

████████████████████,

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE WILLIAM F. BURNHAM,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-MONT-OT-22-25501

DECISION

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STATEMENT OF THE CASE

On October 19, 2022, ██████████ and ██████████ (Parents),¹ on behalf of their child, ██████████ (Student), filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by Montgomery County Public Schools (MCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017);² 34 C.F.R. § 300.511(a) (2021);³ Md. Code Ann., Educ. § 8-413(d)(1) (2022);⁴ Code of Maryland Regulations (COMAR) 13A.05.01.15C(1).

¹ ██████████ (the Father) is the Student’s father. ██████████ (the Mother) is the Student’s mother. They will be referenced as appropriate in this decision.

² “U.S.C.A.” is an abbreviation for the United States Code Annotated. Unless otherwise noted, all citations herein to the U.S.C.A. are to the 2017 bound volume.

³ “C.F.R.” is an abbreviation for the Code of Federal Regulations. Unless otherwise noted, all citations herein to the C.F.R. are to the 2021 bound volume.

⁴ Unless otherwise noted, all citations herein to the Education Article are to the 2022 Replacement Volume of the Maryland Annotated Code (Educ.).

I held a prehearing conference on November 21, 2022 (Conference) via the Webex videoconferencing platform. The Parents were represented by Michael Eig, Esquire. John Delaney, Esquire, represented MCPS.

I held the hearing on March 13, 14, and 20, 2023. Michael Eig, Esquire, represented the Parents. John Delaney, Esquire, represented the MCPS.

The parties held a resolution meeting on November 9, 2022, and, that same day, agreed in writing that no agreement was possible. As discussed at the Conference, based on those circumstances, the forty-five-day decision timeline began on November 10, 2022. *See* 34 C.F.R. §§ 300.510(c), 300.515(a); Educ. § 8-413(h); COMAR 13A.05.01.15C(14). Under the applicable law, a decision in this case would be due by Friday, December 23, 2022,⁵ forty-five days following the written agreement that no resolution was possible. *Id.* § 300.510(b)(2).

However, due to other commitments (previously scheduled hearings, IEP⁶ meetings, and the unavailability of witnesses) and the upcoming holiday season, the parties were unavailable for the hearing before January 9, 2023, and they jointly requested an extension of the timeframe for holding the hearing and issuing the decision. The parties further jointly requested that I issue a decision within thirty days after the conclusion of the hearing. Thus, because counsel for the parties had previously scheduled hearings, IEP meetings, and witnesses who would be unavailable due to previously scheduled vacations and the holiday season, I granted the joint request for an extension and agreed to extend the time for the decision in this matter to thirty days following the close of the record. 34 C.F.R. § 300.515(c); Educ. § 8-413(h).

The hearing was scheduled for January 9, 10, 11, and 12, 2023. On an unknown date following the Conference, the Mother was scheduled for jury duty, and the Parents thereafter

⁵ Because the actual date was Saturday, December 24, 2022, the due date was the first business day prior to that Saturday, i.e., December 23, 2022.

⁶ Individualized education program.

requested a postponement. On January 5, 2023, the matter was further postponed. I rescheduled the hearing for March 13, 14, 20, and 21, 2023 because those dates were the first dates the parties were otherwise unencumbered by further prescheduled hearings and IEP meetings. The previously granted request for extension of the decisional timeframe was until thirty days after the conclusion of the hearing; thus, the decisional timeframe was adjusted to accommodate the rescheduled hearing dates. Because the hearing ultimately concluded one day early, on March 20, 2023,⁷ the decision in this case is due no later than thirty days from that date, that is, on or before Wednesday, April 19, 2023.

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

ISSUES

1. Did MCPS fail to make a free appropriate public education (FAPE) available to the Student for the 2022-2023 school year by failing to develop an IEP specifically related to the amount of special education service hours outside of the general education environment, including an appropriate educational placement or setting for the Student?
2. If MCPS did not make a FAPE available to the Student for the 2022-2023 school year with an appropriate IEP and placement, was the Parents' placement of the Student at the [REDACTED] ([REDACTED]) proper/appropriate?
3. If the placement by the Parents of the Student at [REDACTED] is determined to be proper/appropriate for the 2022-2023 school year, should MCPS reimburse the Parents for tuition and related expenses associated with the placement of the Student at [REDACTED] for the 2022-2023 school year?

⁷ The parties requested, and I granted, leave to submit a memorandum of authorities to support their respective closing arguments. Each party submitted a memorandum on March 21, 2023, and the memoranda are contained in the record.

SUMMARY OF THE EVIDENCE

Exhibits

I have attached a complete Exhibit List as an Appendix.

Testimony

The Mother, testified and presented the following witnesses:

- [REDACTED], Ed. D.,⁸ NBCT,⁹ Director of Social Emotional Services, [REDACTED], admitted as an expert in Special Education
- [REDACTED], High School Education Director, [REDACTED], admitted as an expert in Special Education

The MCPS presented the following witnesses:

- [REDACTED],¹⁰ Resource Teacher for Special Education, MCPS, admitted as an expert in Special Education
- [REDACTED], School Psychologist, M.A., C.A.S.,¹¹ MCPS, admitted as an expert in school psychology
- [REDACTED], Resource Teacher, [REDACTED] [REDACTED] ([REDACTED])¹² at [REDACTED] High School ([REDACTED]), MCPS, admitted as an expert in Special Education

⁸ Doctor of Education.

⁹ National Board-Certified Teacher.

¹⁰ The witness was introduced as [REDACTED] and is referred to throughout this Decision as Ms. [REDACTED]

¹¹ Certificate of Advanced Study.

¹² The program was called "[REDACTED]" throughout the hearing; however, throughout this decision, I used the acronym "[REDACTED]" to avoid confusion with the MCPS [REDACTED] program, "[REDACTED]."

FINDINGS OF FACT

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

I. The Student - Background

1. The Student is seventeen years old (date of birth [REDACTED], 2005) and currently attends [REDACTED].
2. The Student can communicate with peers and adults.
3. The Student was disenrolled from MCPS and home schooled from the 2017-2018 school year through the 2020-2021 school year.
4. The Student's diagnoses include attention-deficit/hyperactivity disorder (ADHD), inattentive presentation; learning disorder unspecified; developmental coordination disorder; and mixed receptive expressive language disorder. The Student qualifies for special education services as a student with an Other Health Impairment (OHI).
5. The Student requires social and emotional supports.
6. The Student was evaluated by MCPS for an IEP in 2018. In April 2018, he was administered the Woodcock-Johnson IV Tests of Achievement (WJ-IV) and the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V). The Parents did not accept an IEP from MCPS and the Student remained in home school.
7. During his home schooling, the Student received private tutoring three to four times per week and forty-five minutes per week of speech and language services from MCPS.
8. The Parents requested MCPS assess the Student for an IEP for the 2021-2022 school year.

II. The 2021-2022 School Year (Eleventh Grade)

9. The Student sought admission into [REDACTED] for the 2021-2022 school year.

10. The Student was evaluated on August 31 and September 2, 2021 for speech and language at the [REDACTED] ([REDACTED]).¹³ At the time, he had a previous diagnosis of ADHD. His prognosis for improvement was considered good. MCPS Ex. 15, p. 108.¹⁴

11. During the [REDACTED] Evaluation, the Clinical Evaluation of Language Fundamentals – Fifth Edition (CELF-5) was administered and the Student’s ranges compared to students his age were:

- | | |
|-----------------------------------|----------------|
| • World Classes | below average |
| • Following Directions | average |
| • Formulated Sentences | average |
| • Recalling Sentences | below average |
| • Understanding Spoken Paragraphs | below average |
| • Word Definitions | below average |
| • Sentence Assembly | within average |
| • Semantic Relationships | average |

12. CELF-5 subtests administered to the Student resulted in the following ranges of functioning:

- | | |
|----------------------------------|---------------|
| • Core Language Score | below average |
| • Receptive Language Index | below average |
| • Expressive Language Index | average |
| • Language Memory index | average |
| • Language Context index average | below average |

¹³ MCPS provided this assessment report as Exhibit 15, but it does not appear that MCPS conducted the assessment as part of its development of an IEP. Many of the [REDACTED] documents in evidence include [REDACTED] in their titles, and [REDACTED] and [REDACTED] appear to be affiliated. No further explanation of any relationship was provided at the hearing. I will refer to the assessment as the [REDACTED] Evaluation. The document indicates that the reason for the referral for the [REDACTED] Evaluation was that it was “part of the admissions process to attend [REDACTED].” See MCPS Ex. 15.

¹⁴ The MCPS exhibits are labeled “MCPS_0001” to “MCPS_0166.” I will refer to specific pages as “p. 1” to “p. 166” where appropriate.

13. According to the [REDACTED] Evaluation, the Student's overall language ability was below age expectations, and it was recommended¹⁵ he receive speech-language therapy once per week to address expressive and receptive language needs.

14. The Student attended [REDACTED] for the 2021-2022 school year.

15. The Student received thirty minutes of counseling¹⁶ each week.

16. On December 1, 2021, [REDACTED] developed a Diagnostic Prescriptive Goals and Annotations plan (DPG) for the Student. On December 3, 2021, the Parents accepted the DPG following a meeting with [REDACTED].

17. The DPG contained Instructional and Testing Accommodations; Present Level of Performance in math, reading, written language, speech and language, and social emotional/behavioral. Additionally, the DPG contained Goals and Annotations for reading; written language; speech and language; and social emotional/behavioral.

18. The Instructional and Testing Accommodations in the DPG included; small group instruction, extra response time, multiple/frequent breaks, small classroom settings with reduced distractions, and one-to-one assistance. The DPG did not provide the Student any behavioral accommodations.

19. [REDACTED] used the Student's 2018 WJ-IV scores to develop the reading portions of his DPG. The Student had needs in reading comprehension, specifically using evidence to support the answers he gave. The DPG indicated the Student struggled with contextual and grammatical accuracy in the use of vocabulary words. The DPG indicated that when the Student was fully engaged, he was able to answer explicit and literal reading comprehension questions with relatively high accuracy and required some support in repeating information and prompting from staff.

¹⁵ [REDACTED], M.S., CCC-SLP was the speech language pathologist who signed the [REDACTED] Evaluation.

¹⁶ The type of counseling was not further identified.

20. The DPG indicated that the Student's written language was comprised of simple sentences with below level language. He required prompts to add different types of clauses to vary sentence structure. With support, prompting, and frequent verbal reminders, the Student could identify and fix issues. The Student needed to proofread and revise his compositions for mechanical and organizational errors.

21. In speech and language, the DPG indicated that the Student's weaknesses negatively impacted his ability to access curriculum. He required speech and language services to help build language skills needed to access the curriculum and effectively engage with peers and staff. He demonstrated weaknesses in receptive and expressive language and required multiple supports to: follow multi-step instructions; recall facts and/or details from spoken and written language; formulate sentences to explain his ideas; answer higher order questions; identify the main ideas of passages and/or stories; and summarize details of passages and/or stories. He benefitted from individualized learning and verbal and visual supports.

22. As to social emotional/behavioral goals, the DPG recommended counseling for the Student to help build self-advocacy and emotional regulation skills to access the curriculum and build healthy peer relationships within the school setting. The DPG recognized the Student's weaknesses in emotional regulation, self-advocacy, and social engagement skills. The DPG indicated he benefitted from support in both academic and social settings. He benefitted from individualized counseling, weekly small group counseling, open-ended questions to check for understanding, visual step-by-step aids and positive feedback.

23. [REDACTED] entered no progress notes for the 2021-2022 school year into the December 2021 DPG.

III. The 2022-2023 School Year (Twelfth Grade)

24. On May 17, 2022, an IEP meeting was convened virtually to discuss the Student's IEP status for 2022-2023. See MCPS Ex. 12. The Parents were informed of the *Procedural Safeguards and Parental Rights* under IDEA. The purpose of the meeting was to identify IEP eligibility for the Student. The Parents, Ms. [REDACTED], [REDACTED] (MCPS Counselor), Zvi Greismann (MCPS Attorney), [REDACTED] ([REDACTED] Staff), and [REDACTED] ([REDACTED] Staff) attended. The parties decided that the Student required psychological and educational assessments to evaluate what supports the Student required for the 2022-2023 school year. On May 19, 2022, the Father authorized an educational assessment.¹⁷

25. On or about June 2, 2022, [REDACTED] drafted a new DPG, but, as of the time of the hearing, [REDACTED] had not met with the Parents and the DPG was not being used. The December 1, 2021 DPG end date was November 30, 2022. The DPG drafted on December 1, 2021 was still in force at the time of the hearing.

26. On June 14, 2022, the Student completed psychological testing with MCPS school psychologist Ms. [REDACTED] at [REDACTED]. MCPS Ex. 17.

27. Ms. [REDACTED] interviewed the Father,¹⁸ and Ms. [REDACTED] (the Student's physics teacher) and Ms. [REDACTED] (the Student's high school social worker) via email.

