Anne's County. In addition, the QACPS pointed out that the family declined the offer of non-public school placement in November 2022. The QACPS noted that a FBA and BIP would be embedded in a non-public school placement, as it was in the [REDACTED] program, and therefore, is unnecessary.

Analysis

The Parent raised three issues in the Due Process Complaint filed on December 19, 2022. For clarity, I will address each issue separately.

I. Whether the Student's behavior was a manifestation of his disability

In order to determine whether the Student's behavior was a manifestation of his disability, the IEP team convened a MDR meeting on September 26, 2022. The IEP team

concluded that the behavior was not a manifestation of his disability. On November 28, 2022, the counsel for the Parent subsequently received the Student's educational records from the QACPS and determined the Parent had not provided the QACPS three discharge reports from outside treatment providers to the school. Counsel for the Parent requested the IEP team to consider the additional treatment records that were not available at the first meeting. Accordingly, the IEP team scheduled a second MDR meeting on December 16, 2022.

The first issue raised by the Parent is whether the IEP team improperly determined that the Student's behavior on September 13, 2022, was not caused by, or did not have a direct and substantial relationship to, his disability.⁴⁹ As there were two MDR meetings, I will address them separately.

The First MDR Meeting, September 26, 2022

The facts of this case that led to the disciplinary removal of the Student are not in dispute. It is uncontradicted that the Student engaged in the behavior alleged on September 13, 2022, which resulted in his ten-day suspension on September 19, 2022, and subsequent expulsion for the remainder of the 2022-2023 school year. The parties disagree with the nature of the behavior and whether it was a manifestation of his disability.

It is the QACPS' position that the Student threatened to harm students and staff on September 13, 2022, in violation of the QACPS Code of Conduct. The act was carried out by advising Ms. [REDACTED] of his premeditated, detailed, plan to bring weapons to school and carry out a school shooting during the lunch period, after which he would leave the school and eventually commit suicide.

⁴⁹ In order for the behavior to be a manifestation of the Student's disability, there must be either (1) a finding that the behavior was caused by, or had a direct and substantial relationship to, the child's disability, or (2) the behavior was a direct result of the school's failure to implement the IEP. 34 C.F.R. § 300.530(e)(1)(i)-(ii). The Parent has not alleged that the behavior was a direct result of the school's failure to implement the IEP.

The Parent did not dispute the statements made by the Student to Ms. [REDACTED], but argued that the behavior was a manifestation of the Student's emotional disability, and that he has an extensive history of homicidal and suicidal ideations. Further, his action of going to Ms. [REDACTED] and telling her of his plan was consistent with what he has been taught to do when he has dark thoughts, and this behavior was a request for help, not a threat.

Prior to determining whether the IEP team's MDR decision was proper, I must address whether the disciplinary removal complied with federal regulations.⁵⁰ This analysis includes the timeliness of the MDR meeting, the proper attendees at the MDR meeting, and whether all relevant data was considered by the IEP team.⁵¹

As the incident resulted in a disciplinary action for a student with a disability that resulted in a change of placement,⁵² the IEP team was required to convene a MDR within ten school days of the disciplinary removal to determine if the behavior was a manifestation of the Student's disability.⁵³ The Student was suspended on September 19, 2022, for ten days. The IEP team convened the first MDR meeting on September 26, 2022. The MDR meeting was convened five school days after the date of the suspension and was therefore within the timelines required by federal regulation.⁵⁴

The IEP team convened the MDR meeting on September 26, 2022, and the Parent and Student participated by telephone. The Student's private therapist was present for the MDR meeting. There were nine members from the QACPS system who participated in the MDR.

⁵⁰ 34 C.F.R. § 300.530.

⁵¹ *Id.*

⁵² "A change of placement occurs if - the removal is for more than 10 consecutive school days." 34 C.F.R. § 300.536(a). Although the Student was not initially suspended for more than ten days, the suspension letter included notice that recommendation for further action was made to the Superintendent of the QACPS. The Parent was notified by mail of the Student's expulsion by the Superintendent the day after the September 26, 2022 MDR meeting.

⁵³ 34 C.F.R. § 300.530(e)(1).

⁵⁴ *Id.*

They included the IEP chairperson, the supervisor of special education for the QACPS, the Student's special education teacher in the [REDACTED] program, the school psychologist, the [REDACTED] program behavioral specialist, the school counselor, the QACPS mental health coordinator, the pupil personnel worker, and the school principal.

The IEP team reviewed the Student's current IEP, three psychological assessments and one psycho-educational assessment that were administered during the time period from 2015 through 2020. The Student's social/emotional goals and behavioral supports written in the IEP, the Student's last FBA and BIP, and previous disciplinary removals were reviewed and documented. The team considered information from the Parent, the Student, and the Student's private therapist, as well as the Student's special education teacher, and the [REDACTED] program behavior specialist, who also reported the behavior that led to the disciplinary action. The behavior specialist also provided a written account of the incident to the IEP team for review that was prepared contemporaneously with the incident.

I find that the MDR meeting that occurred on September 26, 2022, included the Parent and all relevant members of the IEP team. I also find that all known relevant information in the Student's file was reviewed, teacher observations were considered, and relevant information provided by the Student, the Parent, and the Student's therapist were considered to make a proper MDR decision.⁵⁵ The IEP team determined that the Student's behavior on September 13, 2022, was not a manifestation of the Student's disability and that the disciplinary process should continue.

⁵⁵ *Id.*

I must next decide whether the Student has met his burden of proof by a preponderance of the evidence in his allegation that the IEP team made an improper decision regarding whether the Student's behavior was caused by, or had a direct and substantial relationship to, the Student's disability.

The Parent argued that there were several factors to support her position that the IEP team improperly decided that the Student's behavior was not a manifestation of his disability. Significantly, the Student told Ms. [REDACTED] of his plan to carry out the school shooting and then commit suicide. Ms. [REDACTED] is a "trusted adult," who the Student knows well and confides with on a regular basis. The Student has been counseled by his Parent, his therapist and it is part of the behavioral supports on his IEP, to reach out to a trusted adult when experiencing behaviors associated with his disability. The plan that he described to Ms. [REDACTED] appears to align with the Student's history of homicidal and suicidal ideations. After describing the plan to Ms. [REDACTED], the school principal and school resource officer spoke with the Student. The Student was subsequently determined to be at risk and taken to the emergency room at [REDACTED] Hospital and committed pursuant to an emergency petition and hospitalized at a psychiatric hospital. In the days prior to the incident, the Student had been markedly affected by the deteriorating health of his great grandmother, with whom he is very close.

The Parent also argued that the IEP team incorrectly distinguished the September 13, 2022, incident from the previous incident on February 18, 2022. The incident on February 18, 2022, had characteristics of a calculated plan because the Student told another student of his plan prior to leaving the lunch area and then snuck out of the lunchroom in an apparent effort to find the other student, who he had a confrontation with the day before. This incident occurred the

day after the triggering event with the other student, i.e., the confrontation with the other student. The school did not treated the February 18, 2022, incident as a disciplinary matter.

