

██████████,

STUDENT

v.

BALTIMORE COUNTY

PUBLIC SCHOOLS

BEFORE JENNIFER L. GRESOCK,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-BCNY-OT-23-11451

DECISION

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STATEMENT OF THE CASE

On April 28, 2023, ██████████ and ██████████ (Parents), on behalf of their child, ██████████ ██████████ (Student), filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by Baltimore County Public Schools (BCPS) under the Individuals with Disabilities Education Act (IDEA). The BCPS filed an Answer to the Complaint on June 13, 2023. 20 U.S.C.A. § 1415(f)(1)(A) (2017);¹ 34 C.F.R. § 300.511(a) (2021);² Md. Code Ann., Educ. § 8-413(d)(1) (2022);³ Code of Maryland Regulations (COMAR) 13A.05.01.15C(1).

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

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

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

I held the hearing on August 28, August 30, August 31, September 5, September 6, September 7, September 8, and September 12, 2023, at the OAH in Hunt Valley, Maryland.⁴ Mark B. Martin, Esquire, represented the Parents.⁵ Pamela Foresman, Esquire, represented the BCPS.

Under the applicable law, a decision in this case normally would be due by July 12, 2023, forty-five days after the end of the thirty-day resolution period.⁶ 34 C.F.R. §§ 300.510(b)(2), (c), 300.515(a); Educ. § 8-413(h); COMAR 13A.05.01.15C(14). However, the regulations authorize me to grant a specific extension of time at the request of either party. 34 C.F.R. § 300.515(c); Educ. § 8-413(h). In this case, counsel for the Parents requested that the timeline be extended, noting the availability of the parties and witnesses would not make it possible to hold the hearing speedily enough to allow time for me to draft and issue a decision by July 12, 2023. The BCPS agreed that it was appropriate to extend the timeline.⁷ In light of the scheduling constraints and the need for sufficient time to thoughtfully consider the evidence and arguments, I granted the Parents' request for an extension and specified that my decision would be issued within thirty days of the conclusion of the hearing. The hearing concluded on September 12, 2023, making my decision due no later than October 12, 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

⁴ These dates were agreed upon at the remote prehearing conference held on June 13, 2023.

⁵ Only Mr. [REDACTED] the Student's father, attended the hearing; Ms. [REDACTED] did not attend. On the final day of hearing, Mr. [REDACTED] participated remotely.

⁶ I note that adjusting the resolution period to reflect that the parties did not reach an agreement at mediation on June 13, 2023, is not appropriate because the thirty-day resolution period had already ended on May 28, 2023.

⁷ Mr. Martin expressed a strong preference for selecting days as close together as possible – if not all eight at once, then at least four. Noting that the five-day disclosure rule prevented an immediate start to the hearing, he stated that he was unavailable from June 19 through June 23, 2023, due to IEP meetings each day; he was then out of town until July 1, 2023. The Parents were out of town from July 1 through July 15, 2023. Mr. Martin was scheduled for other due process hearings from July 17 through July 28, 2023. I was on prescheduled leave from July 28 through August 15, 2023. Witnesses were unavailable August 16, 17, and 18, 2023, Mr. Martin had another due process hearing beginning August 21 through August 23, 2023, and his witnesses were not available August 24 and 25, 2023. Accordingly, the first day both parties and I were available for the hearing was August 28, 2023. I had dockets assigned for August 29 and September 11, 2023, and preapproved leave September 1, 2023. September 4, 2023, was Labor Day, a federal and State holiday; the OAH was closed.

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

Whether the BCPS, in developing the 2023-24 Individualized Education Program (IEP) (developed March 8, 2023) denied the Student a Free Appropriate Public Education (FAPE) due to:

1. Failing to provide appropriate goals, particularly in the following areas: writing, reading, social/emotional, and mathematics;
2. The lack of integrated special education services throughout the school day and lack of direct special education instruction;
3. Providing insufficient hours of specialized instruction outside of general education;
4. Failing to provide a special education instructor or related services staff as the primary provider throughout the entire school day;
5. Failing to provide needed and recommended supplementary aids⁸ and accommodations (including but not limited to small class size, human reader, graph paper, graphic organizer, checklists for task completion, or other adult support);
6. Failing to provide an appropriate placement.

SUMMARY OF THE EVIDENCE

Exhibits

The exhibits are in the Appendix.

⁸ This refers to supplementary aids and services, as well as program modifications and supports.

Testimony⁹

The Student's father, Mr. [REDACTED], testified. The Parents presented the following witnesses:¹⁰

- [REDACTED], M.Ed., admitted as an expert in special education, reading, and academic testing of students with special needs;¹¹
- [REDACTED], Founder and [REDACTED] ([REDACTED]), admitted as an expert in reading, dyslexia, and language-based learning disabilities.
- [REDACTED], school counselor, [REDACTED].

The BCPS presented the following witnesses:

- [REDACTED], Assistant Principal, and IEP Chair at [REDACTED] [REDACTED] admitted as an expert in general education (grades 1- 6); special education (grades K - 8); school administration; and literacy instruction;
- [REDACTED], Licensed Certified Social Worker-Clinical (LCSW-C), admitted as an expert in school social work and counseling; and
- [REDACTED], School Psychologist, admitted as an expert in school psychology.