28. On June 14, 2022, Ms. [REDACTED] administered the following assessments to the Student:

- Wechsler Adult Intelligence Scale, Fourth Edition (WAIS-IV)
- Conners Third Edition (Conners-3)
- Multidimensional Anxiety Scale for Children Second Edition (MASC-2)

¹⁷ Presumably, the Parents also authorized the psychological assessment although no precise date was provided. In addition, the Mother testified that they, meaning the Parents, filled out documents related to the assessments. I note *infra* where the reports document who completed the assessments.

¹⁸ Ms. [REDACTED] testified she spoke with the Father, but whether in person was not discussed.

29. The Student told Ms. [REDACTED] that his anxiety and OCD were difficult to manage, he was not doing well, and always had many stressful thoughts. During testing, he engaged in behaviors like rubbing his arm, burping, tapping his elbow, playing with his ears, picking his face and nose. He took extended time to complete some assessments and one assessment timed out because he scrolled around on a tablet screen being used to complete the assessment.

30. The Student struggled with lengthy sets of verbal instructions and required multiple prompts to complete testing. The Student was aware of his inattention and apologized for being inattentive.

31. With 90-100 being the average range of cognitive functioning, the Student had the following WAIS-IV scores/results in June 2022:

- Verbal Comprehension 72 borderline
- Perceptual Reasoning 94 average
- Working Memory 92 average
- Processing Speed 59 extremely low
- Full Scale IQ 75 borderline
- General Ability Index 80 low average

32. Full Scale IQ is a measure of overall intellectual ability. The General Ability Index is an estimate of general intellectual ability.

33. On a date not disclosed in the record, Ms. [REDACTED] (the Student's English teacher) and the Parents¹⁹ were administered the Conners Comprehensive Behavior Rating Scale (Conners CBRS). The Conners CBRS allows ratings of average, high average, and extremely elevated. The Parents and Ms. [REDACTED] rated the Student (respectively):

- | | | |
|--------------------------------|---------------|---------------|
| • Emotional Distress Total | very elevated | high average |
| • Upsetting Thoughts | very elevated | very elevated |
| • Worrying | very elevated | no rating |
| • Separation Fears | average | high average |
| • Defiant/Aggressive Behaviors | average | average |

¹⁹ Although the report indicates it was provided to the Parents, the report further indicates that the Father provided responses.

| | | |
|--------------------------------|---------------|---------------|
| • Academic difficulties | elevated | elevated |
| ○ Language subscale | elevated | elevated |
| ○ Match subscale | average | elevated |
| • Hyperactivity/Impulsivity | average | average |
| • Social Problems | elevated | average |
| • Perfectionistic/Compulsive | very elevated | very elevated |
| • Violence Predictor Indicator | average | average |
| • Physical Symptoms | average | average |

34. Both CBRS raters indicated that the Student exhibited upsetting thoughts, had problems with learning, understanding, or remembering academic material, had problems with reading, writing, spelling, and/or communication skills, and the tendency to be rigid and inflexible and engaged in repetitive behaviors.

35. The Father reported additional concerns with the Student's tendency to get stuck on an idea, excessively worry, and have difficulty building friendships.

36. Ms. [REDACTED] added that the Student had difficulty with mathematic material.

37. The Parents, the Student's history teacher (Ms. [REDACTED]) and Ms. [REDACTED] were administered the Conners-3. The Conners-3 was used to obtain observations about the Student and allowed comparison between him and his peers.

38. The Conners-3 is designed to screen for ADHD and other comorbid disorders such as Oppositional Defiance Disorder. The category ratings include average, high average, elevated or very elevated.

39. The Conners-3 raters, other than the Student, indicated their concerns (e.g., elevated, or very elevated) with the following:

- Inattention (concentration difficulty or keeping his mind on his work)
- Learning Problems (academic struggles in reading, writing, and/or math)
- Executive Functioning (higher-order cognitive skills like task initiation, working memory, and planning and organizing, and self-regulation behaviors)
- Peer Relations (ability to develop friendships and social connections)

40. The Student rated himself average in all categories except Learning Problems, where he rated himself high average.

41. The Parents²⁰ and the Student were administered the MASC-2 to explore parental concerns with the Student's anxiety. The MASC-2 provides a range of severity level for several anxiety symptoms and compares a child's functioning to that of same-age and same-gendered peers. The ratings are scored average, high average, slightly elevated, elevated, or very elevated.

42. Reports from both the Father and the Student indicated a high probability of an anxiety related disorder.

43. The Father reported the Student suffers from Separation Anxiety/Phobias (anxious about separation from a caregiver), Performance fears (anxious about public speaking, or answering teachers' questions), Obsessions and Compulsions (thoughts and behaviors consistent with OCD).

44. The Student reported Generalized Anxiety Disorder symptoms, obsessions and compulsions, physical symptoms (comprised of total scores from panic and tense/restless subscales), panic (panic symptoms consistent with Panic Disorder), and tense/restless (tendency to feel tense, shaky, jumpy, restless, on edge).

45. The Student had an anxiety-related disorder.

46. The Student had OCD symptoms as reported on the rating scales.

47. Regardless of whether the Student qualified for an IEP, Ms [REDACTED] recommended that the Student might benefit from:

- The use of checklists, graphic organizers, process charts, or other self-monitoring interventions to improve his attention and work completion in the classroom; regular feedback on his behavior and progress toward meeting classroom expectations in order to address executive functioning weakness.

²⁰ The Father is referred to as the rater for the MASC-2.

- Clear and concise instructions or directions and chunking of information into smaller pieces in order to address attention and organization of information because he may be more successful when asked to remember smaller pieces of information at a time.
- Direct instruction on coping strategies, anxiety management, and mood management techniques in order to address concerns related to anxiety and self-esteem.
- Access to quiet spaces or a cool-down corner in the school building with direct instruction of strategies paired with visual guides to support emotional regulation including deep breathing, fidgets, or timed breaks.

See MCPS Ex. 17.

48. The Student went to [REDACTED] for assessment in June 2022 and did not shut down.

49. The Student participated in a battery of ed assessments on June 14, 16, and 21, 2022 to aid the IEP team in its determination as to whether the Student was educationally disabled and eligible for special education services. Ms. [REDACTED] conducted the assessments and issued a report on June 29, 2022. *See MCPS Ex. 18.*

50. Ms. [REDACTED] relied upon the 2021-2022 DPG for the Student's current services, accommodations, and present levels in math, reading, writing, speech/language, and social emotional development. Ms. [REDACTED] did not observe the Student at [REDACTED] because of COVID restrictions.

51. Ms. [REDACTED] administered the WJ-IV, which measures a student's academic performance in relation to their peer group, based upon age. The WJ-IV measures strengths and weaknesses in reading, mathematics, and writing and important related skills. *See MCPS Ex. 18.*

52. The Student's scores and ranges of achievement for the 2022 WJ-IV compared with the April 2018 WJ-IV resulted in the following:

| | 2022 | Range | 2018 | Range |
|----------------------------|------|-------------|-----------------|-------------|
| Letter Word Identification | 84 | Low Average | 86 | Low Average |
| Passage Comprehension | 75 | Low | 61 | Very Low |
| Word Attack | 97 | Average | 94 | Average |
| Oral Reading | 85 | Low Average | 83 | Low Average |
| Sentence Reading Fluency | 45 | Very Low | 57 | Very Low |
| Reading Recall | 72 | Low | 76 | Low |
| | | | | |
| Applied problems | 102 | Average | 102 | Average |
| Calculation | 82 | Low Average | 91 | Average |
| Math Facts Fluency | 78 | Low | 87 | Low Average |
| Number Matrices | 80 | Low Average | 86 | Low Average |
| | | | | |
| Spelling | 95 | Average | 87 | Low Average |
| Writing Samples | 88 | Low Average | 87 | Low Average |
| Sentence Writing Fluency | <40 | Very Low | 82 | Low Average |
| Spelling of Sounds | 96 | Average | _ ²¹ | - |

53. The Student was administered graded passages in the informal reading inventory with the following results:

- Grade six – 85% comprehension, read the passage aloud and was able to refer to text; errors were sequence of events and inferences
- Grade seven – 65% comprehension, read the passage silently and was able to refer to the text

²¹ No score.

- Grade 8 – 85% comprehension, read the passage aloud and was able to refer to the text; errors were inferences
- Grade nine – 60% comprehension, read the passage aloud and was able to refer to the text; errors were in vocabulary retrieval, finding cause and effect, and inferences

54. The Student scored in the low average range for basic reading skills, very low in reading fluency, and very low in reading comprehension.

55. The Student scored in the low range for mathematic calculation and low average for math problem-solving.

56. The Student scored in the very low range for all written language.

57. Based on the results of the WJ-IV, Ms. [REDACTED] recommended the following for the Student’s classroom teachers:

- Provide graphic organizers for reading responses
- Encourage the Student to use the text to support thesis statements or arguments
- Opportunities to practice new mathematical concepts
- Use of a calculator for all mathematical assessments and classwork
- Opportunities for the Student to practice and review writing conventions
- Extended time for all assessments and long-term assignments
- Opportunities to process information before being called upon
- Proof reading checklist for all written assignments

MCPS Ex. 18, p. 146.

58. On July 12, 2022, the Parents and staff met virtually to review the Student’s eligibility for an IEP. The Parents were informed of their *Procedural Safeguards and Parental Rights* under IDEA. The Parents,²² Mr. [REDACTED] Ms. [REDACTED], Ms. [REDACTED] ([REDACTED] Director), [REDACTED] ([REDACTED] Support Specialist), [REDACTED] ([REDACTED] Education Director), Mr. [REDACTED] (Administrator),²³ Mr. Delaney, [REDACTED] (Parents’ representative), Dr. [REDACTED] (School

²² The names are located on a sign-in sheet entered as “MCPS Ex. 8.” First names are included when known and omitted where already referenced in this decision, or when not provided on the document. The sign-in sheet does not contain the signatures of Mr. Delaney or the Parents.

²³ Whether [REDACTED] or MCPS was not indicated.

Psychiatrist),²⁴ and Mr. [REDACTED] (Resource Teacher)²⁵ attended the meeting. The IEP team agreed that the Student met the criteria as a student with an educational disability of OHI. MCPS and the Parents agreed that MCPS staff would develop an IEP draft and meet within thirty days to review it.

59. On August 4, 2022, the Parents and staff met virtually to review the Student's IEP. The Parents were informed of their *Procedural Safeguards and Parental Rights* under IDEA. The Father,²⁶ Ms. [REDACTED], Mr. [REDACTED], Mr. [REDACTED], Ms. [REDACTED], [REDACTED] (MCPS Special Instructional Specialist), [REDACTED] ([REDACTED] Assistant Principal), [REDACTED] [REDACTED] (MCPS Special Education Teacher),²⁷ Ms. [REDACTED], [REDACTED] ([REDACTED] School Counselor), and [REDACTED] (MCPS Instructional Specialist) attended the meeting.

60. During the meeting, the IEP team considered all the evaluative data, including the recent psychological and educational assessments of the Student.

61. The Student met the criteria of exhibiting characteristics of ADHD, Inattentive Presentation, and his behaviors were seen in multiple settings. Reports from his Parents, teachers and the Student indicated the Student struggled with worries, lacked focus, and required supports from staff to maintain classroom focus, successful peer relationships, and problem-solve when stressed.

62. The proposed IEP indicated that the Student's affected areas of disability were academic (math calculation, reading comprehension, speech and language receptive language, written language, content) and behavioral (self-management, social/emotional).

²⁴ Whether [REDACTED] or MCPS was not indicated.

²⁵ Whether [REDACTED] or MCPS was not indicated.

²⁶ His signature does not appear and neither the Mother's name nor her signature appears on the sign-in sheet.

²⁷ Her name appears on the IEP as a team participant.

63. For its academic determinations, the IEP team used the data contained in the WAIS-IV, the June 2022 WJ-IV and MASC-2, and the 2021 DPG.²⁸

64. For its behavioral determinations, the IEP team used the data contained in the Conners-3, June 2022 Psychological Report, and the 2021 DPG.

65. After reviewing the proposed IEP, the Parents made the following requests:

- Addition of a writing goal
- Addition of reduced workload, visual organizers, sensory tools to the supplementary aids and services
- Change the wording to checklist in supplementary aids and services
- Addition of self-advocacy goal
- Improve criteria for speech goal

66. The IEP set the Student's graduation date as June 16, 2023, and indicated that graduation requirements were explained to the Parents.

67. In its Secondary Transition section, the IEP noted that the Student would like to be a [REDACTED] and, after graduation, would work in the field of [REDACTED], and attend college and complete a course of study in [REDACTED].

68. The IEP identified that the Student had needs in receptive and expressive language and that those needs impacted his comprehension and communication.