At the Due Process hearing, the Parent also presented the testimony of Dr. [REDACTED], who was accepted as an expert in psychology, psychological assessment, and special education. Dr. [REDACTED] explained that she reviewed all of the documents in the file and reviewed relevant literature on the subject matter. Dr. [REDACTED] interviewed the Student and the Parent to verify the information in the documents, and further noted that the interview with the Student was not a clinical interview.

It was Dr. [REDACTED] opinion that the events of September 13, 2022, was a disclosure to Ms. [REDACTED] of an intensifying suicidal ideation. It was her expert opinion that the behavior was help-seeking behavior. Dr. [REDACTED] explained the concept of ideation to action, as a progression. First, there are pathway behaviors, such as stockpiling medications to commit suicide; then there are practicing behaviors, such as target practice with a gun; and finally, the action, or the deliberate carrying out of the act. Dr. [REDACTED] asserted that her opinion that the Student's behavior was mere ideation was supported by the lack of evidence of any pathway behaviors or practicing behaviors by the Student. Dr. [REDACTED] also criticized the threat assessment by the school and the fact that a formal threat assessment tool⁵⁶ was not used by school staff. She described Ms. [REDACTED] as an "early career" behavior specialist and that "best practice" would have been for a multi-disciplinary team to use a formal validated threat assessment tool to determine the nature of the threat imposed by the Student's statement. It was Dr. [REDACTED] expert opinion that the behavior of the Student on September 13, 2022, was entirely consistent with his

⁵⁶ Neither party provided any further admissible evidence or arguments regarding any MSDE or QACPS requirements for threat assessments, including any threat assessment tools, for my consideration.

documented history of homicidal and suicidal ideation and that the behavior was a manifestation of his disability.

Conversely, the QACPS argued that there were several factors that were consistent with the IEP team's decision that the behavior was not a manifestation of the Student's disability. The Student was diagnosed with disruptive mood dysregulation disorder by ██████████ in 2021. The diagnosis is consistent with the Student's extensive history of displaying emotions that are sudden, intense, and reactionary when overwhelmed. The Student's IEP was developed in part to address coping skills and strategies to manage and de-escalate his emotions. As explained by the Student's treating therapist, Mr. ██████████, the Student's homicidal thoughts come up randomly, particularly when he feels overwhelmed, and then he would pull back into a shame spiral that would often lead to self-harm. Mr. ██████████ testified that he acknowledged to the IEP team at the MDR meeting that he was surprised by the plan and admitted that it involved premeditation, as opposed to a fleeting thought that was previously associated with the Student's homicidal ideations.

At the Due Process hearing, Ms. ██████████, who was accepted as an expert in the field of social work and mental health, testified regarding the nature of the statement by the Student as being completely different than his prior statements of homicidal and suicidal ideation and his episodes of emotional dysregulation. She stressed that she knows the Student well, having spent a significant amount of time with him on a daily basis in school. He has expressed homicidal and suicidal ideations with Ms. ██████████ on previous occasions which were consistent with his diagnosis and were accompanied by an angry mood, fidgeting, shaking of his leg, and fear in his voice. She testified that this was different, and the Student advised that he was going to enact a plan that was premeditated, detailed, and was presented in a calm manner where he did not

express any remorse. Ms. [REDACTED] testified that she conducted a real-time threat assessment and believed the atypical behavior was very concerning, it was a serious plan, and that she needed to alert the school administration.

Dr. [REDACTED], who was accepted as an expert in the field of psychology, was part of the IEP team and testified why in her opinion the behavior was not a manifestation of the Student's disability. Dr. [REDACTED] contrasted the behavior on February 17, 2022, where the Student's behavior was a typical reaction for a child with emotional dysregulation disorder, as it was sudden and reactionary and targeted to an individual. In the September 13, 2022, incident, the plan was thought through on many steps, it was not a reaction, or a sudden, intrusive thought. Dr. [REDACTED] described the record of the Student's homicidal ideations as fleeting and reactionary, unlike how he presented his plan to Ms. [REDACTED]. Dr. [REDACTED] also discussed the testimony of the Student's treating therapist, and shared the concern that although the Student would freely discuss his homicidal and suicidal ideations with Mr. [REDACTED] in his weekly therapy sessions, he did not disclose this specific plan despite acknowledging that he had been thinking about it since the 2021-2022 school year. Dr. [REDACTED] noted that the IEP team considered that the Student disclosed the matter to Ms. [REDACTED]; however, Dr. [REDACTED] noted that the Student was not disciplined for reaching out, but for stating and posing a threat to harm the students and staff of the school. Dr. [REDACTED] stated an appropriate threat assessment was made and it involved the principal of the school.

Ms. [REDACTED], who was accepted as an expert in special education and the education of children with emotional disabilities, was also on the IEP team. She testified that she has known the Student since he was in the third grade. She testified that she agreed with the decision of the

IEP team as it was her opinion that the Student's action was a deviation from the Student's historical pattern of having his emotions drive his behaviors.

I agree with the IEP team's determination that the behavior was not a manifestation of the Student's disability. There are reasons to give weighty consideration to the positions of each party, however, the Student has the burden of proof by a preponderance of the evidence. I am persuaded that the Student's disability is one of emotional dysregulation, and his history of homicidal ideation revolves around triggering events that generate an intense and sudden reaction. This reaction is also relatively short lived. Contrary to the well documented evidence of the Student's disability,⁵⁷ the plan that he disclosed to Ms. [REDACTED] was premeditated and thoughtfully plotted out, from the description and access of the weapons, the transport of the weapons to school, the specific manner and time he was going to carry out the plan, to the escape route. What is also compelling was the manner of the presentation of the plan to Ms. [REDACTED], and that he did not ask for help when disclosing the plan.

I am mindful of the February 18, 2022, incident where the Student attempted to re-engage with the peer who had caused him to go into a rage the day before. The act has indicators inconsistent with prior descriptions of the Student's behavior profile, and presents a questions of why the Student was not subject to discipline. I can reconcile the differences with the fact that the behavior was targeted to a specific individual and occurred the very next day.

Although Dr. [REDACTED] provided insight to the process of homicidal ideation, I find the testimony of the QACPS experts to be more persuasive. Dr. [REDACTED] acknowledged that she did not meet with any of the staff members involved in this matter and her conversations with the Parent and Student were limited to verification of the information on the documents that she

⁵⁷ This includes his extensive disciplinary record which supports a pattern of intense, impulsive reactions which triggered the Student to threaten or physically fight with his peers. *See* QACPS Exs. 10-1 through 10-4.

reviewed. She was unable to recall the date she spoke with the Student. Dr. [REDACTED] stated that she had last taught special education over twenty years ago and that her primary practice does not involve providing therapeutic services to children under the age of eighteen. In addition, I found some of her testimony to be evasive, e.g., when she refused to discuss an impulsive act versus a plan. When questioned, Dr. [REDACTED] would not comment other than to state that she “cannot speak of the data.”