⁹ The Parents made a motion to sequester witnesses, including expert witnesses. All witnesses offered by both parties were either expert witnesses or a party. Accordingly, I declined to exclude any witnesses, as allowing expert witnesses to remain in the hearing room is within my discretion. COMAR 28.02.01.21E(1).

¹⁰ The Parents requested that a subpoena be issued to [REDACTED], a general educator at [REDACTED] ([REDACTED]) who participated in IEP team meetings on November 17, 2022; February 28, 2023; and March 8, 2023. A subpoena was subsequently sent by first-class mail to [REDACTED]; however, Ms. [REDACTED] was on extended leave and did not receive it. Mr. Martin made a motion asking me to compel the BCPS to provide Ms. [REDACTED] home address so that the subpoena could be delivered to her there. Ms. Foresman indicated that she did not have Ms. [REDACTED] home address. I denied the request, concluding that to compel the BCPS to provide the home addresses of its staff is outside the scope of my authority. I note that COMAR 28.02.01.14B(3)(a) requires the party requesting a subpoena to furnish the address of the person to be subpoenaed, and there is no regulatory provision allowing for a party to compel the opposing party to provide an address.

¹¹ Ms. [REDACTED] participated by video on her second day of testimony.

FINDINGS OF FACT

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

BACKGROUND

1. The Student is currently a fifth-grade student at [REDACTED] in [REDACTED], Maryland.
2. The Student's family resides in Baltimore County, Maryland.
3. The IEP team approved the Student's current IEP, effective for one year, on March 8, 2023 (March 2023 IEP).¹²
4. The March 2023 IEP places the Student at her home public school, [REDACTED], and provides for 22 hours weekly in general education and 10 hours and 37 minutes weekly outside of general education.
5. The Parents did not agree with the March 2023 IEP and filed a due process request on April 28, 2023. The Student has continued to attend [REDACTED] while this case has been pending.

THE STUDENT'S RELEVANT EDUCATIONAL HISTORY

- [REDACTED]
6. The Student attended kindergarten (2018-2019 school year) and first grade (2019-2020 school year) at [REDACTED] ([REDACTED]), a private [REDACTED] day school in [REDACTED], Maryland.
 7. The Student's curriculum at [REDACTED] included secular academic classes as well as teaching in the areas of the [REDACTED], [REDACTED] [REDACTED] and customs, and [REDACTED].
 8. The Student's classes at [REDACTED] comprised 15 to 20 students, with two teachers per classroom.

¹² Parents Ex. 53.

9. The Student experienced significant academic, emotional, and behavioral challenges at [REDACTED].

10. In the Student's first-grade year, [REDACTED] staff identified areas of need, including slow skill acquisition, mixing up letter and blend sounds when speaking, phoneme segmentation, and vowel sounds.¹³

11. [REDACTED] staff implemented reading interventions in a small-group setting, speech-language therapy, and individual tutoring in reading and writing skills. However, the Student continued to struggle academically, had difficulty regulating her emotions, and engaged in behaviors such as crying, kicking other people, and running from the classroom.

12. In May of the Student's first-grade year (2019 – 2020), her team at [REDACTED] recommended that she undergo a psychoeducational evaluation.¹⁴

First Evaluation by [REDACTED], Ph.D. (May 2020)

13. On May 13 and May 15, 2020, the Student was evaluated by Dr. [REDACTED] [REDACTED], a licensed psychologist.¹⁵

14. Dr. [REDACTED] conducted assessments in the following areas: Intellectual Functioning, Academic Functioning, Memory and Learning, Language, Visual Motor Skills, Attention, Executive Functioning, Social Emotional Functioning, and Adaptive Functioning.¹⁶

15. Dr. [REDACTED] diagnosed the Student with a specific learning disorder, with impairment in reading (mild; dyslexia; word reading accuracy) and attention deficit/hyperactivity disorder, combined presentation.¹⁷

16. Phonological processing is the ability to use, break down, and understand sounds of letters, as applied in spoken and written language.

¹³ Parents Ex. 1.

¹⁴ Parents Ex. 3.

¹⁵ Dr. [REDACTED]'s May 2020 Psychological Evaluation is Parents Ex. 4.

¹⁶ Parents Ex. 4, pp. 1013-14.

¹⁷ Parents Ex. 4, p. 1023.

17. Phonological awareness is the ability to manipulate sounds.

18. Phonics is the association of letters with sounds.

19. Reading fluency is a function of rate and accuracy. A certain degree of fluency is required for reading comprehension.

20. Dr. [REDACTED]'s assessments reflected that the Student's cognitive abilities were in the high average range, with great strength in visual spatial skills and strong fluid reasoning and working memory skills. However, she was low average in word reading, letter and word recognition, reading fluency rate and accuracy, verbal learning, and reading comprehension. Her decoding and sound symbol composite scores were also low average, and she showed particular weakness in reading comprehension and nonsense decoding.¹⁸

21. Dr. [REDACTED]'s assessments reflected that the Student's performance was consistent with an attentional disorder, and that she struggles with emotional regulation, based on reports from her Parents and [REDACTED] teachers regarding the latter. Highlighted concerns included impulsivity, difficulty shifting between tasks, following multistep directions, initiating tasks independently, regulating behaviors, avoiding careless errors, and organizing materials.¹⁹

22. In ratings provided to Dr. [REDACTED], the Student's [REDACTED] teachers indicated a number of social/emotional concerns, including depression, withdrawal, hyperactivity, aggression, anxiety, attention, and learning problems.²⁰

23. Dr. [REDACTED] recommended that the Student be placed in an academic setting that supports her learning throughout her day, rather than providing additional supports to the curriculum. Alternatively, if the Student remained at [REDACTED], Dr. [REDACTED] recommended ongoing intervention in reading and articulation, as well as social and emotional supports. She provided a list of specific recommendations, such as preferential seating, elimination of time

¹⁸ Parents Ex. 4, pp. 1027-29.