69. The IEP called for the following instructional and assessment accommodations:

- General administration directions clarified, read aloud, and repeated as needed
- Headphones or noise buffers
- Redirection
- Graphic organizer
- Text to speech
- Small group
- Separate or alternative location
- Frequent breaks
- Reduction of distractions to self
- Notes and outlines

²⁸ It is referred to in the IEP as a November 2021 [REDACTED] report. Based upon the IEP's contents, I conclude the reference is to the December 2021 DPG and I will reference it accordingly for continuity.

- Calculation devices and mathematical tools
- Motor test response
- Answers recorded in test book
- Extended time (2.0X)

70. The IEP included the following supplementary aids, services, program modifications and supports:

- Visual organizers to help the Student focus his thoughts, especially with extended writing assignments
- Use of word bank to reinforce vocabulary and/or when extended writing was required
- Proofreading checklist so the Student can track completion of all assignments correctly
- Frequent and/or immediate feedback from staff in order to help the Student remain on task, focus his thoughts, and understand class expectations
- A copy of student/teacher notes so the Student can focus on instruction in the class
- Graphic organizers to help focus thought especially on extended writing assignments
- Staff to check for understanding to ensure the Student understands what is required
- Reduced workload so the Student completes only the essential components of an assignment to show mastery
- Break down assignments into smaller units because the Student would benefit from chunking to support his attention and organization

71. The IEP provided for the following social/emotion supports:

- Counseling for when the student feels anxious and needs to discuss his feelings/problem solve
- Strategies to initiate and sustain attention. Staff was to help the Student with maintaining attention and completing assignments/assessments
- Daily checklist of required classroom tasks to allow the Student to self-monitor his work completion and attention in class

72. The IEP provided for the following physical/environmental supports:

- Sensory tools for when the Student is frustrated or anxious
- Alternative location for the Student to access to help him calm down and speak with staff if he feels anxious
- Considering the Student's ADHD, and inability to focus, preferred seating where he is close to staff so they can address the Student if he loses focus

73. The Student's written language goal was that "[b]y August 2023, given adult support, organizers, guiding questions, and grade level curriculum across all content classes, [the Student would] locate, retrieve, and use information to write text to communicate his ideas and information." MCPS Exs. 1 and 2.

74. In the proposed IEP, the Student's behavioral self-management goal was, when presented with a problem that caused anxiety (non-preferred task, frustrating situation, criticism/correction), by August 2023, the Student would: accurately determine the size of the problem (big problem, little problem) and determine the appropriate emotional response (take a break, talk with a teacher, take a deep breath, replace frustration with good thoughts, etc.), and return to the task at hand in four out of five trials as measured by teacher-charted data. *See* MCPS Ex. 2. His objectives for this goal were to: identify the stressor and self-advocate when feeling anxious; identify what he needs (a walk, see trusted adult, go to a quiet location) in order to deal with his feelings and return to class; to be given timed breaks when feeling anxious. *Id.* pp. 71-72.

75. In the proposed IEP, the Student's speech and language expressive language goal was, using supports, the Student would improve expressive language skills by being able to use context clues, write sentences of varied length and complexity, and be able to retell a story by August 2023. *Id.* His objectives for this goal were to: use context clues to identify four of five age-level vocabulary words; retell story events (beginning, middle, end) using key elements (characters, setting, problem, solution) from the story.

76. The Student did not meet criteria that made him eligible for Extended School Year (ESY) services.

77. MCPS, [REDACTED], and the Parents agreed that [REDACTED]²⁹ and [REDACTED] services would not meet the Student's needs.

78. MCPS recommended in the proposed IEP the [REDACTED] for the Student at [REDACTED] because it was a self-contained program within [REDACTED] with staff who could work with the Student one to one and had a social worker to support the Student with his social-emotional needs and small classes. The Student could access special education transportation services.

79. The Student was to receive classroom instruction daily with a special education instructor and instructional assistant outside of general education five days each week for five hours per day.

80. In order to meet Maryland graduation requirements, the Student was to receive one period per day (fifty minutes) in the general education environment with a general education teacher and an instructional assistant.

81. The Student's counseling services were scheduled for four thirty-minute sessions for a total of two hours per month with the school social worker. The sessions would be individual, group, and team settings as deemed appropriate by the services provider.

82. The Student was scheduled for four monthly twenty-minute sessions of speech/language therapy totaling one hour and twenty minutes each month either individually or in a small group.

83. On a date not provided in this record, the Parents disagreed with MCPS's proposed placement and requested the file be sent to the Central IEP (CIEP) for a placement determination. MCPS denied the request and maintained its placement recommendation for the Student as [REDACTED] at [REDACTED].

²⁹ [REDACTED].

84. On or about August 8, 2022, the Parents notified MCPS via a letter that the Student would attend [REDACTED] for the 2022-2023 school year. Considering the IEP process in which they participated, the Parents stated they did not believe an appropriate special education program was identified or offered by MCPS. The Parents requested that MCPS provide the funding for the [REDACTED] placement.

85. The Father signed an IEP Authorization Consent for Initiation of Services on August 10, 2022.

86. On or about August 25, 2022, MCPS declined to place and fund the Student at [REDACTED] and indicated the FAPE placement in the least restrictive environment (LRE) for the Student was in the [REDACTED] at [REDACTED].

87. The Parents did not accept the IEP placement at [REDACTED] for the 2022-2023 school year and the Parents elected to keep the Student enrolled at [REDACTED].

88. On September 15, 2022, the Father and Dr. [REDACTED] observed the [REDACTED] program at [REDACTED].

89. Dr. [REDACTED] observed the Student at [REDACTED] during a social skills group at lunch and in Algebra 2 class for a total of approximately one hour.

90. In the social skills group, the Student sat by himself at one table and four females sat at another table. The Student was provided a worksheet of questions he would be tasked with asking a peer. The student presented as unfocused and appeared not to be following along. When it was the Student's turn to read, he did not know what to do and required prompting.

91. When the Student was asked to pair with peers, he exhibited flexibility and did so. He found a partner's burp humorous. The student shared off-topic stories that did not appear to have reasoning behind them. He responded that he did not know how he spent his free time.

92. The Student required support from teachers to help prompt an answer to what he liked to do in his spare time, and he related that he liked to use his tablet. The teacher had to prompt the student to ask a question despite his having a list. He provided vague responses to peers, and when asked to elaborate, he struggled until a peer mentioned a movie the Student liked. The Student hyper fixated on the movie until the teacher redirected him to the task. He additionally answered the same question asked over and over by a peer as if it were the first time it was asked, and he offered a non sequitur regarding that day being the first day of fall.

93. When the teacher explained that students would stand up, introduce themselves, and share information about a peer, the Student continued to talk with a peer, then did not know what to do when it was his turn. After the teacher prompted him, the Student read his name in a monotone voice and the peer's information at a very fast rate.

94. In Algebra 2 class, the Student sat in the front of the room, but did not take out any materials, left his books in a pile, and did not appear engaged. The Student required prompting when called upon, and struggled to explain a problem to which he obviously knew the answer.

95. When asked to work independently, the Student sat and stared at the paper and calculator. The Student was not phased or distracted by a peer's random announcements or the teacher's redirection of that peer. He fixated on his fingers and was redirected back to task, but quickly disengaged when not receiving attention from the teacher and demonstrated a lack of attention and he required prompts.

96. The Student complied easily with directions and demonstrated flexibility when asked to make last-minute adjustments. He engaged with peers and, although he required prompting and support, seemed to enjoy social interaction. The Student was highly distractable,

required significant teacher prompting to remain on task, and displayed below-average social skills in relation to same-aged peers.

97. The Student was administered the IXL Diagnostic Action Plan (IXL) Assessment on or about November 4, 2022. The IXL is an adaptive computerized assessment used at [REDACTED], meaning the student answers questions which become more, or less, difficult depending upon the students' responses. [REDACTED] began using the IXL for the 2022-2023 school year, after the IEP was developed.

98. The IXL developed the following scores for the Student's assessment:

| | |
|-----------------------------------|------|
| Overall language arts level | 540* |
| Overall reading level | 480 |
| Reading Strategies | 360 |
| Vocabulary | 920 |
| Writing Strategies | 350 |
| Grammar and Mechanics | 520 |
| Overall math level | 440 |
| Numbers and Operations | 490 |
| Algebra and Algebraic Thinking | 660 |
| Fractions | 350 |
| Geometry | 260 |
| Measurement | 490 |
| Data, Statistics, and Probability | 370 |

* Correlates to the year and month of grade level. E.g., fifth grade, fourth month.

99. The IXL assessment provides "recommended skills" for each area. All the data that [REDACTED] received from the IXL is in the results. See P Ex. 13.

100. The Student's 2022-2023 [REDACTED] grades as of January 23, 2023 were:

| Course Title | Q1 Grade | Q1 Effort | Q2 Grade | Q2 Effort | Exam | S1 Grade |
|------------------------|----------|-----------|----------|-----------|------|----------|
| Algebra 2 | B | 2 | B | 2 | N/A | B |
| Biology | B | 2 | B | 2 | B | B |
| English 12 | B | 1 | B | 2 | B | B |
| Geography | C | 2 | C | 3 | N/A | C |
| International Cultures | C | 2 | B | 2 | B | B |
| Physical Ed | A | 1 | A | 3 | N/A | A |
| Spanish 2 | D | 1 | C | 3 | N/A | C |

See P. Ex. 14.

101. The [REDACTED] Effort Grading System was: Excellent =1, Satisfactory = 2, Needs Improvement = 3.

102. [REDACTED] documented progress comments on January 27, 2023 in the DPG labeled "School Year 2022-2023" and noted the Student was "making progress" in reading and written language. See P Ex. 3.

103. The Parents cooperated with MCPS during the development of the IEP.

104. The Student would not have graduated from [REDACTED] in June 2023.

105. The Student intends to complete one additional year at [REDACTED].

DISCUSSION³⁰

I. Burden of Proof

The standard of proof in this case is a preponderance of the evidence. COMAR 28.02.01.21K(1). To prove an assertion or a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cnty Police Dep’t*, 369 Md. 108, 125 n.16 (2002). The burden of proof rests on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005). The Parents are seeking relief and bear the burden of proof to show that the challenged actions by the MCPS did not meet the requirements of the law. The Parents bear the burden to show by a preponderance of the evidence that MCPS failed to make a FAPE available to the Student for the 2022-2023 school year by failing to develop an IEP specifically related to the amount of special education service hours outside of the general education environment, including an appropriate educational placement or setting for the Student, and that [REDACTED] is the appropriate placement and that they are entitled to reimbursement for their unilateral placement of the Student at [REDACTED]. COMAR 28.02.01.21K(1), (2)(a).

For the reasons that follow, I find the Parents have not met this burden, and conclude that MCPS offered the Student a FAPE for the 2022-2023 school year, with an IEP that was reasonably calculated to meet his unique needs, and that the Parents are therefore not entitled to reimbursement for their unilateral placement of the Student at [REDACTED].

³⁰ My findings, analysis, and legal conclusions are based upon consideration of all the parties’ arguments and the credible evidence in this record. All testimonial and documentary evidence was considered and given the weight it was due, regardless of whether it has been recited, cited, referenced, or expressly set forth in the Decision. *See, e.g., Walker v. Sec’y of Health & Human Servs.*, 884 F.2d 241, 245 (6th Cir. 1989) (an administrative law judge need not address every piece of evidence in the record); *Mid-Atl. Power Supply Ass’n v. Md. Pub. Serv. Comm’n*, 143 Md. App. 419, 442 (2002) (emphasizing that “[t]he Commission was free to accept or reject any witness’s testimony” and “the mere failure of the Commission to mention a witness’s testimony” does not mean that the Commission “did not consider that witness’s testimony”).

II. Applicable Law

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

To be eligible for special education and related services under the IDEA, a student must meet the definition of a “child with a disability” as set forth in section 1401(3) of the U.S.C.A. and the applicable federal regulations. The statute provides as follows:

(A) In general

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

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

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

“Other health impairment” is defined as:

having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—

- (i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and
- (ii) Adversely affects a child’s educational performance.

34 C.F.R. § 300.8(c)(9); COMAR 13A.05.01.03B(51) (emphasis added).

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

The *Rowley* Court held, because special education and related services must meet the state’s educational standards, that the scope of the benefit required by the IDEA is an IEP reasonably calculated to permit the student to meet the state’s educational standards. 458 U.S. at 204; *and see* 20 U.S.C.A. § 1401(9).