I also found Dr. [REDACTED]’s opinion that one should not assess the presenting calm affect of an individual when assessing risk to be a generalized statement and difficult to reconcile when discussing an individual with an emotional dysregulation disorder. Ms. [REDACTED] discussed the calm affect of the Student when he disclosed his plan as a compelling factor in her threat assessment. She has contact with the Student every school day and knows him well. She was able to articulate the dramatic difference in the presentation of his plan to her when compared to his previous behaviors when discussing suicidal or homicidal ideation. Dr. [REDACTED] does not have an ongoing relationship with the Student, and only interviewed the Student on one occasion.

Due to Ms. [REDACTED]’s familiarity with the Student, and her explanation of why she determined the Student’s calm affect to be of importance, I found Ms. [REDACTED]’s testimony to be more persuasive as to the significance of the Student’s affect, his calm demeanor, when describing his plan to Ms. [REDACTED].

Dr. [REDACTED] also provided expert opinion testimony that I found to be credible, and I gave her opinion more weight than Dr. [REDACTED] due to her advanced degrees in school psychology and her current role as a school psychologist. She was able to articulate the specific reasons of her familiarity with the Student’s behavior and how it was not a manifestation of the child’s disability. She explained that the Student did not have any history of planning behavior and that

his typical emotional dysregulation behavior is aggressive, retaliatory and a response to a reaction.

In conclusion, I give more weight to the credible testimony of the experts presented by the QACPS.⁵⁸ All of the QACPS experts knew the Student and were able to provide the appropriate context to his exhibited behavior on September 13, 2022. Based upon their personal knowledge and observations of the Student, the QACPS clearly explained why the September 13, 2022, behavior differed from his diagnosed emotional disability and why it determined such behavior was not a manifestation of such disability.

The Second MDR meeting on December 16, 2022

On November 28, 2022, the counsel for the Parent received the Student's education records from the QACPS and discovered that there were treatment records from outside providers that were not part of the Student's education record. Counsel for the Parent asked the IEP team to consider three additional treatment reports that were not in the education records previously considered by the IEP team at its MDR meeting on September 26, 2022. The QACPS agreed that the IEP team would convene a second MDR meeting and review the treatment records, as requested.

The IEP team convened on December 16, 2022, and the Parent participated by telephone. The Parent's attorney also participated in the meeting. The Student's private therapist was also present for the MDR meeting. There were six members from the QACPS system who participated in the MDR. They included the IEP chairperson, supervisor of special education for

⁵⁸ "However, district courts may not 'substitute their own notions of sound educational policy for those of the school authorities which they review.'" *Hartmann ex rel. Hartmann v. Loudoun Cnty. Bd. of Educ.*, 118 F.3d 996, 1000 (4th Cir.1997) (quoting *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206 (1982)). Although such deference to educators is generally in the context of the IEP development and appropriateness, I find the court's analysis to also be relevant to this context because of the expert testimony of the QACPS educational professionals who had direct, ongoing contact with or prior knowledge of the Student prior to the September 13, 2022, incident.

the QACPS, the Student's special education teacher in the [REDACTED] program, the school psychologist, the [REDACTED] program behavioral specialist, school counselor, and the QACPS mental health coordinator. The attorney for the QACPS was also present at the meeting.

The IEP team reviewed the new information provided by the Parent: the complete discharge reports from the Student's hospitalizations at [REDACTED] in 2020; [REDACTED] in 2021; and [REDACTED] in 2022 (following the incident on September 13, 2022).⁵⁹ The IEP team also considered the Student's formal and informal assessments, classroom performance, parent, teacher, therapist, and attorney input and observations.

The IEP also considered observations from various individuals who work with the Student. Dr. [REDACTED] provided a summary of information in each of the discharge reports and their relationship to the Student's disability. Dr. [REDACTED] concluded that the information captured in the reports were continuations of previously known facts and descriptors. The Student's private therapist, Mr. [REDACTED] spoke on behalf of the Student. The Parent and her counsel also provided information for the IEP team's consideration.

The MDR meeting on December 16, 2022, included the Parent, the Parent's attorney, the Student's therapist, and all relevant members of the IEP team. I find that all relevant information in the Student's file was reviewed, teacher observations were considered, and relevant information from the Parent was considered. This relevant information also included the new

⁵⁹ Less than one hour before the December 16, 2022 MDR meeting, counsel for the Parent provided a new discharge report from [REDACTED] arising from the Student's hospitalization from the beginning of December 2022. The IEP team requested additional time to review the information and convene an IEP meeting to review and make any necessary changes to the IEP. The IEP team did not agree to consider this information due to the timeliness with which it was provided to the school team. Counsel and the Parent agreed to have it reviewed at the subsequent IEP meeting.

treatment records provided by the Parent; and input from the Parent's attorney, the Student's therapist, and the IEP team. All was considered to make a proper MDR decision.⁶⁰

The IEP team again determined that the Student's behavior on September 13, 2022, was not a manifestation of the Student's disability and that the disciplinary process should continue. After a review of the testimony and information provided, I find that the IEP team considered all of the factors and information in the December 16, 2022, MDR meeting and properly determined that the behavior of the Student was not a manifestation of his disability. The additional information obtained from the December 16, 2022, MDR meeting does not change the determination that the behavior was not a manifestation of the Student's disability. As noted above, I found Dr. [REDACTED]'s expert testimony to be sound, reliable, and credible, and I agree with her opinion that the new documentation did not provide the IEP team with new information about the Student which was unknown. As such, for the same reasons noted above for the September 26, 2022 MDR meeting, the IEP team's MDR decision on December 16, 2022 was also proper.

Based on my review of the information contained in the documents provided in reference to the two MDR meeting documents and the testimony and evidence presented at the Due Process hearing, I do not find that the Student has met his burden of proof for me to conclude that the IEP team improperly decided that the Student's behavior was not caused by, or did not have a direct and substantial relationship to, his disability.⁶¹

II. Educational Services

A child with a disability who is removed from the child's current placement for more than ten days must continue to receive educational services, (FAPE during the disciplinary

⁶⁰ 34 C.F.R. § 300.530(e)(1).

⁶¹ COMAR 28.02.01.21K(1); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005).

removal), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and receive, as appropriate, a FBA , and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.⁶² The removal of a child with a disability for more than ten days constitutes a change of placement,⁶³ and the child's IEP team determines the appropriate educational services.⁶⁴

In this instance, QACPS would be required to provide the Student appropriate special education services beginning on the eleventh day that the Student remained in a disciplinary removal.⁶⁵ Furthermore, since the expulsion constituted a change of placement (removal for more than ten days from his current educational setting), the Student's IEP Team was required to determine the appropriate educational services to be provided during the period of disciplinary removal.⁶⁶ A failure to provide those special education services could result in a denial of FAPE for the time the Student did not receive services for any time beyond the tenth day of suspension.