¹⁹ Parents Ex. 4, pp. 1022.

²⁰ Parents Ex. 4, pp. 1029-31.

pressure, limiting distractions, breaks, rewarding the learning process, breaking tasks into smaller parts, targeted phonics instruction (e.g., Orton-Gillingham), small group or individualized instruction in reading, tutoring, additional time and breaks for standardized testing, self-removal when upset, self-soothing objects, naming emotions, and therapy.²¹

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24. Based on Dr. ██████████'s recommendation, the Student's Parents enrolled her at ██████████ in her second-grade year (2020-2021 school year). Her placement was funded by the BCPS.

25. ██████████ is structured around the Orton-Gillingham method and philosophy. Orton-Gillingham is a structured literacy intervention program that breaks language and reading skills into smaller, discrete skills, delivered through direct, diagnostic, systematic, prescriptive, and multisensory instruction.

26. All students at ██████████ are below grade level in multiple subjects and have language-based learning difficulties. Children with significant emotional/social/behavioral issues are not admitted unless admissions staff conclude that such issues are due primarily to frustration with learning challenges.

27. ██████████ provides specially designed instruction, integrated into the Student's entire day, that is keyed to mastering specific skills in a systematic, structured way, rather than instruction based on Common Core grade-level standards used in Maryland public schools.

28. ██████████ divides the academic school year into three terms. Report cards are issued at the end of each term, with the child's grade level noted at the top. ██████████ teachers prepare report card templates by inserting a unit of preset discrete skills, obtained from Orton-Gillingham-based software, that represent a student's specific goals for the school year.

²¹ Parents Ex. 4, pp. 1023-26.

29. The Student's report cards reflect her performance in each skill with an E (emerging), P (progressing), or M (mastered). Skills that were not taught or reviewed during the term have blank spaces on the report cards. Report cards also include comments from teachers.

30. The youngest students at [REDACTED] are assigned to the Primary classroom, which generally includes grades one through three, taught by a teacher and an aide.

31. The Student was assigned to the Primary classroom as one of seven students for her second-grade year.

32. Students at [REDACTED] have a rotating schedule with limited transitions that provides individualized instruction in short bursts of twenty minutes per session.

33. When the Student began attending [REDACTED] in second grade, she continued to struggle with emotional regulation and anxiety. At times, she would scream and run from the classroom.

34. [REDACTED] staff responded to the Student's emotional, social, and behavioral challenges by developing a safety plan to address elopement concerns, encouraging use of the "calm down corner," and discussing triggers and de-escalation methods in a group "chat."

35. The Student continued at [REDACTED] for third grade, funded by the BCPS.

36. On March 15, 2022, the IEP team approved an IEP for the Student that determined she required multisensory instruction, manipulatives, and other strategies that closely supported her social/emotional needs, and that she further required "a non-public placement in a private separate day school in order to receive support and instruction noted in this IEP."²²

37. The Student attended [REDACTED] for her fourth- grade year (2022 - 2023), funded by the BCPS.

²² Parents Ex. 23, p. 1276.

DEVELOPMENT OF THE MARCH 8, 2023 IEP

November 17, 2022 IEP Team Meeting

38. In October 2022, the BCPS initiated the annual process of reviewing and revising the Student's IEP.²³

39. Before the first IEP team meeting, the BCPS requested classroom work samples, any current academic data, any grade level or standardized test scores, and a teacher narrative “that describes how [the Student] is doing academically and socially/emotionally.”²⁴ The request was directed to the Parents, who forwarded it to Ms. [REDACTED]. Ms. [REDACTED] promptly responded with all requested documents, after obtaining clarification on the teacher narrative to ensure that it provided the information the IEP team sought.

40. On November 17, 2022, the IEP team met to conduct reevaluation planning. The team reviewed and considered the documents Ms. [REDACTED] had provided to Mr. [REDACTED], and which Mr. [REDACTED] then provided to the team.

41. The team sought to conduct a classroom observation and to have formal assessments completed, including a psychological assessment (for social/emotional rating scales and updated information on cognitive and phonological processing), speech/language assessment for articulation, and an educational assessment (for information on present levels of academic achievement and functional performance (“present levels”)). Additionally, the team noted that it could not correlate the Student's skills in the [REDACTED] reports to “grade level or age level expectation.” The team sought to conduct informal educational assessments to “gather information on mastery of academic standards and skills.”²⁵

²³ BCPS Ex. 40, p. 5.

²⁴ Parents Ex. 28.

²⁵ Parents Ex. 31, p. 1278.