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

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

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

20 U.S.C.A. § 1414(d)(3)(A).

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

IEP teams must consider the student's evolving needs when developing their educational programs. The student's IEP must include "[a] statement of the child's present levels of academic achievement and functional performance, including . . . [h]ow the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for non-disabled children). . . ." 34 C.F.R. § 300.320(a)(1)(i). If a child's behavior impedes his or her learning or that of others, the IEP team must consider, if appropriate, the use of positive behavioral interventions, strategies, and supports to address that behavior. *Id.* § 300.324(a)(2)(i). A public agency is responsible for ensuring that the IEP is reviewed at least annually to determine whether the annual goals for the child are being achieved and to consider

whether the IEP needs revision. *Id.* § 300.324(b)(1). However, a “school district is only required to continue developing IEPs for a disabled child no longer attending its schools when a prior year’s IEP for the child is under administrative or judicial review.” *M.M. ex rel. DM v. Sch. Dist. of Greenville Cnty*, 303 F.3d 523, 536 (4th Cir. 2002).

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

The parties in *Andrew F.* asked the Supreme Court to expound on *Rowley* and set forth a test for measuring whether a disabled student had attained sufficient educational benefit. The framework for the decision was the Tenth Circuit’s interpretation of the meaning of “some educational benefit,” which construed the level of benefit as “merely . . . ‘more than *de minimis*.’” *Andrew F.*, 798 F.3d at 1338. The Fourth Circuit acknowledged that “[o]ur prior FAPE standard is similar to that of the Tenth Circuit, which was overturned by *Andrew F.*” *M.L. ex rel. Leiman v. Smith*, 867 F.3d 487, 496 (4th Cir. 2017), *cert. denied*, 138 S. Ct. 752 (2018). For these reasons, any opinions of the Fourth Circuit or any circuit that adopted a no more than “*de minimis*” standard and any district court within those circuits that are cited or discussed below are not relied upon for their definition of a FAPE, but for other legal principles for which they remain the state of the law in this circuit and controlling precedent or persuasive authority.

The “reasonably calculated” qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. The Act contemplates that this fact-intensive exercise will be influenced not only by the expertise of school officials, but also by the input of the child’s parents or guardians. Any review of an IEP

must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal. *See generally Andrew F.*, 867 F.3d 487.

The IEP depicts the student’s current educational performance, sets forth annual goals and short-term objectives for improvements in that performance, describes the specifically designed instruction and services that will assist the student in meeting those objectives, and indicates the extent to which the child will be able to participate in regular educational programs. 20 U.S.C.A. § 1414(d)(1)(A); *accord* 34 C.F.R. § 300.22; Md. Code Ann., Educ. § 8-405(a)(4).

As the “centerpiece” of the IDEA’s “education delivery system” for disabled students, an IEP is a “comprehensive plan” for the “academic and functional advancement” for the student. *Andrew F.*, 137 S. Ct. at 994, 999. It must be tailored to the student’s “unique needs” with “careful consideration” of the student’s present levels of achievement, disability, and potential for growth. *Id.*; *see also* 20 U.S.C.A. § 1401(29). The IEP must be “appropriately ambitious,” and it must provide for “specially designed instruction” that is “reasonably calculated to enable the child to receive educational benefits” and to “make progress appropriate in light of the student’s circumstances.” *Andrew F.*, 137 S. Ct. at 996, 999, 1000 (quoting *Rowley*, 458 U.S. at 207).

A focus on the particular child is at the core of the IDEA. The instruction offered must be “*specially designed*” to meet a child’s “*unique needs*” through an “[*i*]ndividualized education program.” *Andrew F.*, 137 S. Ct. at 998-99 (citations omitted).

Directly adopting language from *Rowley*, and expressly stating that it was not making any “attempt to elaborate on what ‘appropriate’ progress will look like from case to case,” the *Andrew F.* Court instructs that the “absence of a bright-line rule . . . should not be mistaken for ‘an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.’” *Andrew F.*, 137 S. Ct. at 1001 (quoting *Rowley*, 458 U.S. at 206). At the same time, the *Andrew F.* Court wrote that in determining the extent to

which deference should be accorded to educational programming decisions made by public school authorities, “[a] reviewing court may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” *Id.* at 1002.

A judge in a due process hearing must look to what the IEP team knew when it developed the IEP, and whether that IEP, as designed, was reasonably calculated to enable the child to receive educational benefit and make appropriate progress. An IEP is essentially a “snapshot” in time and “cannot be judged exclusively in hindsight.” *See Z.B. v. Dist. of Columbia*, 888 F.3d 515, 524 (D.C. Cir. 2018); *K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 818 (8th Cir. 2011); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990).

When assessing whether a student was offered, given, or denied a FAPE, a judge must “afford great deference to the judgment of education professionals” *O.S. v. Fairfax Cnty Sch. Bd.*, 804 F.3d 354, 360 (4th Cir. 2015) (*quoting E.L. v. Chapel Hill-Carrboro Bd. of Educ.*, 773 F.3d 509, 517 (4th Cir. 2014)). Additionally, a judge “should be reluctant . . . to second-guess the judgment of education professionals.” *Tice v. Botetourt Cnty Sch. Bd.*, 908 F.2d 1200, 1207 (4th Cir. 1990). A judge should be mindful that local educators deserve latitude in determining the IEP most appropriate for a disabled child, and that the IDEA does not deprive these educators of the right to apply their professional judgment. *See Hartmann ex rel. Hartmann v. Loudoun Cnty Bd. of Educ.*, 118 F.3d 996, 1001 (4th Cir. 1997).

However, this respect and deference, while unquestionably a well-settled principle of review under the Act, both within and outside of this circuit, is not limitless. *See Cnty Sch. Bd. of Henrico Cnty v. Z.P.*, 399 F.3d 298, 307 (4th Cir. 2005) (“Nor does the required deference to the opinions of the professional educators somehow relieve the [judge] of the obligation to determine as a factual matter whether a given IEP is appropriate.”). “[T]he fact-finder is not required to

conclude that an IEP is appropriate simply because a teacher or other professional testifies that the IEP is appropriate.” *Id.*; see *Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1476 (9th Cir. 1993) (“Indeed, if the views of school personnel regarding an appropriate educational placement for a disabled child were conclusive, then administrative hearings conducted by an impartial decisionmaker would be unnecessary.”). “To give deference only to the decision of the School Board would render meaningless the entire process of administrative review.” *Sch. Bd. of Prince William Cnty, Va. v. Malone*, 762 F.2d 1210, 1217 (4th Cir. 1985) (citation omitted).

The *Endrew F.* Court confirmed that a FAPE does not promise an “ideal” education. *Endrew F.*, 137 S. Ct. at 999. Nor does it promise that a student with a disability will be provided with “opportunities to achieve academic success, attain self-sufficiency, and contribute to society that are substantially equal to the opportunities afforded children without disabilities.” *Id.* at 1001. A reviewing court must determine whether the IEP is “reasonable.” *Id.* at 999. It is also important to remember that the IDEA does not require “the best possible education that a school could provide if given access to unlimited funds.” *Barnett ex rel. Barnett v. Fairfax Cnty Sch. Bd.*, 927 F.2d 146, 154 (4th Cir. 1991). Nor does it require the “furnishing of every special service necessary to maximize each handicapped child’s potential.” *Hartmann ex rel. Hartmann*, 118 F.3d at 1001.

Ultimately, a disabled student’s “educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.” *Endrew F.*, 137 S. Ct. at 1000. Moreover, the IEP must be reasonably calculated to allow him to advance from grade to grade, if that is a “reasonable prospect.” *Id.*

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, when feasible, be educated in the same classroom. 20 U.S.C.A. § 1412(a)(5); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117. Indeed, mainstreaming children with disabilities with non-disabled peers is generally preferred, if the disabled student can achieve educational benefit in the mainstreamed program. *DeVries v. Fairfax Cnty Sch. Bd.*, 882 F.2d 876, 878-79 (4th Cir. 1989). At a minimum, the statute calls for school systems to place children in the "least restrictive environment" consistent with their educational needs. 20 U.S.C.A. § 1412(a)(5)(A). Placing disabled children into regular school programs may not be appropriate for every disabled child, and removal of a child from a regular educational environment may be necessary when the nature or severity of a child's disability is such that education in a regular classroom cannot be achieved.

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 MCPS to offer a continuum of alternative placements that meet the needs of children with disabilities. 34 C.F.R. § 300.115. The continuum must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, and make provision for supplementary services to be provided in conjunction with regular class placement. *Id.* § 300.115(b); COMAR 13A.05.01.10B(1).

Consequently, removal of a child from a regular educational environment may be necessary when the nature or severity of a child's disability is such that education in a regular classroom cannot be achieved. COMAR 13A.05.01.10A(2). In such a case, a FAPE might require placement of a child in a nonpublic school setting that would be fully funded by the child's public school district.

Parents may be entitled to retroactive reimbursement from the state for tuition and expenses for a child unilaterally placed in a private school if it is later determined that the school system failed to comply with its statutory duties and that the unilateral private placement provided an appropriate education. *Sch. Comm. of Burlington v. Dep't of Educ. V. Dep't of Educ of Mass.*, 471 U.S. 359, 370 (1985). The issue of reimbursement for unilateral placement was expanded in *Florence County School District Four v. Carter*, 510 U.S. 7 (1993), where the Supreme Court held that placement in a private school not approved by the state is not a bar under the IDEA. Parents may recover the cost of private education only if (1) the school system failed to provide a FAPE; (2) the private education services obtained by the parent were appropriate to the child's needs; and (3) overall, equity favors reimbursement. *See id.* at 12-13. The nonpublic education services need not be provided in the least restrictive environment. *M.S. ex rel. Simchick v. Fairfax Cnty Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009).

Parents who unilaterally place their child, do so at their own financial risk. *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 373-374 (1985); *see also Carter*, 510 U.S. at 15. To obtain reimbursement, the Parents must prove that the proposed public placement violates the IDEA. *Carter*, 510 U.S. at 15.

III. Positions of the Parties

Parents

The Parents contended MCPS failed to provide FAPE for the Student when MCPS failed to consider the unique needs of the Student. According to the Parents, the evidence is clear that there was no good educational or legal reason to move the Student from [REDACTED] in his senior year when he was identified as significantly disabled and required the self-contained environment of [REDACTED] in which he was comfortable and progressing. The Parents argued that the Student benefitted from the [REDACTED] program, he progressed, and he likes it.

According to the Parents, MCPS failed to observe the Student at [REDACTED] or speak with [REDACTED] staff regarding the Student's needs, or his progress at [REDACTED], but Mr. [REDACTED], and Dr. [REDACTED] did. Therefore, MCPS did not know the Student and they failed to properly assess the Student and dispositive weight should be given to testimony of the Parents' experts who know the Student. In support of their argument, the Parents asserted that MCPS did not notice or did not question the fact that there were no progress notes in the December 2021 DPG. Therefore, because MCPS did not exercise its expertise with respect to knowing the Student, testimony of their experts deserve less weight.

As to the IEP MCPS developed, the Parents claim it is dispositive of their claims because the IEP indicated that the Student would graduate from MCPS in June 2023, and MCPS's own witness testified that was an impossibility. The Parents claim that because the IEP contained a goal that could not be achieved, a substantive failure occurred and they should prevail. The fact that the Mother indicated the Student would complete a "super senior year" or a "gap year" at [REDACTED] following the 2022-2023 school year was not a commitment to do so and that did not mean that the Student would not graduate from [REDACTED]. Therefore, according to the Parents, MCPS failed to provide the Student a FAPE.

In addition, the Parents argued, [REDACTED] was the wrong setting for the Student because it was a near certainty that he would shut down were he in a school with 1,600 students and behind locked doors. The Parents argued that the Student was never diagnosed as emotionally disabled and the [REDACTED] was not designed with the Student's disability in mind because he would be cognitively beneath all other students in the program. The Student was diagnosed as borderline intelligence and had processing speed below the first percentile. According to the Parents, to place such an outlier as the Student, in his senior year, at [REDACTED] made no sense and, as according to *Andrew F.*, an appropriate education would be one that considers the Student's

unique needs calculated to allow his progression and would have maintained continuity in his senior year. ■■■ is the school where the Student's speech and language needs can be met, he has peers who share his cognitive disability, and he is comfortable, and earning A's and B's for grades. The Parents asserted that they exposed the Student to non-disabled populations themselves.

MCPS

MCPS contended that the Parents failed to establish that the proposed IEP did not provide FAPE, and, to the contrary, the 2022-2023 IEP was reasonably calculated to enable the Student to make progress appropriate in light of his circumstances and, therefore, would have provided him FAPE. In addition, the Parents failed to establish that ■■■ was the appropriate placement, and, even if ■■■ was an appropriate placement for the Student, that placement did not eliminate ■■■ at ■■■ as an appropriate placement.