Here, the Student was suspended from school for ten days, beginning September 19, 2022, through September 30, 2022, with a recommendation for further action made to the Superintendent of the QACPS.⁶⁷ The IEP team convened the MDR meeting on September 26, 2022, and determined that the discipline infraction was not a manifestation of the Student's disability. Afterwards, the Superintendent of the QACPS notified the Parent by certified mail

⁶² 34 C.F.R. § 300.530.

⁶³ 34 C.F.R. § 300.536.

⁶⁴ 34 C.F.R. § 300.530(d)(5).

⁶⁵ 34 C.F.R § 300.530(b)(2).

⁶⁶ 34 C.F.R. § 300.530(d)(5).

⁶⁷ It was not clear from the record why the suspension date commenced on September 19, 2022, when the incident occurred on September 13, 2022.

dated September 27, 2022, that the Student was expelled for the remainder of the 2022-2023 school year “with alternative education options.”⁶⁸

The Student was hospitalized at [REDACTED] from September 13, 2022, through September 26, 2022. There was no evidence presented from either party describing what, if any, educational services were provided while the Student was hospitalized. There is a reference in the MDR dated September 26, 2022, that “[i]t was noted that the suspension began while [the Student] was admitted to [REDACTED]. Home/Hospital services⁶⁹ are provided while students are admitted to this psychiatric program.”⁷⁰

The MDR noted in its review of discipline and attendance records that the total out of school suspension days for the current school year was five days, and that services were also provided for five days. I glean from the record that the five-day school suspension period references the ten-day suspension that began on September 19, 2022. On September 26, 2022, the student would have served five days of the ten-day suspension.

Notwithstanding the statement that services were provided, neither the QACPS nor the Parent provided any description of what HHT services were provided, whether the services were to allow the Student to continue to participate in the general education curriculum, and/or to progress toward meeting the goals set out in the Student’s IEP. There was no evidence of when

⁶⁸ QACPS Ex. 7-1.

⁶⁹ Home and Hospital Services (HHT) refers to the “provision of instructional services to public school students who are unable to participate in their school of enrollment due to a physical or emotional condition” which can be provided a in a “medical institution, or therapeutic treatment center, and at the student’s place of residence, or all of these.” COMAR 13A.03.05.01A; COMAR 13A.03.05.03A(2). According to the MSDE’s regulations, when a student with a disability receives HHT, the IEP team must meet to review and revise the IEP. *See* COMAR 13A.05.01.10C(5) (“If a student with a disability is unable to participate in the student’s school of enrollment and is provided instruction at home because of a physical or an emotional condition, consistent with COMAR 13A.03.05.04A, the IEP team shall meet to review and revise the student’s IEP.”).

⁷⁰ QACPS Ex. 5-6.

the services were provided, or how many hours of services were provided. Additionally, there was no indication of who determined the type, duration, and service provider for the HHT services.

Other than the brief reference during the Parent's closing argument that the Student was not approved for HHT, the parties did not provide any further evidence of the HHT process or documentation relating to HHT.

Upon the Student's discharge from [REDACTED] on September 26, 2022, he returned home. The MDR Summary of the IEP team meeting provides a section for the IEP team to determine services to address the provision of a FAPE after the tenth day of removal. The section provides areas to describe the service nature, frequency, duration, and location of the services. This section was left blank. The discussion section noted: "[The Student] had access to education services via home/hospital instruction while at [REDACTED]; [the Student] was also able to continue working on academic classes through [REDACTED]." ⁷¹

There was no further discussion in the MDR Summary of IEP team meeting about educational services to be provided to the Student during his disciplinary removal. In discussing the Student's current (October 2021) IEP, the IEP team noted that the Student's behaviors require follow up, including monitoring and coordination across resources, but are not within the scope of school-based assessments.⁷² The IEP team did not elaborate further other than to note that the Student's behaviors are addressed programmatically through the [REDACTED] program, that supports are embedded into his IEP, and the Student had accessed those supports appropriately.⁷³

⁷¹ QACPS Ex. 5-6.

⁷² See QACPS Ex. 5-8.

⁷³ *Id.*

The IEP team noted in the MDR Summary of IEP team meeting that the case manager will ensure that the annual IEP meeting that was scheduled for October 6, 2022, will discuss IEP supports and services to support the Student. The IEP team meeting occurred on October 11, 2022. The Behavioral Self-Management section of the IEP identified the Student's needs as requiring "extended guided practice and an active teaching style to engage [the Student's] prior knowledge and build confidence in his own abilities."⁷⁴

At the October 11, 2022 IEP team meeting, the IEP team determined that the Student shall receive special education services four times per week for fifty minutes each session. The time allotted thirty minutes for social/emotional services and twenty minutes for mathematics services. The discussion of services to be delivered to the Student further noted that as the Student's tolerance and ability to participate within the general education setting increases, aligned with the behavioral programmatic expectations of the classroom, he will have increased opportunity to participate within the general education setting. The services were scheduled to begin on October 11, 2022.⁷⁵

On October 11, 2022, the IEP also determined the placement in the least restrictive environment for the Student to be in special education classes with instructional/testing accommodations and supplementation aids/services and specially designed instruction services. Total time in school was noted as thirty-two hours and thirty minutes per week and the total time outside of general education was noted as the same.

The October 2022 IEP did not address the Student's current disciplinary removal or how and in what manner the education services would be provided. Neither party provided a copy of

⁷⁴ Parent Ex. 58, p. 397.

⁷⁵ Parent Ex. 63, p. 423.

any accompanying Prior Written Notice (if it exists) which addressed the educational services to be provided during the disciplinary removal.

The QACPS presented the educational service logs during disciplinary removal from October 2022 through January 12, 2023. The first date that special education services were provided to the Student was October 17, 2022. The services were for fifty minutes total per day, with twenty minutes allotted to mathematics and thirty minutes allotted to social/emotional goals. Mr. [REDACTED], the Student's special education teacher, testified that he provided special education services for fifty minutes, four times per week to the Student during the disciplinary period through the Zoom videoconferencing platform beginning October 17, 2022. He testified that the Student was making progress toward meeting the goals set out in the Student's October 11, 2022, IEP.

Mr. [REDACTED] testified that the [REDACTED] online education platform was made available to the Student during this time, but he was unable to provide any details of how the program was provided, for how many hours, and what classes were offered. It was clear from his testimony that he did not provide education services in the four classes that were in the Student's general education curriculum, and that any instruction in those areas were limited to what Mr. [REDACTED] described as when the Student needed a "recharge" or an "energy boost." Significantly, Mr. [REDACTED] was unable to provide any information about how and when the Student had access to [REDACTED] during the disciplinary removal period, although he was listed as the teacher for the three of the four general curriculum courses.