42. The Parents consented to all assessments recommended by the IEP team.²⁶ However, at the request of the Parents, the BCPS agreed that their private provider, Dr. [REDACTED], could conduct the psychological and educational assessments. Mr. [REDACTED] coordinated with BCPS staff to ensure that the appropriate assessments would be conducted, and that no duplication would occur, to avoid invalidating the results.²⁷

43. After the November 17, 2022 IEP team meeting, Mr. [REDACTED] prepared a list of questions posed by members of the IEP team, as well as additional documents sought, and emailed the list on November 18, 2022, to [REDACTED], Founder and Head-of-School at [REDACTED]. The questions related to the Student's social/emotional services at [REDACTED], her current level of performance in articulation, the Student's struggles to stay on task, the number of students in the Student's classes, and a request for additional benchmark data and a math work sample. Ms. [REDACTED] provided a prompt response to the email, which was subsequently provided by Mr. [REDACTED] to the IEP team.²⁸

Second Evaluation by Dr. [REDACTED] (January 5, 2023)

44. On January 5, 2023, the Student was again evaluated by Dr. [REDACTED].²⁹

²⁶ Parents Ex. 33.

²⁷ Parents Ex. 35.

²⁸ Parents Ex. 34.

²⁹ Dr. [REDACTED]'s January 5, 2023 Psychoeducational Evaluation is Parents Ex. 39.

45. Dr. [REDACTED] conducted assessments³⁰ in the following areas: Intellectual Functioning,³¹ Academic Functioning,³² Memory and Learning,³³ Visual Motor Skills,³⁴ Executive Functioning,³⁵ Social Emotional Functioning,³⁶ and Adaptive Functioning.³⁷

46. Dr. [REDACTED] maintained her diagnosis of a specific learning disorder, with impairment in reading (mild; dyslexia; word reading accuracy) and attention deficit/hyperactivity disorder, combined presentation (by history). She also diagnosed the Student with an impairment in written expression (spelling).

47. Dr. [REDACTED]'s assessments again reflected that the Student had a high average cognitive ability, with strengths in processing speed, visual spatial skills, fluid reasoning, and working memory.³⁸ The Student's math skills ranged from high average (math fluency) to low average (basic computation skills).³⁹ In reading, the Student's composite scores were borderline in reading, decoding, reading fluency, and orthographic processing; her Oral Reading Quotient was also borderline. She had particular weaknesses in letter and word recognition, fluency rate and accuracy, and reading comprehension (all borderline), with low average scores in decoding fluency and silent reading.⁴⁰ Her written language composite score was average, reflecting an average score in written expression and extremely low spelling score. Spontaneous

³⁰ Parents Ex. 39, p. 1322.

³¹ This was assessed using the Wechsler Intelligence Scale for Children- Fifth Edition, or WISC-V. (Parents Ex. 39 pp. 1322-23, 1331.)

³² This was assessed using the Kaufman Test of Educational Achievement, Third Edition, or KTEA-3; Wechsler Individual Achievement Test, Fourth Edition, or WIAT-4; the Gray Oral Reading Tests, Fifth Edition, or GORT-5; the Test of Written Language, Fourth Edition, or TOWL-4, and the Comprehensive Test of Phonological Processing – Second Edition, or CTOPP-2. (Parents Ex. 39, pp. 1324-26, 1331-32.)

³³ This was assessed using the Wide Range Assessment of Memory and Learning – Third Edition, or WRAML-3. (Parents Ex. 39, pp. 1326, 1333.)

³⁴ This was assessed using the Beery-Buktenica Developmental Test of Visual-Motor Integration, or VMI. (Parents Ex. 39, pp. 1326-27, 1333.)

³⁵ This was assessed using the Behavior Rating Inventory of Executive Functioning, Second Edition, or BRIEF-2. (Parents Ex. 39, pp. 1327, 1333.)

³⁶ This was assessed using the Behavior Assessment System for Children, Third Edition, or BASC-3. (Parents Ex. 39, pp. 1327, 1334.)

³⁷ This was assessed using the BASC-3. (Parents Ex. 39, pp. 1327, 1334-35.)

³⁸ As assessed by the WISC-V. (Parents Ex. 39, p. 1331.)

³⁹ As assessed by the KTEA-3 and the WIAT-4. (Parents Ex. 39, pp. 1331-32.)

⁴⁰ As assessed by the KTEA-3 and GORT-5. (Parents Ex. 39, pp. 1331-32.)

writing was average.⁴¹ While average in phonological awareness, the Student showed deficits in elision (the omission of a sound from a word), phonological memory, and nonword repetition (all low average).⁴²

48. Assessments based on ratings from the Student's Parents, [REDACTED] teachers, and the Student herself reflected no elevated areas of concern in executive functioning, social/emotional functioning, and adaptive functioning, except elevations by her mother in working memory and attention.⁴³

49. Dr. [REDACTED] recommended that the Student continue with placement in her specialized academic setting.

January 10, 2023 Classroom Observation and Informal Assessments; Speech Assessment

50. On January 10, 2023, BCPS social worker [REDACTED] conducted a classroom observation at [REDACTED] to obtain additional data regarding the Student's social/emotional functioning.

51. The Student greeted Ms. [REDACTED] upon her arrival. The Student presented as smiling, confident, and well adjusted. She worked diligently in the classroom during an English Language Arts lesson, with a few reminders to stay on task from her teacher and transitioned easily to recess and lunch.

52. Ms. [REDACTED] noted that the Student demonstrated significant problems with basic reading skills and written expression, and some problems with listening comprehension, attention, organization, work habits, task completion, and speech.