According to MCPS, its experts deserve deference because, by comparison, its experts spent more time observing the Student than did the Parents' experts and were involved in the IEP process. For example, Dr. ■■■ observed the Student for approximately one hour at ■■■ while Ms. ■■■ conducted an educational assessment of the Student over the course of three days. And although Dr. ■■■ created the ■■■, she has not been at ■■■ for three years, and Ms. ■■■ provided evidence that the ■■■ runs slightly differently now and is better suited to serve the Student's needs. Also, Dr. ■■■ was not present when the IEP was developed. Mr. ■■■ who was in his first year at ■■■, had difficulty identifying characteristics of the ■■■ student body, did not teach the Student, and had only informally observed the Student when he went in and out of classes, and even then, did not specifically go to the classroom to observe the Student. Further, Ms. ■■■, who made observations during a lengthy evaluation of the Student, testified she had initial concerns about ■■■, but after learning

about all the supports it offered, felt [REDACTED] was better suited than [REDACTED] for the Student's social emotional needs.

MCPS contended that the Student's social emotional needs were highlighted by all those who rated the Student in his psychological evaluation. Thus, the testimony that the Student would shut down if moved is additional evidence that he would benefit from, and needs, [REDACTED] to address his social emotional deficits. Additionally, MCPS is required to provide the least restrictive environment (LRE) in order to provide the services.

The fact that the Student would not graduate was not discovered until Ms. [REDACTED] was developing the Student's class schedule and, in any event, was discovered after the Parents told MCPS the Student would attend [REDACTED]. Therefore, whether the Student would graduate did not enter into the Parents decision-making process. Further, the Student was never graduating in June 2023 from [REDACTED] because, as the Mother testified, he was always going to attend another year at [REDACTED].

MCPS contended that the IEP was developed with the documents provided by the Parents. MCPS argued it is not its responsibility to reach out to a private school to get information. In addition, the DPG provided to MCPS was concerning for several reasons. First, the goals in the December 2021 DPG, now four months expired, are nearly identical to the draft DPG that [REDACTED] has not yet discussed with the Parents and not yet implemented. There are no updates entered in the December 2021 DPG. There are now goals in mathematics in the draft DPG that were not in the December 2021 DPG which may indicate there has been no progress; and testimony indicated the progress updates in the draft DPG are in the wrong document.

IV. Evidence

The Parents' Evidence

Dr. [REDACTED]'s testimony

Following her review of the DPG, assessments, report cards, observation reports, and conducting her own observation of the Student, Dr. [REDACTED] supported the Parents' decision to reject the Student's IEP and placement in the [REDACTED] at [REDACTED]. She did so because, in her view as the individual who developed the [REDACTED] at [REDACTED], the [REDACTED] was not developed for individuals like the Student whose primary needs are academic with a secondary social and emotional component. She testified that, in her experience, typical [REDACTED] students would have only mild to moderate learning disabilities and, but for the mental health aspect of their diagnoses, were typical high school students who did not have low IQ and extremely low processing speed like the Student. She obtained most of her information about the [REDACTED] from Ms. [REDACTED] and did not observe any [REDACTED] students such that she could have documented her observations.

Dr. [REDACTED] testified that the Student does not have a cognitive impairment such that he qualified for a certificate track versus a diploma track in high school.

Dr. [REDACTED] recognized the Student's anxiety and attributed his OCD tendencies and insecurities to the student's awareness of and concern about his academic abilities. In her view, the Student's social emotional needs would increase because he would be negatively impacted were he in a class with peers who had significantly higher academic abilities. The Student's need for significant prompting and one-to-one instruction would lead to further insecurities.

The Student's June 2022 Educational Assessment showed regression in the WJ-IV scores from 2018 to 2022 and his writing ability was significantly below grade level. The levels in the IXL stood out to her because the Student's reading levels were second, third, or fourth grade levels. Thus, according to Dr. [REDACTED], it would be negatively impactful for the Student to be

in the [REDACTED] program where the student population required more social and emotional supports than academic.

Dr. [REDACTED] testified that the December 2021 DPG supported her belief that the Student's academic needs negatively affected his ability to access curriculum because it specifically noted the Student's awareness of his academic shortcomings and indicated that he would not self-advocate and would sit alone until staff prompted him. *See* P Ex. 2-1. According to Dr. [REDACTED], the Student was socially immature, and, because the Student demonstrated a high level of comfort with peers who were more cognitively impacted, the Student better fit at [REDACTED].

She observed the Student at [REDACTED] being taught how to have a conversation with peers. She observed the Student struggle to ask questions even when presented with a list of questions and noted that he required prompts and redirection when he fixated on details about a movie. He allowed another student to pose the same question to him over and over and answered it as if it were the first time he had heard it. Based on her conversations with the Student's teachers, she concluded the Student was making progress at [REDACTED] but could not identify specific progress because the DPG did not have progress notes and she was not an employee of [REDACTED]. Her review of the Student's report cards resulted in her opining that he was doing well overall. Dr. [REDACTED] spoke with the Student between the two classes she observed, "lunch bunch" and Algebra 2.

Even though all students need time to transition when moving into a new school environment, to move the Student from [REDACTED], where he was "on the same playing field" as his peers, risked regression. The Student might regress because of the Student's uncomfortable feelings and his inability to self-regulate or self-advocate. The IEP required the Student to immediately begin a class, perhaps art, in the general education population with a general

education teacher, and a para-educator who would not possess credentials for special education. Dr. ██████ observed the ██████ program at ██████ with the Father and spoke with Ms. ██████. She did not discuss changes to the ██████ program since her departure from MCPS but learned there were no students receiving speech and language services in the ██████.

Even though the ██████ could provide the support services the Student needs, Dr. ██████ did not believe that ██████ was the appropriate environment. Dr. ██████ felt the ██████ program was running the way it should be, however, it served primarily social and emotional needs with necessary help in academics – the opposite of what the Student needed. Dr. ██████ testified that typically, there is no one-to-one social skills instruction in the ██████ such as the Student receives at ██████. She believed the ██████ students would be “loving” and “kind” toward the Student, but they would not be peers and that would increase the Student’s sense of isolation. Therefore, she opined, based upon the Student’s past struggles with transition, there was no educational reason to move him from ██████.

The Mother’s testimony

The Mother testified that the Student’s issues surfaced in school when he was five years old. A teacher discussed the Student’s attention issues with the Parents, and they were not surprised. MCPS developed an IEP. The Parents were generally dissatisfied because the Student often seemed “on his own island” and they felt the Student needed more one-on-one attention. He was twice removed from MCPS schools and home-schooled for six years.³¹

The home schooling followed a pre-established curriculum, and a “teacher” came at least four days each week. Although the Student was home-schooled, the Parents tried to involve him with others through programs for home-schooled children. The Mother testified that the Student was intimidated by children who he perceived as smarter, and became silent, shut down, and

³¹ The Parents home-schooled in fourth grade and then sent the Student to MCPS for fifth grade. They thereafter home-schooled the Student from sixth grade through the tenth grade.

would not talk. The Mother testified that he is very aware of his limits and if he perceives people are smarter and can express themselves better than he can, the Student “feels stupid.”

The Parents decided to send the Student back to school and the Student’s speech pathologist suggested that the Student would benefit from [REDACTED] because of the small class sizes and constant individual attention. The Parents did not investigate MCPS because of their experience in the past with MCPS with which they were dissatisfied. The Student visited [REDACTED] two times. According to the Mother, at first, the Student “didn’t want to hear about it,” but the Parents insisted and eventually, the Student had to go to school outside of the home. Although he was nervous at [REDACTED] at the beginning, he adjusted. The Parents were not concerned with the Student’s emotional state because they could just “pull him out” if [REDACTED] was inappropriate. The Parents reached out to MCPS to ask that it fund [REDACTED], and their request ultimately ended in a settlement with MCPS that included the parties revisiting an IEP for 2022-2023.³²

The Parents participated in IEP meetings for the present school year beginning in May 2022. They agreed that the Student would be assessed, and the Mother testified she and her husband fully cooperated in the process. Following IEP meetings and MCPS evaluations, MCPS suggested the [REDACTED] at [REDACTED]. The Mother knew nothing about the [REDACTED] at [REDACTED]. Her husband went to observe [REDACTED], and he spoke to Dr. [REDACTED]. The Parents received information about the [REDACTED] discussed it with Dr. [REDACTED], compared it with [REDACTED], and ultimately decided the [REDACTED] and [REDACTED] was the wrong placement for the Student.

According to the Mother, the Student has a difficult time adjusting to change, was almost at the end of his high school program and, at [REDACTED], was doing the best he had ever done in school. For example, he can now have conversations with children his age and with adults. The Student now self-advocates, expresses himself and his opinions, and his focus is

³² The alleged settlement and its terms were not in evidence for purposes of this hearing.

better -especially when he is interested in a subject. The Student now spends time in the evening speaking to friends who are both [REDACTED] peers and peers outside of [REDACTED]. However, the Student reacts negatively to change, and the Mother suggested that she would never take a chance to move him to another environment. She opined that it would have been a “disaster” for her to move him to a program with staff who did not know him.

The Mother testified that her understanding is that the [REDACTED] is geared to students with emotional issues who are, academically speaking, “more or less on class level.” The Student is the opposite and has “tremendous academic problems” including reading comprehension issues, auditory comprehension issues, focusing issues, slow processing speed, and executive functioning issues. The Mother believes that [REDACTED] is an environment where he is finally able to cope with his academic challenges, and he is doing much better than he has ever done in a school setting. In contrast, the Mother lives near [REDACTED] and has heard stories about the negative behavior of children there, and therefore believes [REDACTED] is a better school.

Finally, according to the Mother, the Student is not ready to graduate and needs to attend an additional year at [REDACTED] to prepare for college. The Mother testified that the Parents have never had a positive experience with MCPS, and [REDACTED] is where she wants him to stay because he “in the best place he can be right now” and, according to her testimony, “no matter what happens, [she] will not move him.”

Mr. [REDACTED]'s testimony

Mr. [REDACTED] was hired as the Education Director at [REDACTED] in July 2022 and is the spokesperson for [REDACTED] at IEP meetings. He described [REDACTED] as a school for learning disabled students who also have social emotional needs. Social needs can be pragmatic, such as basic how-to-socialize skills, e.g., when to stop or enter a conversation.

Mr. [REDACTED] made it a point to learn all ninety-six students' first names and met the Student at the July 2022 IEP meeting, his first IEP meeting at [REDACTED]. He has not formally observed the Student in class but described the Student as pleasant and polite, with a smile on his face. He reviewed all the Student's records and discussed the Student with his teachers.

MCPS's evidence

Ms. [REDACTED]'s testimony

Ms. [REDACTED] conducted a two to three-hour educational assessment of the Student over the course of three days at [REDACTED] before the IEP was developed. Ms. [REDACTED] testified she requested reports, levels, and [REDACTED]'s daily observations of the Student so she would have the most up-to-date information possible for the Student. The 2021-2022 DPG was the only document she received from [REDACTED]. *See* MCPS Ex. 16. The DPG contained no formal testing after 2018 and she noticed it contained no annotations about his progress. She used [REDACTED]'s 2021 observations for the Student's present levels and relied on others' observations of the Student in the classroom.

Ms. [REDACTED] issued a report on June 29, 2022. MCPS Ex. 18. She also testified that the subtests took a longer period to administer because of the Student's inattentiveness. She often had to provide the Student breaks due to inattention and, if he was unable to refocus, she called the Student's Parent to come pick him up and scheduled another day to resume. According to Ms. [REDACTED], the data would have been inaccurate had she continued when the Student was

unfocused. Generally, the Student was inattentive and exhibited some OCD behaviors and scored consistent with his 2018 WJ-IV. Ten of fourteen WJ-IV scores were below average.

Ms. [REDACTED] described the WJ-IV and the Student's performance in reading, writing, and math in timed and untimed tests. The WJ-IV measured the Student's performance in relation to his peer group based upon age to give insight into his strengths and weaknesses. The first test was a word test in which the Student read and decoded words. She noted that the Student scored in the low average range and his ability to focus decreased as the difficulty of the words increased, and he had to be refocused several times. In the passage comprehension test, she had difficulty establishing a base and noted the Student's difficulty with semantic and syntactic clues; he scored in the low range. He could decode familiar words and unfamiliar words equally and could sound out the words but not say them. In oral reading, the Student read sentences aloud and took three tests. Ms. [REDACTED] scored him for mispronounced or omitted words. He had no errors in the first test, three mispronunciations in the second test and five mispronunciations, and one substitution error in the third test.

Sentence reading fluency was a timed test in which he read a series of yes/no questions. He only read twenty-four sentences but made no mistakes and scored in the very low range and had to be redirected due to distraction. In the timed reading recall test, he read passages and then used a blank page to write details. The Student read the passages quickly but did not pay attention to the details, scoring in the low range of achievement.

In math, the Student scored in the average range for applied problems and had difficulty solving equations, percents, measurements, interest, and probability. He read the problems aloud and completed them without using the scratch paper that he was allowed to use for the test. He scored low average on the calculations test which went from "one plus one" up to "calculus." He had difficulty with decimals, dividing with multiple digits, percents and fractions. He was

allowed to work at his own pace, solved problems slowly, and required several redirections to stay on task.