Per the Student's report card, he was enrolled in four classes for the first quarter 2022-2023 school year: Introductory to Carpentry, World History, English III, and Chemistry. The Student received an "E" in the Introductory to Carpentry class, with a percentage grade of 59%.

Mr. [REDACTED] was the teacher in the other three classes. The Student also received an “E” in English III, with a zero-percentage grade. In World History and Chemistry, the Student did not receive a letter grade and had a zero-percentage grade.⁷⁶

Ms. [REDACTED], the QACPS special education supervisor, explained that the [REDACTED] program is a multi-grade classroom and that [REDACTED] is an online education tool that is paired with live instruction used by students in the [REDACTED] program. During the period of the Student’s disciplinary removal, the [REDACTED] program was “made available” to the Student to ostensibly satisfy the QACPS’ obligation to provide a general education curriculum. It was Ms. [REDACTED]’s position that the zero grades may have been an input error by the QACPS. The opinion was not corroborated by any additional documentation other than for her to note that the Student had been in school for the first two weeks of the semester, and there should have been some data entered during that time, as was done in the Introduction to Carpentry class.

An IEP meeting was convened on January 10, 2023, to discuss the Student’s placement. The IEP draft provided by the Parent did not address [REDACTED] or any issues related to online education during the disciplinary period. There was no Prior Written Notice provided by the parties for this IEP meeting. The IEP team members, including the Parent, agreed to place the Student in a non-public day school at the meeting.

When the local education agency fails to abide by the procedural protections afforded students and parents under the IDEA, at a hearing, the parent must prove that any procedural violation resulted in a denial of a FAPE to the child. Particularly, the parent must prove that the procedural violation (I) impeded the child’s right to a FAPE; (II) significantly impeded the

⁷⁶ Parent Ex. 66, p. 430.

parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or (III) caused a deprivation of educational benefits.⁷⁷

When a school system has failed its obligation to a student under the IDEA, that student is entitled to be made whole with nothing less than a “complete” remedy including compensatory services.⁷⁸ Further “[w]hen 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.”⁷⁹

As to the remedial provision, the Supreme Court has emphasized that relief under the IDEA depends on equitable considerations. Accordingly, compensatory education is not a contractual remedy, but an equitable remedy, part of the court’s resources in crafting appropriate relief. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.⁸⁰

The QACPS committed procedural errors because (1) there was no clear determination of what type of services the Student received through HHT or when such services began; (2) the Student received no educational services for the two-week period between October 3 and October 14, 2022; and (3) there is no documentation that the IEP team determined how the Student would have access to the general educational curriculum or make progress towards his IEP goals.

⁷⁷ 20 U.S.C.A § 1415(f)(3)(E)(i) and (ii).

⁷⁸ *G.I. v. Ligonier Valley School District Authority*, 802 F.3d 601, 625 (3d Cir. 2015); citing *Forest Grove School Dist. v. T.A.*, 557 U.S. 230, 244 (2009).

⁷⁹ *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).

⁸⁰ *Reid v. District of Columbia*, 401 F3d 516 (2005).

Having found that the QACPS committed these procedural errors, I must now determine whether these errors constitute a procedural violation that impeded the Student's access to a FAPE, impeded the Parent's opportunity to participate in the decision-making process,⁸¹ or caused a deprivation of educational benefits.

The record is not clear about the level and nature of educational services that the Student received while he was hospitalized at [REDACTED] from September 13, 2022, through September 26, 2022. There is a vague reference to educational services being provided in the September 2022 MDR documentation, but the nature of the services is not clear. Upon the Student's discharge on September 26, 2022, he returned home and there is no record that he was provided any education services until October 17, 2022. The school started to provide special education services on October 17, 2022. After the special education services began, I find that the QACPS was thereafter in compliance with their obligation to provide special education services to the Student so that he could make progress on the goals listed in his IEP. I also accept the testimony from Mr. [REDACTED] that the Student was making progress on those goals, which is corroborated by the notes included in the draft of January 2023 IEP report.

However, I find the QACPS failed to provide special education services to the Student for the two weeks prior to October 17, 2022. Specifically, between October 3, 2022, and October 7, 2022, the Student had four, one-hour sessions of special education services in his October 2021, IEP, and between October 10, 2022, and October 14, 2022, the Student had four, fifty-minute sessions of special education services in his October 2022, IEP.⁸²

⁸¹ There was no evidence submitted by the parties that the Parent was unable to participate in the decision-making process. The Parent was present during all MDR and IEP meetings and her input was noted for each meeting. Therefore, I will not address this issue further.

⁸² The October 14, 2021 IEP indicated that the Student was to receive special education sessions in the amount of four session per week for one hour. Thirty minutes was allocated to mathematics services and thirty minutes was allocated to social/emotional goals. The October 11, 2022 IEP reduced the length of time for the weekly services to fifty minutes, and reduced the time allocated to mathematics services by ten minute per session.

I find this unexplained two-week gap, where no special education services were provided, impeded the Student's access to a FAPE and caused a deprivation of educational benefits, as evidenced by his zero grades and lack of records in his educational logs for this time period. Although two weeks is a relatively brief period of time, the Student has a significant emotional disability and a history of struggles with mathematics, and he should have every opportunity to receive the services that were placed in his IEP, or the services determined by his IEP team to be implemented during his disciplinary removal.

With respect to the school's obligation to provide general education curriculum services to the Student during his disciplinary removal, there was a complete failure to do so. I do not accept the QACPS argument that "making available" the [REDACTED] virtual online education program, without any explanation of how the Student was to access the program, and who was responsible for implementing the general education curriculum, is legally adequate.

Mr. [REDACTED] testified that he provided the special education services to the Student as described in the October 2022 IEP. He also testified that he was not familiar with how the [REDACTED] coursework was provided to the Student. However, he was listed as the teacher for the general curriculum classes in World History, English III, and Chemistry. Other than what he described as the occasional "boost" or "re-charge", he was not involved in the instruction of these online classes. Apparently, the QACPS relied entirely on the [REDACTED] online program for the delivery of the general curriculum to the Student without any support from an educator. This is contrary to Ms. [REDACTED]'s explanation that the [REDACTED] coursework is paired with live instruction in the [REDACTED] program to be a complimentary tool in the general education curriculum.

I find the failure by the QACPS to support the [REDACTED] online coursework with any teacher-led instruction during the period of October 3, 2022, through January 27, 2023, impeded the Student's access to a FAPE and caused a deprivation of educational benefits.⁸³

The Parent did not present any evidence, including expert testimony, regarding the amount of compensatory services to be provided. The Parent suggested that I order the IEP team make the determination or that I order an Independent Education Evaluation⁸⁴ to be conducted at the QACPS' expense to determine the amount of compensatory services to be provided.

The QACPS objected to the request for an independent education evaluation on the grounds that it was not previously requested in the Due Process complaint or at the pre-hearing conference. "A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency."⁸⁵ The Parent has not identified the QACPS assessments, with which she disagrees. I also agree with the QACPS that this issue is beyond the Parent's Due Process Complaint and therefore, not properly before me.⁸⁶ Therefore, I do not find the Parent's request for an independent education evaluation to be appropriate to determine the amount of compensatory services.