53. [REDACTED], a BCPS special educator, accompanied Ms. [REDACTED] on January 10, 2023, and conducted informal assessments. The Student was engaged and focused during the assessments and transitioned easily into and out of the classroom.

⁴¹ As assessed by the KTEA-3 and TOWL-4. (Parents Ex. 39, pp. 1331-32.)

⁴² As assessed by the CTOPP-2. (Parents Ex. 39, pp. 1326, 1332-33.)

⁴³ As assessed by the BRIEF-2 and BASC-3. (Parents Ex. 39, pp. 1327-28, 1333-35.)

54. Ms. [REDACTED] conducted a DIBELS Oral Reading Fluency assessment, a standardized measure of accuracy and fluency with connected text. The Student read a fourth-grade passage with 76% accuracy (49 words correct), below the benchmark of 96% accuracy (121 words correct). She read a third-grade passage with 64% accuracy (29 words correct), below the benchmark of 96% accuracy (105 words correct).⁴⁴

55. Ms. [REDACTED] conducted a Beginning Decoding Survey, which assesses a student's ability to read high-frequency words and single-syllable decodable words with short vowels, digraphs, and blends. The Student read 45 of 50 words correctly (benchmark is 48/50).⁴⁵

56. Ms. [REDACTED] also conducted an Advanced Decoding Survey, which assesses a student's ability to read unfamiliar single-syllable decodable words with advanced vowel patterns. The Student read 10 of 30 words correctly (benchmark is 26/30). Ms. [REDACTED] noted particular difficulty with nonsense words containing advanced vowel teams and multisyllabic words.⁴⁶

57. Ms. [REDACTED] also conducted an informal math assessment (Bridges Intervention Math Placement Assessment) with skills aligned to grades two to four. The Student had difficulty with a word problem with multiplicative comparison but was able to solve an equation with multiplicative comparison. She could also multiply single and double digits by 10, solve three one-step word problems (multiplication and division), and identify fractional halves. She had difficulty with fourths.⁴⁷

⁴⁴ Parents Ex. 53, p. 1367

⁴⁵ Parents Ex. 53, p. 1368.

⁴⁶ Parents Ex. 53, p. 1368.

⁴⁷ Parents Ex. 53, p. 1372.

58. On January 27, 2023, [REDACTED], speech-language pathologist, conducted an assessment and determined that the Student has a mild speech disorder characterized by a distortion of the /r/ sound.⁴⁸

February 9, February 28, and March 8, 2023 IEP Team Meetings

59. On February 9, 2023, the IEP team met to discuss the assessment reports. [REDACTED], Assistant Principal at [REDACTED], chaired the meeting, which was attended by a general educator ([REDACTED]), special educator (Ms. [REDACTED]), the Parents, speech language pathologist [REDACTED], School Psychologist [REDACTED], IEP Facilitator [REDACTED], Ms. [REDACTED], [REDACTED] (family advocate), and the Parents' counsel, Mr. Martin.⁴⁹

60. At the February 9, 2023 IEP team meeting, the team reviewed Dr. [REDACTED]'s report, as well as Ms. [REDACTED]'s classroom observation and the speech-language assessment. The team determined that the Student's disability coding should be a specific learning disability. The IEP team also determined that there were no current social/emotional concerns and thus no need for a goal in this area, though the Parents disagreed. The team discussed including supplementary aids and services to address the Parents' concerns about social/emotional challenges.

61. On February 28, 2023, the IEP team met to review and revise the IEP. Ms. [REDACTED] chaired the meeting, which was attended by a general educator ([REDACTED]), the Parents, Mr. [REDACTED], Ms. [REDACTED], Ms. [REDACTED], Ms. [REDACTED], Ms. [REDACTED], Ms. [REDACTED], and Mr. Martin.⁵⁰

⁴⁸ BCPS Ex. 20. The report indicates that Ms. [REDACTED] holds a Certificate of Clinical Competence in Speech Language Pathology (CCC-SLP).

⁴⁹ Parents Ex. 47.

⁵⁰ Parents Ex. 50.

62. At the February 28, 2023 meeting, the IEP team considered input from the Parents; ██████ progress reports;⁵¹ Ms. ██████'s classroom observation, as documented and as described by her at the meeting;⁵² Ms. ██████'s speech assessment; and Dr. ██████'s January 2023 psychoeducational assessment report.

63. The meeting was contentious. The Parents and the BCPS staff members disagreed over numerous aspects of the draft IEP, including the appropriate disability coding, the need for small class size and/or instructional group, aspects of the supplementary aids and services, and the lack of a social/emotional goal.

64. The IEP team met again on March 8, 2023. Ms. ██████ chaired the meeting, which was attended by Ms. ██████, Ms. ██████, the Parents, Ms. ██████, ██████ (Guidance⁵³), Ms. ██████, ██████ (IEP Facilitator), Ms. ██████, Mr. Martin, and Ms. ██████.⁵⁴

65. The IEP team heard input from Ms. ██████, added the statement from the Parents to the IEP and discussed supplementary aids and services, special education services, least restrictive environment, transportation, and the draft IEP. There was significant disagreement between the Parents and BCPS staff.