A three-minute math facts fluency test measured the Student's ability to solve simple addition, subtraction, and multiplication facts quickly and scored in the low range. The numbers matrices test was like Sudoku and measured his quantitative reasoning ability by identifying a missing number in a matrix. He scored in the low range and found later patterns more difficult to solve.

In written expression the Student was tested in spelling measuring his ability to correctly write orally presented words. He scored in the low range and had difficulty with words that had silent letters or repeated sounds. In spelling of sounds, he scored average and had difficulty spelling items with complex sounds. In the writing samples test, the Student had difficulty filling the missing sentences, his sentences lacked details, and he scored in the very low range. In the timed writing fluency test, the Student was given five minutes to use three words in a sentence. He was distracted, fixated on erasing non-perfect letters, only completed four items, and scored in the very low range.

She administered informal inventories where she had the Student read words and that established a grade level. Then she administered tests at grade level and above and below grade level to measure how well he could adjust. The Student was grade seven and Ms. [REDACTED] then pushed him to grade eight and nine for the tests. The informal assessments showed deficits in passage comprehension and sequencing of events.

Ms. [REDACTED] summarized the WJ-IV range of reading math and writing levels so she could make recommendations. Ms. [REDACTED] recommended:

- Provide graphic organizers for reading responses
- Encourage the Student to use the text to support thesis statements or arguments
- Opportunities to practice new mathematical concepts

- Use of a calculator for all mathematical assessments and classwork
- Opportunities for the Student to practice and review writing conventions
- Extended time for all assessments and long-term assignments
- Opportunities to process information before being called upon
- Proof reading checklist for all written assignments

She attended the July 12, 2022 IEP meeting where the IEP team considered her recommendations, and she drafted the IEP after the August 4, 2022 IEP meeting.

Initially, the team evaluated IEP eligibility, considering the psychological and educational evaluations along with feedback from [REDACTED], and determined the supports the Student required. The Student's present levels came from the assessments and showed where the Student was functioning at the time. The IEP addressed testing accommodations for the Student to be successful in the classroom. Then the IEP addressed the services he needed and where the Student would receive the services in the LRE. The LRE was determined based upon need and all the information available at the IEP meeting.

The Parents and [REDACTED] were at the meeting and the original IEP was developed August 4, 2022 and then amended on September 23, 2022 to indicate that the Student was not attending MCPS, otherwise it was "basically the same IEP." Ms. [REDACTED] testified she knew that the Parents received the IEP because the Father signed the initial consent for initiation for services on August 10, 2022. The Parents requested adjustments to the IEP and MCPS added the following at the request of the Parents:

- Addition of a writing goal
- Addition of reduced workload, visual organizers, sensory tools to the supplementary aids and services
- Change the wording to checklist in supplementary aids and services
- Addition of self-advocacy goal
- Improve criteria for speech goal

Ms. [REDACTED] testified that everyone agreed that the Student was not best served by the [REDACTED] because the [REDACTED] did not provide the level of support the Student needed. For example, the

█████ did not have self-contained classes. The █████ program would not meet his needs due to limited self-contained classes and it was designed for “more intense” students who may be, for example, aggressive, defiant, elopers, or have a conduct disorder. MCPS proposed the █████ at █████ because it was a self-contained program within the school that had staff who could work with the Student one-on-one, had a social worker who could work with the Student’s social emotional needs, and had small classes. Ms. █████ noted that the Student had anxiety and, at one time, had school avoidance, but had been attending █████. MCPS wanted to place the Student in an environment where he would thrive.

In Ms. █████’s opinion, the █████ could provide everything the Student needs and could have met the Student where he was. The █████ had smaller class sizes, social worker supports, human behavior (social skills) class, and activities where the Student could be exposed to other students completing tasks together. Additionally, if he were “ready,” he could participate in the general education activities because the █████ was part of a larger, comprehensive high school. It was not a locked facility as characterized by the Parents.

According to Ms. █████, the Parents, their attorney, and █████ disagreed and requested the IEP be sent to the CIEP. She believed that was unnecessary because everything that █████ proposed, MCPS could provide for the Student at █████. For example, the Student’s social needs could be met, the █████ had small classrooms and a social worker as well as one-to-one support for the Student. Although no one would know whether the Student would shut down or be unable to attend the general education class unless it was attempted, the IEP team could have met and have amended the IEP if those issues arose. In Ms. █████’s opinion, all the Student’s needs could be met in the █████ at █████.

Ms. [REDACTED]'s testimony

Ms. [REDACTED] evaluated the Student on June 14, 2022. Ms. [REDACTED] reviewed the Student's records, including a 2018 evaluation, 2012 [REDACTED] assessment, his school records, testing from 2011, screening documents from 2015, [REDACTED] information and Parent questionnaire, and medical histories. She noted that in 2012 the Student was diagnosed with ADHD, developmental delay, and developmental coordination disorder. She additionally noted that the 2014 diagnoses included ADHD, learning disorder, developmental coordination disorder, and a mixed receptive expressive language disorder. There were no diagnoses of autism, and the Student was determined eligible for special education services as OHI.

She spoke to the Father who informed her that the Student enjoyed school and talking with his friends. He was concerned with the Student's OCD and how it might affect the Student's ability to graduate. The Father indicated that the Student had a severe anxiety attack in 2018 and his mood was not good because of constant stress and anxiety. According to Ms. [REDACTED], the Father focused on social emotional needs versus educational concerns.

For an in-school observation, Ms. [REDACTED] communicated with Ms. [REDACTED] and Ms. [REDACTED] via email but was unable to personally observe the Student. According to Ms. [REDACTED], [REDACTED] cancelled the observation at least six times because of COVID quarantining.

Ms. [REDACTED] administered the WAIS-IV to the Student because she could obtain a full scale IQ using this instrument. At the assessment, the Student told Ms. [REDACTED] he was very anxious. He was fidgety and unfocused, and required frequent redirection. He engaged in self-soothing activities and played with his fingers or scratched himself. He rubbed the arms of the chair or scrolled on the tablet.

According to Ms. [REDACTED], his results, compared to the 2018 evaluation, were lower in June 2022. The Student struggled with verbal comprehension where he needed to use factual

knowledge. He did better when presented with visual items and when he used his working memory. He struggled with processing subtests because they involved handwriting. When he had to create symbols, he needed frequent redirection from the self-soothing activities. Ms. [REDACTED] believed the anxiety may have impeded the Student's performance because he scored lower on processing speed in this assessment than he did in 2018. In 2018 he scored a 77, and in June 2022, his range was 55-71, consequently, she believed his testing was affected by anxiety. Additionally, his full scale IQ dropped from an 81 in 2018 to a 75 in June 2022.

Ms. [REDACTED] noted that the Conners CBRS rating scales looked at a variety of symptoms that "lined up with the DSM"³³ as well as with IDEA categories, for example, an emotional disability or an ADHD diagnosis. There were roughly 186 questions that she had teachers and the Parents and the Student answer. The Student was scrolling on the tablet and closed it, and because of his anxiety, she did not have the Student complete the assessment. She relied on the Parents' and an English teacher's (Ms. [REDACTED]) rating scales. She believed the Parents completed it together. The Student was rated as tending to have upsetting thoughts and worry, so the very elevated rating for emotional distress was clinically significant. She opined that the Student's tendencies to be a perfectionist and to be compulsive are "in line" with his OCD.

According to Ms. [REDACTED], the Student's social problems were less indicated at school versus at home. Additionally, there were no real concerns with hyperactivity/impulsivity but there was concern with academics across all areas.

The Conner 3, behavior rating scale, was administered to the Student, the Parents and the Student's history and physics teachers. Again, Ms. [REDACTED] believed the Parents completed the scale together. She noted that that Student was very inattentive and hyperactive which was

³³ Diagnostic and Statistical Manual of Mental Disorders.

prevalent across all settings, at home or in school, in higher order (executive function) thinking, and in relationships with peers.

The Conners 3 looks at three versions of ADHD, inattentive type, impulsive/hyperactive type, and combined type. Ms. [REDACTED] testified that the Student shows inattentive ADHD across all settings but may only show hyperactive type in classes he did not like.

The MACS-2 scales related to anxiety. It was administered to the Student and the Parents in accordance with its design. The Student indicated a much higher level of anxiety overall and Ms. [REDACTED] found it was highly likely that the Student exhibited anxiety-related symptoms.

Based on all the assessments she performed, Ms. [REDACTED] indicated the Student had an emotional disability and exhibited inappropriate types of feelings or behaviors under normal circumstances. This was evident in his self-reports and behaviors while completing assessments as well as the information she received from others around him and the records. The Student exhibited ADHD inattentive type, not hyperactive type as seen in multiple settings and was evident since before age twelve.

Ms. [REDACTED] testified that it was up to the IEP team to determine whether the Student was eligible under the special education coding of “emotional disability” or “other health impairment.” The team discussed the Student's emotional issues and how they impacted his ability to access education, but ultimately, the Student was not given a special education coding as emotionally disabled.

Her report went to the IEP team and the Parents before the IEP meeting. The report was reviewed and discussed at the July 12, 2022 IEP meeting.³⁴ Based upon Ms. [REDACTED]'s review of the IEP and what she knows about the [REDACTED] she opined that the [REDACTED] would provide for all the

³⁴ Ms. [REDACTED] was on maternity leave and another (not identified at the hearing) MCPS-participant presented the information in the IEP meeting after discussing it with Ms. [REDACTED].

Student's needs. The Student's peer interactions in the [REDACTED] would be accented by participation in special projects and constant adult support. The ratio of peers to staff is small and the Student would get the one-to-one redirection he needs and the engagement and facilitation of the staff all day. He would have access to counselors and social workers and interns all day long. The Student would interact with peers struggling with the same difficulties and have access to rooms where he could go if overwhelmed or if he needed to take a break. If he were in social skills training, he could be in social skills groups with general education or "nonimpacted" peers to get experience in modeling of behaviors of proper engagement. Ms. [REDACTED] has a varied group of students in her social skills group. She believed pragmatics were best learned through appropriate interactions with age-appropriate models and, depending on how it was written in his IEP, the Student would receive it one-on-one or in a group depending upon his data with the speech language pathologist and throughout the day.

Ms. [REDACTED] also testified that she had no concerns if the Student were the only student with speech language needs because speech language is from an outside provider. In addition, she testified that there may have been another student in the [REDACTED] receiving speech language services. She believed he needed to have the [REDACTED] to address his anxiety needs and OCD symptoms. He really would benefit from mental health support. She would have had no concerns moving the Student from [REDACTED] to the [REDACTED]. She spoke to teachers at [REDACTED] and discovered the Student developed relationships despite being new to [REDACTED]. Ms. [REDACTED] believed the Student could have transitioned from [REDACTED] to [REDACTED] with help from the supports in the [REDACTED] at [REDACTED]. She testified that the Student's shutting down is something that everyone presumes would happen but has not been addressed with the Student. In her view, the [REDACTED] would address the anxiety and the staff at [REDACTED] is attuned to that because other students at [REDACTED] struggle with the same issues.

Ms. [REDACTED]'s testimony

Ms. [REDACTED] has been the resource teacher for the [REDACTED] for three years. She became involved with the Student's IEP when she learned he might enter the [REDACTED] program. She reviewed the educational and psychological evaluations and information from [REDACTED], but never met the Student.

Ms. [REDACTED] described the [REDACTED] as a "small program" that is "capped" at forty students that "meets kids where they are;" a "school within a school." The [REDACTED] is locked from the outside to allow [REDACTED] students to integrate in the general population as they feel comfortable but limits the general education student population from entering the [REDACTED]. Ms. [REDACTED] testified that the atmosphere allows [REDACTED] students to attend smaller classes in a quiet atmosphere in which they do better.

Ms. [REDACTED] testified that Dr. [REDACTED] started the [REDACTED] and since she left, several changes have been made. The [REDACTED] is designed for students with primary social emotional disorders that are internal and does not include students with aggressive or behavioral disorders. Many [REDACTED] students have dual diagnoses, and all have social emotional anxiety. The IQ range of [REDACTED] students is from the low 80s to 158. The goal of the [REDACTED] is a Maryland high school diploma, and although they do not want students to spend four years in a self-contained environment, if a student requires that setting, the [REDACTED] would provide it. Generally, they start [REDACTED] students with an art class or attend a club for general education integration, and although few do, [REDACTED] students are welcome to attend lunch outside of the [REDACTED]. In the Student's case, were he unable to acclimate to the general education class, the IEP team would be reconvened to discuss an amendment of the IEP.

Other inclusive activities that have been added include an environmental center on land held by MCPS where students go to participate in outdoor activities like trail clearing and hiking.

These activities allow students to participate with their typically developing peers in social emotional activities like collaborating with one another and allows them to demonstrate skills, such as using a drill. There is also a human behavior elective class that allows students to earn credits for peer and adult interaction in skills like cooking, handicrafts, and greenhouse work.