I find the appropriate remedy is to convene an IEP meeting within thirty days of the date of this order to determine the nature and amount of compensatory services to be provided for the failure of the QACPS to provide the Student access to special education services from October 3, 2022, through October 14, 2022, and failure to provide access to the general education

⁸³ See 20 U.S.C.A § 1415(f)(3)(E)(i) and (ii).

⁸⁴ "Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question." 34 C.F.R. § 300.502(a)(3)(i).

⁸⁵ 34 C.F.R. § 300.502(b)(1).

⁸⁶ "The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under §300.508(b), unless the other party agrees otherwise." 34 C.F.R. § 300.511(d).

curriculum from October 3, 2022, through the date of the hearing. This is an equitable remedy, to be provided with flexibility and with consideration of the necessities of this particular case.⁸⁷

I find that it is appropriate for the Student to receive a FBA, and for the IEP team to develop a BIP.⁸⁸ According to the educational records provided, the last FBA was conducted in May 2015.⁸⁹ In addition, a BIP is currently not in place as the services and modifications were addressed programmatically in the ██████ program.⁹⁰ As part of the MDR process, “[a] child with a disability who is removed from the child’s current placement pursuant to paragraphs (c) or (g) of this section must - (ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.”⁹¹ The QACPS determined that an FBA and BIP were not necessary as they were embedded in the ██████ program and would be addressed through the non-public placement. Since 2015, in addition to the September 13, 2022, incident, the Student has had several hospitalizations, and other disciplinary infractions, which leads me to conclude that an FBA and BIP are necessary as an equitable remedy to ensure that this behavior does not recur.

III. Home Setting

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 FAPE, meaning that, ordinarily, disabled and non-disabled students should be, when feasible, educated in the same classroom.⁹² Indeed, mainstreaming children with disabilities with non-disabled

⁸⁷ *Reid v. District of Columbia*, 401 F.3d. 516 (2005).

⁸⁸ 34 C.F.R. § 300.530(d)(1)(ii).

⁸⁹ Parent Ex. 13, pp. 69-70.

⁹⁰ QACPS Exs. 5-7, 5-8

⁹¹ 34 C.F.R § 300.530(d)(1)(ii).

⁹² 20 U.S.C.A. § 1412(a)(5); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117.

peers is generally preferred, if the disabled student can achieve educational benefit in the mainstreamed program.⁹³ At a minimum, the statute calls for school systems to place children in the “least restrictive environment” consistent with their educational needs.⁹⁴ 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 the QACPS to offer a continuum of alternative placements that meet the needs of children with disabilities.⁹⁵ 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.⁹⁶ In the case of disciplinary removals of students with disabilities, the IEP may place the student in an alternative interim education setting, another setting, or suspension as appropriate.⁹⁷ However, in Maryland, the student may not be placed at home during any period of disciplinary removal.⁹⁸

In this instance, from October 17, 2022, to present, the QACPS provided the Student with fifty minutes of special education services, four times per week by Mr. [REDACTED], a special education teacher. These services were provided virtually in the Student’s home. During this time period, the QACPS also made available to the Student a virtual general education curriculum through the

⁹³ *DeVries v. Fairfax Cty. Sch. Bd.*, 882 F.2d 876, 878-79 (4th Cir. 1989).

⁹⁴ 20 U.S.C.A. § 1412(a)(5)(A).

⁹⁵ 34 C.F.R. § 300.115.

⁹⁶ *Id.* § 300.115(b); COMAR 13A.05.01.10B(1).

⁹⁷ 34 C.F.R § 300.530(b)(1).

⁹⁸ COMAR 13A.05.01.10C(6).

██████████ online educational platform. The ██████████ program was not supported or supplemented by a teacher. The Parent argued that educating the Student at home during the disciplinary period is the most restrictive environment, and the Student has not had access to his peers which has been detrimental to his well-being. The QACPS argued that virtual learning has been available as an option to all students in the QACPS since before the COVID-19 pandemic.⁹⁹

Based upon the record before me, it is clear that the Student was educated in the home setting despite the Maryland regulatory prohibition. I must now determine whether this error constitutes a procedural violation because it impeded the Student's access to a FAPE, impeded the Parent's opportunity to participate in the decision-making process,¹⁰⁰ or caused a deprivation of educational benefits.¹⁰¹

The matter is complicated by the Student's psychiatric admissions from September 13, 2022, through September 26, 2022, and again on December 1, 2022, through December 9, 2022, and the extreme and alarming nature of the threat posed to the staff and students of the school by the Student. I must also weigh the fact that the QACPS offered the Student placement in a non-public school setting on November 18, 2022, which was declined by the Parent.¹⁰² In addition, at the January 10, 2023 IEP meeting, the Parent agreed with the non-public placement and three applications were sent out the same day.

Counsel for the Parent argued the Student "just wants to attend school," yet now states that the family is not seeking a return to the ██████████ program at the ██████████ High

⁹⁹ The QACPS offered no additional evidence regarding what a virtual school day entails for a student opting to be educated in this manner, including the subject matters taught and the length of the school day, and whether the services Mr. ██████████ was providing for the Student were equivalent or distinguishable.

¹⁰⁰ As previously noted, there is no evidence that the Parent was unable to participate in the decision-making process.

¹⁰¹ 20 U.S.C.A § 1415(f)(3)(E)(i) and (ii).

¹⁰² The offer of non-public placement was offered at the resolution meeting that took place after the first Due Process complaint was filed.

School. The QACPS was in a challenging position of making a placement decision for the Student and had to balance its legal obligation to provide the Student with FAPE. I find the offer of non-public placement in November 2022 to be a significant factor in mitigating the procedural FAPE violation.

However, there is no evidence of any further efforts made by the QACPS to consider any alternative placements after the offer was declined so as not to be in violation of the Maryland regulation. Perhaps the QACPS should have convened an IEP meeting to make the placement to a non-public school. Despite the rejection of the offer of a non-public school placement at the resolution meeting in November 2022, the QACPS has an ongoing obligation to place the Student in a setting that is not in violation of Maryland law.

I also note that the Student was attending the majority of his classes in the special education [REDACTED] classroom, and he was only attending one class (Introduction to Carpentry), lunch, and participating in building a set for the high school musical, in the general education setting. Nevertheless, the Student did not have access to any of his peers during the time of his expulsion, he was not permitted on school property per the expulsion letter dated September 27, 2022.¹⁰³

I find that the failure to provide the Student with educational services in an appropriate setting determined by the IEP, other than the Student's home, for the duration of his suspension and expulsion, impeded the Student's access to a FAPE and caused a deprivation of educational benefits, as evidenced by his grades and for the reasons stated above, I also find the violation of the Maryland regulation would ordinarily warrant compensatory education services, however, in light of the prior violation and award of compensatory services for the QACPS' failure to provide special education services and access to the general education curriculum, I do not find

¹⁰³ QACPS 6-1.

that additional compensatory services to be determined by the IEP team is warranted at this time.