The March 8, 2023 IEP⁵⁵

66. The Student's primary disability is Specific Learning Disability. It impacts her educationally in the following areas: social/emotional/behavioral; reading fluency/phonics; reading phonemic awareness; writing; mathematics; and speech and language articulation.⁵⁶

⁵¹ It is not clear if this included the Student's Term 2 Legacy report card. The Prior Written Notice for the meeting includes the following notation: "Team received Term 2 (report card) reports (██████████) from Mr. ██████ (received after 4:30pm on Friday 2/25/2023)[.]" (Parents Ex. 50, p. 1355.)

⁵² Ms. ██████'s Classroom Observation of Student Performance is Parents Ex. 40.

⁵³ Ms. ██████'s precise role and title were not clear.

⁵⁴ Parents Ex. 54.

⁵⁵ The March 2023 IEP is Parents Ex. 53.

⁵⁶ Parents Ex. 53, p. 1358.

67. The Student's social/emotional/behavioral performance is below grade level, as she sometimes becomes overwhelmed by tasks and needs breaks, is easily distracted, and has difficulty following through with multi-step directions. She sometimes requires reminders, prompting, and positive reinforcement to stay on task and to complete tasks.⁵⁷

68. During the 2022 – 2023 school year, the Student received no specialized instruction or intervention at [REDACTED] to address social, emotional, or behavioral concerns. Behavioral problems were limited to generalized anxiety and some concern about school bus safety, as the Student ran from the bus in an unsafe manner near the end of her third-grade year. Any outbursts or incidents of difficulty with outbursts or emotional regulation were isolated, anecdotal, and unsupported by data reflecting recency, frequency, intensity, trigger, or interventions used to calm or assist her.

69. The Student's reading fluency is at the second-grade level. She struggles with reading sight words.⁵⁸ Her reading comprehension is limited because she is not yet a fluent reader, meaning that her rate and accuracy make it difficult for her to discern meaning from texts she reads herself. At [REDACTED], she does not receive an intervention in reading comprehension because she does not yet read fluently enough.

70. The Student's skill in reading phonics is first-grade level. She struggles with decoding and guesses on words containing three or four sounds. She has difficulty with nonsense words and with blending sounds.⁵⁹

71. The Student's phonemic awareness is at third-grade level. She has difficulty with eliminating or omitting a sound from a multisyllabic word (elision).⁶⁰

⁵⁷ Parents Ex. 53, p. 1366; Parents Ex. 39; Parents Ex. 40; Parents Ex. 38.

⁵⁸ Parents Ex. 53, pp. 1366-67; Parents Ex. 39; Parents Ex. 60C.

⁵⁹ Parents Ex. 53, pp. 1368-69; Parents Ex. 39; Parents Ex. 60C; Parents Ex. 62C; Parents Ex. 65C.

⁶⁰ Parents Ex. 54, pp. 1369-70; Parents Ex. 39; Parents Ex. 60C; Parents Ex. 64.

72. The Student's written expression is at third-grade level. She has great difficulty with spelling and some difficulty with proper sentence structure but can construct a paragraph independently when using a graphic organizer.⁶¹

73. The Student's mathematic abilities are at third-grade level. She has some difficulty with word problems and understanding fractions but is in the average to low average range in math computation and fluency.⁶²

74. With regard to speech articulation, the Student is below grade level, as she struggles with the /r/ sound, including an initial /r/, r-blends, and the vocalic /r/.⁶³

75. The March 2023 IEP contains the Student's present levels of academic achievement in social/emotional/behavioral; reading (phonics, phonemic awareness, and fluency), writing, mathematics, and speech and language articulation, including the sources used to determine each one.⁶⁴

76. The March 2023 IEP contains the following supplementary aids and accommodations:

- a. In addition to instructional and assessment accessibility features that are available to all students (including graphic organizers and writing tools), the Student is provided text-to-speech technology for instruction and assessments in mathematics, science, government, and English Language Arts. Additionally, the Student is provided with extended time on all assessments, frequent breaks, and reduced distractions.⁶⁵

⁶¹ Parents Ex. 53, pp. 1370-71; Parents Ex. 39; Parents Ex. 60C; Parents Ex. 66; Parents Ex. 68; Parents Ex. 69C.

⁶² Parents Ex. 53, pp. 1371-72; Parents Ex. 39; Parents Ex. 60C; Parents Ex. 61C; Parents Ex. 70; Parents Ex. 71.

⁶³ Parents Ex. 53, p. 1372.

⁶⁴ Parents Ex. 53, pp. 1366-1373.

⁶⁵ Parents Ex. 53, pp. 1375-77.

- b. Supplementary aids, services, program modifications and supports:
- i. The Student's instructional supports include provision of a proofreading checklist (weekly during writing assignments, by a special educator); use of manipulatives (weekly as needed, by a special educator); use of highlighters during instruction and assignments (weekly as needed, by a special educator); use of organizational aids (daily, by a general educator); having the Student repeat or paraphrase information (daily, by a general educator); and use of a word bank to reinforce vocabulary and/or when extended writing is required (daily during content, as needed, by a general educator).⁶⁶
 - ii. The Student's program modifications include breaking down assignments into smaller units (weekly as needed, by a general educator); chunking of texts (daily, by a special educator); and speech-to-text on writing assignments (daily, by a general educator).⁶⁷
 - iii. The Student's social/behavior supports include providing frequent changes in activity or opportunities for movement (daily, by a general educator); use of positive/concrete reinforcers (daily, by a general educator); social skills training (weekly, by a special educator); home-school communication system (weekly, by a general educator); frequent eye contact/proximity control (daily, by a general educator); providing structured time for organization of materials (weekly, by a special educator); strategies to initiate and sustain attention (daily, by a general educator); encouraging the Student to ask for assistance when needed

⁶⁶ Parents Ex. 53, p. 1381.