Every student receives thirty minutes of direct counseling four times each month – generally weekly unless it is a short month. The staff discusses students daily to address school barriers. All the ■ students require one-to-one attention at some point regardless of their individual aptitudes. The cognitive abilities of the ■ students are varied. Over fifty percent of ■ students were above the Student’s range of cognitive functioning. However, according to Ms. ■, it is not uncommon for students to be at a third, fourth, or fifth grade level in certain subjects. Writing and math receive the most one-on-one instruction in the ■

She attended the IEP meeting in August, and her role was to listen and determine whether the Student’s needs could be met by MCPS. Ms. ■ testified that she heard of the Student’s ADHD and anxiety and she concluded that the ■ can meet the Student’s needs for small classes and one-to-one instruction. In contrast, the ■ cannot meet the needs of behaviorally challenged students or those on a certificate track versus a diploma. She acknowledged that transitions are difficult for every student, and she tries to discover the triggers and concerns of the students.

In the Student’s case, she heard that he would shut down around students he perceived as smarter. Ms. ■ testified that if that were the case, it was evidence the Student needed coping skills, which is a main component of the ■. The Student had access to a “mindfulness room,” fidget toys, alternative seating, class escorts, and a clinical social worker who would be pushed “front and center” to assist the Student. In addition, the ■ focuses on understanding triggers and what it takes to overcome feeling associated with them. The ■ teaches strategies

for students to use to function in the outside world. One such way is social skill instruction where appropriate modeling is used by adults and other students to teach [REDACTED] students to navigate the larger world.

She reached out to the Parents to try and meet with them and the Student to minimize any transitional issues. According to Ms. [REDACTED], she initially could not reach the Parents and when she did, the Parents sent an email stating they chose [REDACTED], and, at that point, she wished the Parents well.

In addition, she noticed, while preparing the class schedule for the Student, that he could not graduate in June 2023, because he would not meet the Maryland requirements. Ms. [REDACTED] does not focus on IQ levels because a student must master the academics and curriculum to earn a diploma, and, whether it takes a student one try or ten tries to master it, the material and coursework is individualized to that student.

Analysis

It was undisputed that the Student has an intellectual disability, ADHD, and qualified for an IEP based upon other health impairment. *See* 34 C.F.R. § 300.8(c)(9); COMAR 13A.05.01.03B(51); 20 U.S.C.A. § 1401(3)(A); *see also* Educ. § 8-401(a)(2); 34 C.F.R. § 300.8; and COMAR 13A.05.01.03B(78).

There is no dispute that the Student exhibited characteristics of ADHD, Inattentive Presentation, and these characteristics were seen in multiple settings. Reports from his Parents, teachers, and the Student himself, indicated that the Student struggled with worries, lacked focus, and required supports from staff to maintain classroom focus, develop successful peer relationships, and problem-solve when stressed.

The June 2022 psychological evaluation indicated that the Student had a high probability of having an anxiety disorder. MCPS Ex. 17, p. 135. Everyone who rated the Student as part of

his June 2022 psychological evaluation indicated he was elevated or very elevated in inattention (concentration difficulty or keeping his mind on his work), learning problems (academic struggles in reading, writing, and/or math), executive functioning (higher-order cognitive skills like task initiation, working memory, and planning and organizing, and self-regulation behaviors), and peer relations (ability to develop friendships and social connections). *See* MCPS Ex. 17.

The Student exhibited OCD symptoms in multiple settings. During testing, he engaged in behaviors like rubbing his arm, burping, tapping his elbow, playing with his ears, picking his face and nose. *See* MCPS Ex. 17. The Father stated the Student fumbled with his ears and rubbed his hands. MCPS Ex. 17, p. 128. When observed at school, the Student struggled to interact with peers, hyper fixated on a topic, shared off-topic stories and non sequiturs, had difficulty responding verbally when he knew answers, or sat and stared and required frequent redirection and prompts. *See* P. Exs. 11 and 12. The Student's [REDACTED] teacher told Ms. [REDACTED] he experienced internal distraction. MCPS Ex. 17, p. 128.

There was no dispute that the Student had cognitive difficulties. For example, his 2022 WJ-IV scores were essentially the same as his 2018 WJ-IV scores. There were some scoring differences. In 2022, his passage comprehension score increased from very low to low, and spelling score from low average to average. MCPS Ex. 18, p. 145. In 2022, the following scores were lower than in 2018: calculation scores went from average to low average; math facts fluency went from low average to low; and sentence writing fluency from low average to very low. *Id.* The Student scored in the low average range for basic reading skills, very low in reading fluency, and very low in reading comprehension. MCPS Ex. 18, p. 146. He scored in the very low range for all written language areas. *Id.* The Student scored in the low range for mathematic calculation and low average for math problem-solving. *Id.*

██████ developed a DPG with the Parents in December 2021 and created an updated draft DPG in June 2022. P. Exs. 2 and 3. The MCPS IEP team³⁵ met three times and MCPS developed an IEP for the 2022-2023 school year with input from the Parents. *See* P. Ex. 8, MCPS Exs. 1 and 2.

Both the DPG and IEP call for similar supports. *See generally* P. Exs. 11 and 12; MCPS Exs. 2 and 3. They each called for small groups/classroom size, reductions in distractions, prompting, one-to-one interaction, frequent prompts/verbal reminders, counseling, extra time, and speech and language counseling, for example. *Id.* Neither the DPG nor the IEP required behavioral accommodations beyond the Student’s social emotional and self-regulatory needs. *Id.*

The parties disagreed as to the amount of special education service hours outside of the general education environment, and which setting was the appropriate educational placement or setting for the Student, e.g., that ██████ educational setting offered at ██████ or the setting offered at ██████. The Parents believed the Student should have no classes outside of a small class setting, such as those available at ██████, and MCPS recommended one general education class in its IEP. *See* P. Exs. 11 and 12; MCPS Exs. 2 and 3. The Parents believed the Student would “shut down” if he were transferred from ██████ to ██████ in his senior year of high school. Test. Dr. ██████; the Mother. The credible evidence, however, is that the Student would probably not shut down at ██████.

Each party suggested I give their respective experts more weight. The Parents cited *Andrew F.* and argued that because the MCPS experts failed to apply their expertise and provide

³⁵ I will further refer to the MCPS IEP team as the IEP team.

a cogent and responsive reason for the [REDACTED] placement at [REDACTED], their experts were due significantly more deference.³⁶

MCPS cited Fourth Circuit authority that a procedurally and properly developed IEP by MCPS professional educators is afforded deference that should not be second guessed, even by the most well-meaning parent. *O.S.*, 804 F.3d at 360, *abrogated on other grounds*, *R.F. v. Cecil Cnty Sch.*, 919 F.3d 237 (4th Cir. 2019); *M.M. ex rel. DM*, 303 F.3d at 532; *Hartmann ex rel. Hartmann*, 118 F.3d at 1001; *A.B. v. Lawson*, 303 F.3d 523, 532 (4th Cir. 2004). Based on the evidence before me in this case, I agree with MCPS.

All the MCPS witnesses testified credibly that: 1) the IEP team considered all the information it received from the Parents and [REDACTED], and 2) the Student's needs could be met in the [REDACTED] at [REDACTED].

The Parents' witnesses also testified credibly but appeared less informed. Their opinions were less persuasive. According to his testimony, at the time the IEP was developed, Mr. [REDACTED] had been employed with a [REDACTED] for approximately one month and met the Student at the "July 4, 2022" IEP meeting.³⁷ At the time of the IEP meetings, he did not teach the Student. He never taught the Student. He never formally, or informally observed the Student when he was in and out of classrooms. He learned the Student's name and saw him as a happy child who always had a smile on his face. Test. Mr. [REDACTED].

Dr. [REDACTED] developed the [REDACTED] at [REDACTED] but has not worked at [REDACTED] for three years. Test. Dr. [REDACTED]. She observed the Student for roughly one hour in total, in

³⁶ The Parents cited other cases that are factually inapposite to issues before me. In *Leggett*, the local education agency attempted to remove a child who was placed privately after the local education agency violated FAPE. *Leggett and K.E. v. Distr. of Columbia*, 793 F. Supp. 59 (D.C. Cir. 2015). In *Holmes*, following its failure to provide a timely IEP, the local education agency attempted to remove a student for seven months from a school it had paid for for three years. *Holmes v. District of Columbia*, 680 F. Supp. 40 (D.D.C. 1988). In *Burger*, the court decided a narrow burden of proof issue. *Burger v. Murray Cnty Sch. Distr.*, 612 F. Supp. 3434 (N.D. Ga. 1984). The local education agency wished to remove a child from a school in which it had placed him for three years. *Id.*

³⁷ Although he testified it was at the July 4, 2022 IEP meeting, I presume he meant the July 12, 2022 or August 4, 2022 meeting. See MCPS Exs. 8 and 10.

September 2022, after the IEP was developed, while the Student was at lunch and in an Algebra 2 class. *See* P. Ex. 12. She spoke to the Student between classes. Test. Dr. [REDACTED]. Her observation report recommended that the Student attend a small educational setting where he can receive one-on-one instruction with prompts to remain on task. *Id.* Additionally, she recommended ongoing social skill instruction, checklists, or charts to provide one-step directions, and strategies to initiate and sustain attention. P. Ex. 12. Those same recommendations were suggested by the IEP team with input from the Parents. *See* MCPS Ex. 2. Dr. [REDACTED] did not attend any of the IEP meetings.

MCPS experts spent several hours over the course of three days with the Student at [REDACTED]. *See* MCPS Exs. 17 and 18. Ms. [REDACTED] testified that, due to several [REDACTED] cancellations, she did not observe the Student at [REDACTED]. MCPS experts evaluated all the information sent to them by [REDACTED] and interviewed some of the Student's teachers and a counselor, as well as the Parents. Based on the evidence before me, I do not find, as the Parents argued, that MCPS failed to exercise its expertise in development of the IEP.

[REDACTED] developed its December 2021 DPG³⁸ using data from the 2018 WJ-IV and, thereafter, never entered any progress notes. In developing the December 2021 DPG, there was no further academic assessment or psychological assessment of the Student before its implementation. The December 2021 DPG indicated that it ended on November 30, 2022. P. Ex. 2. Although [REDACTED] developed another DPG in June 2022 and tested the Student in November 2022, it never met with the Parents to come to agreement and implement the June 2022 DPG. The first progress notes of any kind for the Student at [REDACTED] were entered on the June 2022 DPG in late January 2023. At that time, and at the time of the hearing, the June 2022 DPG was not in effect.

³⁸ [REDACTED] does not implement an IEP because they are a nonpublic school. However, they implement the DPG to address student needs.

Dr. [REDACTED] testified that the Student's feelings of being challenged or different would be exacerbated if he were around other students who were smarter than he. *See also* Test. the Mother. Dr. [REDACTED] based that theory on the one-to-one direction and prompting that the Student required to maintain his attention. Test. Dr. [REDACTED]. However, the more credible testimony at the hearing indicated that the students in the [REDACTED] would be welcoming to the Student. *Id.*; *and see* Test. Ms. [REDACTED]. In addition, the Student would receive one-to-one instruction. *See* MCPS Exs. 2 and 3; *and see* Test. Ms. [REDACTED].

I do not credit Dr. [REDACTED]'s knowledge of the [REDACTED] over that of Ms. [REDACTED] who presently runs the [REDACTED]. Dr. [REDACTED] testified she never discussed any changes to the [REDACTED] with Ms. [REDACTED]. Ms. [REDACTED] outlined additions to the [REDACTED] that would address the Student's social and emotional needs outside of the classroom and in preparation for the outside world. Test. Ms. [REDACTED]. For example, she described a property held by MCPS where [REDACTED] students are allowed to integrate in an outdoor setting with other students and adults. The site allows students with disabilities to observe peers modeling appropriate social skills that helps students who are socially and emotionally disadvantaged. Students collaborated on projects including trail maintenance, sanding, and painting tables. According to Ms. [REDACTED]'s testimony, there are also additional activities to hone fine motor skills like cooking, handicrafts, and access to a greenhouse facility. All these added activities allow students to hone social interaction skills.

Dr. [REDACTED] observed the [REDACTED] in September 2022 and reported that it could provide the Student with the small class sizes the Student required, but due to the size of the school, would require the Student to navigate a "comprehensive building" to attend any electives. P. Ex. 11. According to Dr. [REDACTED], the Student would be socially and academically below his age group and struggle with the transition from [REDACTED] to Magruder. *Id.* Additionally, he would not be able to find a peer group with whom he could relate. *Id.* However, Ms. [REDACTED] testified that the

one thing all the students in [REDACTED] have in common is that they have social emotional anxiety and that it was not uncommon to have students in [REDACTED] who function at a third, fourth, or fifth grade level in particular subjects. In addition, the [REDACTED] program was described as having less than forty students and ample opportunity for self-contained classes while, as required under the IDEA, delivering instruction in the LRE. *See Andrew F.*, 137 S. Ct. at 994.