If the Student has not been placed in a non-public school setting at the time of this decision, and the Student is still receiving education services at home, I find the QACPS to continue to be in violation of COMAR 13A.05.01.10C(6), and order that the QACPS convene an IEP meeting within thirty days of the date of this decision to determine an educational placement for the Student that is not in violation of COMAR 13A.05.01.10C(6) while the application(s) for non-public placement are pending.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the manifestation determination review meetings held on September 23, 2022, and December 16, 2022, had the appropriate participants and all relevant data were considered.¹⁰⁴

I further conclude as a matter of law, that the IEP team properly determined on September 26, 2022, and December 16, 2022, that the Student's behavior on September 13, 2022, was not caused by, or did not have a direct and substantial relationship to, his disability.¹⁰⁵

I further conclude as a matter of law, that the Student was not provided access to special education services from October 3, 2022, through October 14, 2022, which resulted in a denial of a FAPE and a deprivation of an educational benefit.¹⁰⁶

I further conclude as a matter of law, that the Student was not provided educational services to access the general education curriculum from October 3, 2022 to the date of the hearing, which resulted in a denial of a FAPE and a deprivation of an educational benefit.¹⁰⁷

¹⁰⁴ 34 C.F.R. § 300.530.

¹⁰⁵ 34 C.F.R. § 300.530(e)(1)(i)-(ii).

¹⁰⁶ 34 C.F.R. § 300.530(d)(1)(i); 20 U.S.C.A § 1415(f)(3)(E)(ii)(I), (III).

¹⁰⁷ 34 C.F.R. § 300.530(d)(1)(i); 20 U.S.C.A § 1415(f)(3)(E)(ii)(I), (III).

I further conclude as a matter of law, that the Student is entitled to receive a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.¹⁰⁸

I further conclude as a matter of law the Student improperly received educational services at home while he was removed for disciplinary purposes, which resulted in a denial of a FAPE and a deprivation of an educational benefit.¹⁰⁹

ORDER

I **ORDER** that:

1. The order of expulsion of the Student from the Queen Anne's County Public Schools for the 2022-20223 school year shall remain in effect.
2. The IEP team convene a meeting to determine the amount and nature of compensatory services to be provided in accordance with this decision.
3. The IEP team is also to determine the placement of the Student in the event that the Student has not already been placed in a non-public school.
4. The IEP team conduct a functional behavioral assessment and develop a behavior intervention plan.
5. The Queen Anne's County Public Schools shall, within thirty [30] days of the date of this decision, provide proof of compliance with this Order to the Chief of the Complaint

¹⁰⁸ 34 C.F.R. § 300.530(d)(1)(ii).

¹⁰⁹ COMAR 13A.05.01.10.C(6); 20 U.S.C.A § 1415(f)(3)(E)(ii)(I), (III).

Investigation and Due Process Branch, Division of Special Education and Early Intervention
Services, Maryland State Department of Education.

February 10, 2023
Date Decision Issued

Administrative Law Judge
Patrick E. Maher

PEM/emh
#203413

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 and/or Emailed To:

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██████████,

STUDENT

v.

QUEEN ANNE'S COUNTY

PUBLIC SCHOOLS

BEFORE PATRICK E. MAHER,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-QANN-OT-22-31189

FILE EXHIBIT LIST

Unless otherwise noted, I admitted the following exhibits into evidence on behalf of the

Student:

- | | |
|---------------|---|
| Parent Ex. 1 | QACPS Student Discipline Alert, March 2, 2011- September 13, 2022, pp. 1-4 |
| Parent Ex. 2 | Child Find Referral, June 3, 2011, pp. 5-6; not offered |
| Parent Ex. 3 | QACPS Evaluation Report and Determination of Initial Eligibility, July 26, 2011, pp. 7-10; not offered |
| Parent Ex. 4 | Child Find Referral, January 28, 2015, pp. 11-12; not offered |
| Parent Ex. 5 | Prior Written Notice, January 28, 2015, pp. 13-14; not offered |
| Parent Ex. 6 | QACPS Assessment Report, March 23, 2015, pp. 15-21; not offered |
| Parent Ex. 7 | QACPS Psychological Report, March 27, 2015, pp. 22-31 |
| Parent Ex. 8 | QACPS Evaluation Report and Determination of Initial Eligibility, April 1, 2015, pp. 32-36; not offered |
| Parent Ex. 9 | Prior Written Notice, April 1, 2015, pp. 37-38; not offered |
| Parent Ex. 10 | IEP, April 29, 2015, pp. 39-62; not offered |
| Parent Ex. 11 | Prior Written Notice, April 30, 2015, pp. 63-64; not offered |
| Parent Ex. 12 | QACPS Occupational Therapy Evaluation, May 4, 2015, pp. 65-68; not offered |

Parent Ex. 13 FBA, May 9, 2015, pp. 69-70

Parent Ex. 14 BIP, May 27, 2015, pp. 71-72

Parent Ex. 15 Prior Written Notice, May 27, 2015, pp. 73-74; not offered

Parent Ex. 16 IEP, April 13, 2016, pp. 75-99

Parent Ex. 17 BIP Review, April 13, 2016, pp. 100-101

Parent Ex. 18 IEP Team Summary/Prior Written Notice, November 9, 2016, pp. 102-104; not offered

Parent Ex. 19 BIP Review, November 9, 2016, pp. 105-106; not offered

Parent Ex. 20 QACPS Assessment Report, December 16, 2016, pp. 107-110; not offered

Parent Ex. 21 QACPS Psychological Assessment, January 6, 2017, pp. 111-118

Parent Ex. 22 IEP Team Summary/Prior Written Notice, January 18, 2017, pp. 119-122; not offered

Parent Ex. 23 IEP, February 15, 2017, pp. 123-163; not offered

Parent Ex. 24 IEP Team Summary/Prior Written Notice, February 15, 2017, pp. 164-166; not offered

Parent Ex. 25 IEP Team Summary/Prior Written Notice, October 27, 2017, pp. 167-170; not offered

Parent Ex. 26 Notice and Consent for Assessment, October 27, 2017, pp. 171-172; not offered

Parent Ex. 27 QACPS Assessment Report, December 22, 2017, pp. 173-176; not offered

Parent Ex. 28 QACPS Psychological Assessment, January 12, 2018, pp. 177-189

Parent Ex. 29 IEP, February 8, 2018, pp. 190-224; not offered

Parent Ex. 30 BIP Review, February 8, 2018, pp. 225-226

Parent Ex. 31 IEP Team Summary/Prior Written Notice, May 3, 2018, pp. 227-231; not offered