⁶⁷ Parents Ex. 53, p. 1381.

(daily, by a general educator); providing manipulatives and/or sensory activities to promote listening and focusing skills (daily, by a general educator); and advance preparation for schedule changes (as needed, by a general educator).⁶⁸

- iv. The Student's physical/environmental supports include preferential seating in the general education classroom.⁶⁹

77. The March 2023 IEP contains the following goals and objectives:

- i. Reading – Phonological Awareness:⁷⁰ By February 2024, the Student will increase her phonological awareness skills by deleting initial phonemes given ten multisyllabic words containing consonant blends and digraphs with 90% accuracy in four of five trials. The goal is broken down into three separate objectives, to be measured through classroom-based informal assessments.⁷¹
- ii. Reading – Decoding (based on the fourth-grade standard “Use combined knowledge of all letter sound correspondences, syllabication patterns, and morphology to read accurately unfamiliar multisyllabic words in context and out of context”):⁷² By February 2024, when given a list of thirty teacher selected, multisyllabic words containing welded sounds, three letter beginning blends, and two or three letter ending blends, the Student will be able to decode with 80% accuracy, based on classroom-based assessments and observation record. The goal is broken down into three objectives, to be achieved at intervals prior to February 2024.

⁶⁸ Parents Ex. 53, pp. 1382-83.

⁶⁹ Parents Ex. 53, p. 1383.

⁷⁰ Parents Ex. 53, pp. 1384-85. This goal does not cite a specific grade-level standard.

⁷¹ These objectives differ from others in the March 2023 IEP in that intervals are not specified for each objective.

⁷² Parents Ex. 53, pp. 1386-87.

- iii. Reading – Fluency (based on the fourth-grade standard “Read with sufficient accuracy and fluency to support comprehension”):⁷³ By February 2024, the Student will read a grade level text or passage orally with 95% accuracy (not timed), based on two out of three trials using classroom-based assessment running records. The goal is broken down into four objectives, to be achieved at intervals prior to February 2024.
- iv. Writing – Encoding (based on the fourth-grade Common Core language standard “Spell grade-appropriate words correctly, consulting references as needed”):⁷⁴ By February 2024, given a dictated sentence that contains at least two multisyllabic words with digraphs and/or long vowels containing silent e, the Student will spell with 70% accuracy. The goal is broken down into two objectives, to be achieved at intervals prior to February 2024. Progress is to be measured by classroom-based assessments and observation record.
- v. Mathematics – Number and Operations (Fractions) (based on the fourth-grade standard “Compare two fractions with different numerators and different denominators”):⁷⁵ By February 2024, the Student will compare two fractions with uncommon denominators by drawing two shapes, splitting them into appropriate fractional parts and shading them to visually show two fractions, then use this drawing to make a greater than, less than, or equal to comparison, based on classroom-based assessments. The goal is broken down into two objectives, to be achieved at intervals prior to February 2024.

⁷³ Parents Ex. 53, pp. 1388-89.

⁷⁴ Parents Ex. 53, pp. 1390-91.

⁷⁵ Parents Ex. 53, pp. 1392-93.

- vi. Speech Articulation:⁷⁶ By February 2024, given a set of at least 20 stimulus words, the Student will produce /r/ (including a mix of initial/vocalic/blend) at the sentence level, with 80% accuracy, measured by observation record. The goal is broken down into four objectives, with each addressing a discrete skill reflected in the goal.

78. The March 2023 IEP contains the following special education and related services:⁷⁷

- a. Five sessions, 15 minutes each, weekly outside of the general education setting to address her reading phonological awareness goal.
- b. Five sessions, 45 minutes each, weekly outside of the general education setting to address her reading decoding goal.
- c. Five sessions, 30 minutes each, weekly outside of the general education setting to address her reading fluency goal.
- d. Five sessions, 30 minutes each, weekly outside of the general education setting to address her writing/encoding goal.
- e. Five sessions, 30 minutes each, weekly inside of the general education setting to address her math number and operations goal.
- f. Five sessions, 15 minutes daily inside of the general education setting to address her reading phonological awareness goal.
- g. Five sessions, 15 minutes daily inside of the general education setting to address her phonics goal.⁷⁸
- h. Five sessions, 15 minutes daily inside of the general education setting to address her reading fluency goal.

⁷⁶ Parents Ex. 53, pp. 1394. The goal does not cite a grade-level standard.

⁷⁷ Parents Ex. 53, pp. 1396-98.

⁷⁸ The IEP goals do not include a specific “phonics” goal; this appears to refer to decoding.