Dr. [REDACTED] opined that the Student required social and emotional support but secondary to academics and, therefore, he is on the same cognitive level as his peers at [REDACTED], and that would not be the case at [REDACTED]. She criticized the general education class as providing only a paraeducator and not a special education teacher. Test. Dr. [REDACTED]. Ms. [REDACTED] credibly testified that if the Student was unable to successfully participate in the general education environment for the one elective (most likely an art class) the IEP team would meet and discuss revisions to the IEP. Test. Ms. [REDACTED]. Ms. [REDACTED] described the [REDACTED] at [REDACTED] as “a school within a school” and that it was locked only to general education student coming in, not [REDACTED] students going out.

The Mother testified that the Parents cooperated with the IEP process and, except through an allusion in their argument, MCPS did not dispute that fact. Further evidence of cooperation is that the Father signed an IEP Authorization Consent for Initiation of Services on August 10, 2022. MCPS Ex. 20. However, the Mother additionally testified that the Parents have never had a positive experience with MCPS and placement of the Student, and moving the Student to [REDACTED] in his senior year would be a disaster. She explained that the Student reacts negatively to change and there was no way she would take him out of [REDACTED] and place him in a school that she has heard negative things about. Test. the Mother. Tellingly, she never testified that she considered [REDACTED], except in the negative light of what she had heard about the school. *See generally* test. the Mother.

I do not find that the Student would shut down at [REDACTED]. He did not shut down when he went to [REDACTED] for assessment in June 2022. He was distracted and had to return several times to complete the assessments but was able to attend [REDACTED] for the assessments. The Mother testified that the Student was sociable with both [REDACTED] peers and friends of his [REDACTED] peers. However, the Mother insisted that the Student would shut down in a new environment when he discovered that the student body was more intelligent than he. In addition, she testified the Student was sociable and was speaking to other children on the telephone, sometimes in lieu of completing schoolwork, and speaking to adults in social settings outside of the classroom. As further proof the Student could successfully transition from [REDACTED] to [REDACTED], the Mother added that the Student was reticent to attend [REDACTED] from his home school environment but did so after the Parents insisted that he go to [REDACTED]. I credit her testimony and find that the Student could have made the transition to [REDACTED] as he did at [REDACTED]. According to the Mother's testimony, I conclude the Student has made progress in his social skills since he entered [REDACTED] and there is no evidence to suggest that he would not continue building on those skills.

The evidence is that the Student could have transitioned to a new environment in August 2022. The Student was described as affable and a pleasure to work with. *See* MCPS Ex. 17; Test. the Mother. He enjoyed social interaction. *Id.* The Student demonstrated flexibility and a willingness to engage with peers and developed positive peer relationships at [REDACTED] despite being new. *See* P. Ex. 12; MCPS Ex. 17. The Student communicates with peers outside of [REDACTED]. He has relationships with peers he met through students at [REDACTED] (who do not attend [REDACTED]). Test. the Mother. In addition, the Mother related that the Student was sociable in a restaurant with a peer and adults. The [REDACTED] at [REDACTED] could have built upon the progress made by the Student since his attendance at [REDACTED].

The Student's counselor at [REDACTED] informed MCPS that the student developed positive peer relationships despite being new to [REDACTED]. See MCPS Ex. 17, p. 128. According to the evidence, the Student did not "shut down" when he transferred from home school to [REDACTED]. He was reticent but adjusted and thrived. To presume he would shut down and make no progress at [REDACTED] does not fit the evidence. The evidence is that the Student would, like all students, have some transition period. Whatever the transition period had been for [REDACTED], the Student was able to weather it, and more likely than not would have done so in the [REDACTED] at [REDACTED]. In any event, I believe the testimony of Ms. [REDACTED] who stated that a "shut down" reaction would be a call for more coping strategies and a meeting of the IEP team to consider additional supports. The IDEA does not require an IEP that is guaranteed to provide success but that is reasonably calculated to provide FAPE. *Andrew F.*, 137 S. Ct. at 999; and see test. [REDACTED].

If the Student was unable to transition to the elective class in the general population, all his classes at [REDACTED] could have been conducted in the self-contained environment of the [REDACTED]. Test. Ms. [REDACTED]. MCPS was required to develop an IEP that included the LRE consistent with the Student's educational needs. 20 U.S.C.A. § 1412(a)(5)(A). The evidence is uncontroverted that at [REDACTED] the Student only participated with disabled peers. There is no opportunity for him to have any interactions with typically developing peers at [REDACTED].

I do not accept the Parents' argument that the June 2023 graduation date is dispositive evidence that the IEP was unable to be implemented in August 2022 because an IEP is prospective and not governed by the law of contracts. See *John A. v. Bd. of Educ. for Howard Cnty*, 400 Md. 363, 385, (2007). Although Ms. [REDACTED] testified that the Student would not complete high school in 2023, that was not the reason given by the Parents for their rejection of the IEP. They rejected the IEP because they believed the Student should not have been scheduled for any classes in the general population and that if he were, he would shut down. In

addition, they believed that [REDACTED] was the wrong environment for the Student. Based on the evidence, the Student was going to complete an extra year at [REDACTED]. The Parents rejected the IEP before Ms. [REDACTED] noticed the fact that the Student needed additional credits for a Maryland high school diploma, so the issue could not be brought to their attention.

The IDEA requires that the IEP be reasonably calculated to enable the Student to make progress appropriate in light of his circumstances. The question is whether the August 2022 IEP was reasonably calculated to allow the Student to progress. *See Endrew F.*, 137 S. Ct. at 999-1001. The IDEA does not require the best possible education that a school can provide. *Barnett ex rel. Barnett*, 927 F.2d at 154. Although the Parents believe that [REDACTED] is the best option for the Student, that does not mean that the [REDACTED] at [REDACTED] was unreasonable.

I am “obliged to defer to educators’ decisions as long as an IEP provided the child the basic floor of opportunity that access to special education and related services provides.” *MM ex rel. DM*, 303 F.3d at 532 (4th Cir. 2002) (Quoting *Tice*, 908 F.2d at 1207) (quotations omitted). According to the evidence in this record as illustrated above, the IEP established a basic floor of opportunity in which the Student could progress. MCPS developed a reasonable and appropriate IEP for the Student for the 2022-2023 year in the appropriate educational environment.

Summary

Having considered and weighed the totality of the evidence, I conclude that the Parents have not met their burden of proving that the 2022 IEP proposed by MCPS failed to offer the Student a FAPE. I find that MCPS developed an appropriate IEP and placement for the Student for the 2022-2023 school year in the [REDACTED] at [REDACTED]. The placement was reasonably calculated to meet his unique needs in the LRE.

Under *Carter* and *Burlington*, whether a Parents’ private placement choice is proper is analyzed only if the IEP proposed by MCPS results in the denial of a FAPE. 510 U.S. 7; 471

U.S. 359. I concluded in this case, for the reasons set forth above, that the IEP and placement offered by MCPS provided the Student a FAPE. Therefore, the issue of whether the Student's placement at [REDACTED] is proper is not required to be addressed further in this decision. Because MCPS did not deny the Student a FAPE, the Parents' claim for reimbursement of tuition, costs, and expenses associated with the Student's unilateral placement at [REDACTED] need not be decided.

The Parents have not proven that MCPS failed to evaluate the Student for special education services, nor have they proven that the proposed IEP was not reasonably calculated to enable the Student to make progress appropriate considering the student's unique circumstances. *Andrew F.*, 137 S. Ct. 988. Therefore, the Parents are not entitled to reimbursement.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law, that the Parents have not proven that Montgomery County Public Schools violated the Individuals with Disabilities Education Act by failing to provide the Student with a free appropriate public education, by failing to provide him with an appropriate individualized education program and placement for the 2022-2023 school year.

I further conclude as a matter of law that the Parents failed to prove that the Student could not receive FAPE through the MCPS for the 2022-2023 school year and that only the [REDACTED] [REDACTED] would have done so, or that they are entitled to reimbursement for tuition and expenses at the [REDACTED] for the 2022-2023 school year. 20 U.S.C.A. § 1400(d)(1)(A) (2017); 34 C.F.R. § 300.148 (2021); *Andrew F. v. Douglas Cnty School Dist. RE-1*, 137 S. Ct. 988 (2017); *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Florence Cnty Sch. District Four v. Carter*, 510 U.S. 7 (1993); *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49 (2005).

ORDER

I **ORDER** that the Parents' request for placement and reimbursement for tuition, costs, and expenses at the [REDACTED] for the 2022-2023 school year is **DENIED**.

April 19, 2023
Date Decision Mailed

William F. Burnham
Administrative Law Judge

WFB/at
#204433

REVIEW RIGHTS

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

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

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

Copies Mailed To:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

████████████████████,

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE WILLIAM F. BURNHAM,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-MONT-OT-22-25501

APPENDIX: EXHIBIT LIST

I admitted the following pre-marked exhibits into evidence on behalf of the Student and Parents:

- P Ex. 1 Request for Due Process, October 18, 2022
- P Ex. 2 ██████ Diagnostic Prescriptive Goals, (DPG) School Year 2021-2022
- P Ex. 3 ██████ DPG, School Year 2022-2023
- P Ex. 4 MCPS Psychology Report, June 14, 2022
- P Ex. 5 MCPS Educational Assessment report, June 29, 2022
- P Ex. 6 MCPS Prior Written Notice, July 15, 2022; IEP Team Meeting Sign-In Sheet, July 12, 2022; MCPS Five-Day Verification Notice of Documents Provided After an IEP Meeting, July 15, 2022
- P Ex. 7 ██████ Transcript for the Student, September 2, 2021
- P Ex. 8 MCPS IEP, August 4, 2022
- P Ex. 9 MCPS Prior Written Notice, August 9, 2022; IEP Team Meeting Sign-In Sheet, August 4, 2022; MCPS Five-Day Verification Notice of Documents Provided After an IEP Meeting, August 9, 2022
- P Ex. 10 Letters from/to the Parents' counsel to/from MCPS, August 8, 2022 and August 25, 2022
- P Ex. 11 Observation Report, September 15, 2022
- P Ex. 12 Observation Report, September 21, 2022
- P Ex. 13 IXL Diagnostic Action Plan, As of November 4, 2022

- P Ex. 14 [REDACTED] course grades, February 16, 2023
- P Ex. 15 Resume of [REDACTED], undated
- P Ex. 16 Resume of [REDACTED], undated
- P Ex. 17 Semester Schedule for the Student, Grade:12, undated

I admitted the following pre-marked exhibits into evidence on behalf of MCPS:

- MCPS Ex. 1 IEP, August 4, 2022
- MCPS Ex. 2 IEP, Amended, September 23, 2022 b
- MCPS Ex. 3 MCPS Notice of IEP Team Meeting, May 10, 2022
- MCPS Ex. 4 Five-Day Verification Notice of Documents Provided After an IEP Meeting, May 18, 2022
- MCPS Ex. 5 Duplicate MCPS Ex. 4
- MCPS Ex. 6 Five-Day Verification Notice of Documents Provided After an IEP Meeting, June 29, 2022
- MCPS Ex. 7 MCPS Notice of IEP Team Meeting, June 29, 2022
- MCPS Ex. 8 MCPS IEP Team Meeting Sign-In Sheet, July 12, 2022
- MCPS Ex. 9 Five-Day Verification Notice of Documents Provided After an IEP Meeting, July 15, 2022
- MCPS Ex. 10 MCPS IEP Team Meeting Sign-In Sheet, August 4, 2022
- MCPS Ex. 11 Five-Day Verification Notice of Documents Provided After an IEP Meeting, August 9, 2022
- MCPS Ex. 12 Prior Written Notice, May 18, 2022
- MCPS Ex. 13 Prior Written Notice, July 15, 2022
- MCPS Ex. 14 Prior Written Notice, August 9, 2022
- MCPS Ex. 15 Speech language Evaluation, August 31 and September 2, 2021
- MCPS Ex. 16 [REDACTED] DPG, School Year 2021-2022
- MCPS Ex. 17 MCPS Report of the School Psychologist, June 14, 2022

MCPS Ex. 18 MCPS Educational Assessment report, June 29, 2022

MCPS Ex. 19 [REDACTED] Transcript for the Student, September 2, 2021

MCPS Ex. 20 IEP Consent for Initiation of Services, August 10, 2022

MCPS Ex. 21 Letters from MCPS to the Parents' counsel, August 25, 2022, March 6, 2023

MCPS Ex. 22 Resume of [REDACTED], undated

MCPS Ex. 23 Resume of [REDACTED], undated

MCPS Ex. 24 Resume of [REDACTED], undated

MCPS Ex. 25 Resume of [REDACTED], undated

MCPS Ex. 26 Resume of [REDACTED], undated

MCPS Ex. 27 Resume of [REDACTED], undated