Parent Ex. 32 Child Find Referral, October 14, 2019, pp. 232-233; not offered

- Parent Ex. 33 IEP Team Summary/Prior Written Notice, September 21, 2020, pp. 234-236; not offered
- Parent Ex. 34 QACPS Assessment Report, October 13, 2020, pp. 237-243; not offered
- Parent Ex. 35 [REDACTED] Psychiatric Evaluation, October 14, 2020, pp. 244-253
- Parent Ex. 36 QACPS Psycho-Educational Assessment Report, October 30, 2020, pp. 254-266
- Parent Ex. 37 IEP, November 17, 2020, pp. 267-295; not offered
- Parent Ex. 38 IEP Team Summary/Prior Written Notice, November 17, 2020, pp. 296-298; not offered
- Parent Ex. 39 [REDACTED] Individualized Treatment Plan, February 19, 2021, pp. 299-305
- Parent Ex. 40 Quarterly Progress Report: [REDACTED]
[REDACTED], March 24, 2021, pp. 306-307
- Parent Ex. 41 [REDACTED] May 2021 Support List, May 4, 2021, p. 308
- Parent Ex. 42 Prior Written Notice, May 4, 2021, pp. 309-310; not offered
- Parent Ex. 43 [REDACTED] Educational Assessment, September 21, 2021, pp. 311-312; not offered
- Parent Ex. 44 QACPS Notice of IEP Team Meeting, September 29, 2021, pp. 313-314; not offered
- Parent Ex. 45 [REDACTED] Discharge Paperwork, October 13, 2021, pp. 315-317; not offered
- Parent Ex. 46 [REDACTED] October 2021 Support List, October 14, 2021, p. 318
- Parent Ex. 47 IEP, October 14, 2021, pp. 319-357
- Parent Ex. 48 Prior Written Notice, October 14, 2021, pp. 358-359
- Parent Ex. 49 Letter Concerning Progress Report, November 5, 2021, p. 360; not offered
- Parent Ex. 50 Letter Concerning Progress Report, January 20, 2022, p. 361; not offered

Parent Ex. 51 Statement from ██████████, February 18, 2022, p. 362

Parent Ex. 52 Statement from ██████████, February 18, 2022, p. 363

Parent Ex. 53 Letter Concerning Progress Report, April 1, 2022, p. 364; not offered

Parent Ex. 54 IEP Team Summary/Prior Written Notice, June 3, 2022, pp. 365-367

Parent Ex. 55 Letter Concerning Progress Report, June 9, 2022, p. 368; not offered

Parent Ex. 56 Statement from ██████████, September 13, 2022, p. 369

Parent Ex. 57 Disciplinary Referral Form, September 13, 2022, p. 370

Parent Ex. 58 ██████████ Discharge Care Plan and Home Medications, September 26, 2022, pp. 371-374

Parent Ex. 59 Review of Assessment data and educational records for MDR, September 2022, pp. 375-377

Parent Ex. 60 MDR Worksheet, September 26, 2022, pp. 378-385

Parent Ex. 61 Expulsion Letter, September 27, 2022, p. 386

Parent Ex. 62 Department of Juvenile Services, Charge of Threat of Mass Violence, September 29, 2022, p. 387; not offered

Parent Ex. 63 IEP, October 11, 2022, pp. 388-427

Parent Ex. 64 Educational Services Log, October 17, 2022 - January 11, 2023, p. 428; not offered

Parent Ex. 65 Notice of Intake Decision/Appeal Letter, Delinquency Cases, October 21, 2022, p. 429; not offered

Parent Ex. 66 QACPS Report Card, November 11, 2022, p. 430

Parent Ex. 67 ██████████ Psychiatric Evaluation, December 2, 2022, pp. 431-440

Parent Ex. 68 ██████████ Discharge Summary, December 9, 2022, pp. 441-444

Parent Ex. 69 IEP Team Summary/Prior Written Notice, December 16, 2022, pp. 445-448

- Parent Ex. 70 IEP, January 4, 2023, pp. 449-486
- Parent Ex. 71 The Student's Drawings and Writings, pp. 487-497
- Parent Ex. 72 Curriculum Vitae, Dr. [REDACTED], pp. 498-502
- Parent Ex. 73 Maryland State Department of Education Letter of Findings Reference #22-188, July 25, 2022, pp. 503-508; not admitted

Unless otherwise noted, I admitted the following exhibits into evidence on behalf of the

QACPS:

- QACPS Ex. 1 Incident Report Statement, [REDACTED], September 13, 2022
- QACPS Ex. 2 Student Writings in Student Backpack, September 13, 2022
- QACPS Ex. 3 Text message from Ms. [REDACTED] to the Parent, September 13, 2022
- QACPS Ex. 4 Discipline Letter from the Principal of [REDACTED] High School to the Parent re: September 13, 2022 incident and Referral forms to the QACPS' Superintendent, September 19, 2022
- QACPS Ex. 5 Prior Written Notice, September 26, 2022
- QACPS Ex. 6 QACPS' Superintendent's Letter to the Parent, September 27, 2022
- QACPS Ex. 7 QACPS' Board of Education Letter to the Parent re: expulsion appeal, October 14, 2022
- QACPS Ex. 8 Prior Written Notice, December 16, 2022
- QACPS Ex. 9 IEP, October 14, 2021
- QACPS Ex. 10 Disciplinary Log Entries, undated
- QACPS Ex. 11 Educational Service Logs during disciplinary removal, 2022-2023 school year
- QACPS Ex. 12 Psycho-Educational Assessment, QACPS, October 30, 2020
- QACPS Ex. 13 Psycho-Educational Assessment, QACPS, December 11, 2017
- QACPS Ex. 14 Psychological Report, QACPS, January 16, 2017
- QACPS Ex. 15 Psychological Report, QACPS, March 27, 2015, Page 2 of 2
- QACPS Ex. 16 FBA, May 19, 2015

- QACPS Ex. 17 BIP, May 19, 2015
- QACPS Ex. 18 BIP Review, March 13, 2016
- QACPS Ex. 19 BIP Review, February 8, 2018
- QACPS Ex. 20 Behavioral Supports and Resources, [REDACTED], October 14, 2021
- QACPS Ex. 21 Individualized Treatment Plan, [REDACTED], February 19, 2021
- QACPS Ex. 22 [REDACTED] Discharge Care Plan, September 26, 2022
- QACPS Ex. 23 Interdisciplinary Notes, [REDACTED], October 14, 2020
- QACPS Ex. 24 Discharge Summary, [REDACTED], December 9, 2022
- QACPS Ex. 25 Psychiatric Evaluation, [REDACTED], December 1, 2022
- QACPS Ex. 26 Resume - [REDACTED]
- QACPS Ex. 27 Resume - [REDACTED], Ph.D.
- QACPS Ex. 28 Resume - [REDACTED]; not offered
- QACPS Ex. 29 Resume - [REDACTED]
- QACPS Ex. 30 Resume - [REDACTED]; not offered