- i. One thirty-minute session weekly outside of general education to address her speech goal (as a related service).
- j. Extended school year services from July 11, 2023, through August 4, 2023 of one hour each day with a special education classroom teacher outside general education (thirty minutes daily on the reading fluency goal and thirty minutes daily on the phonics goal).⁷⁹

79. Based on the number of hours inside a general education setting (22 hours), and outside of general education (10 hours and 30⁸⁰ minutes), as well as consideration of the least restrictive environment, the Student's placement was "inside general education (40%-79%)," with services to be provided at her home school, [REDACTED].⁸¹

DISCUSSION

POSITIONS OF THE PARTIES

The Parents challenge the March 2023 IEP, arguing that it does not provide the Student with a FAPE. Fundamentally, the Parents' Complaint relates to the significant shift in the Student's educational program, from fourth grade at a small, private school providing all-day, integrated specialized instruction on an individualized basis to fifth grade at a public school, with

⁷⁹ Parents Ex. 53, p. 1395.

⁸⁰ The Placement Data page of the March 2023 states that the total time outside of general education is 10 hours and 37 minutes, but as Ms. [REDACTED] testified, the actual time is 10 hours and 30 minutes. She explained that the figures used in the IEP result from calculations based on 32 hours and 45 minutes as the total time in school per week and instructional time of 4 hours and fifteen minutes each school day. In any case, there is no dispute that the March 2023 IEP provides for 10 hours and 30 minutes of instructional time outside of general education, and the discrepancy in these figures is not material to my decision.

⁸¹ Parents Ex. 53, pp. 1399-1400.

two-thirds of the Student's day in a general education classroom.⁸² The requested remedy is reimbursement for private educational evaluations and related educational expenses; reimbursement for tuition, private educational services, and expenses at [REDACTED] for the 2023-2024 school year; and the development of an IEP with full-day special education services and placement at [REDACTED]. The BCPS contends that its IEP team approved a data-driven, appropriate IEP that considers the Student's present levels of academic performance and needs, with measurable goals and objectives crafted to meet these needs, and that it provides the services and supports the Student needs to make educational progress.

LEGAL FRAMEWORK

The identification, evaluation, and placement of students in special education are governed by the IDEA. 20 U.S.C.A. §§ 1400-1482; 34 C.F.R. pt. 300; Md. Code Ann., Educ. §§ 8-401 through 8-420; 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. § 8-403.⁸³

The requirement to provide a 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." *Board of Education of the Hendrick Hudson Central School District v.*

⁸² Technically, the IEP is effective for the calendar year following the date of its approval, March 8, 2023, and therefore applies to the final three months of the 2022- 2023 school year (the Student's fourth-grade year) and the majority of the following school year (2023 – 2024 school year, the Student's fifth-grade year). (Parents Ex. 53.) For this reason, it includes goals relating to and objectives to be measured during the 2022 – 2023 school year, even though the Student was still attending [REDACTED] during that time. The BCPS was obligated to craft the IEP with these effective dates in order to comply with the procedural requirements of the IDEA. Nonetheless, both parties at times referred colloquially to the IEP as the IEP for the 2022 – 2023 school year, or the IEP for the Student's fifth-grade year. It is clear that both parties nonetheless understood the effective dates of the IEP and that there was no disagreement regarding the effective dates.

⁸³ There is no dispute that the Student is a child with a disability. 20 U.S.C.A. § 1401(3)(A); *see also* Educ. § 8-401(a)(2); 34 C.F.R. § 300.8; COMAR 13A.05.01.03B(78). While the record reflects some disagreement regarding the appropriate disability coding (Parents Ex. 50, p. 1353), that issue was not raised in the Complaint and is not before me.

Rowley, 458 U.S. 176, 201 (1982) (footnote omitted). The Supreme Court set out a two-part inquiry to analyze whether a local education agency satisfied its obligation: first, whether there has been compliance with the procedures set forth in the IDEA; and second, whether the IEP, as developed through the required procedures, is reasonably calculated to enable the child to receive some educational benefit. *Id.* at 201, 206-07.

The Parents do not allege any procedural violation by the BCPS. The issues before me therefore relate only to the second prong, i.e., whether the IEP is reasonably calculated to provide educational benefit. In 2017, the Supreme Court revisited the meaning of a FAPE, holding that for an educational agency to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a student to make progress appropriate in light of the student's circumstances. *Endrew F. v. Douglas Cnty. Sch. Dist.*, 580 U.S. 386 (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 404. Ultimately, a disabled student's "educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives." *Id.* at 402. 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).

To comply with the IDEA, an IEP must, among other things, allow a student with a disability to advance toward measurable annual academic and functional goals that meet the needs resulting from the child's disability or disabilities, by providing appropriate special

education and related services, supplementary aids, program modifications, supports, and accommodations. 20 U.S.C.A. § 1414(d)(1)(A)(i)(II), (IV), (VI).

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 thus bear the burden of proof to show that the BCPS has failed to offer the Student a FAPE. I find that the Parents have failed to meet that burden.

ANALYSIS

I. The IEP Provides Appropriate Goals for the Student

The Parents challenge the appropriateness of the goals set out in the IEP, as well as goals they maintain should have been included in the IEP but were not. I begin with one of the latter: the IEP team’s decision not to include a social/emotional/behavioral goal.

The IEP Appropriately Addresses the Student’s Social and Emotional Needs

The parties agree that the Student has social and emotional challenges and needs, and that she has, in years past, exhibited problematic behaviors that compromised her ability to learn. The Parents maintain that these needs manifest as problematic behaviors less frequently than in the past specifically because of the all-day, specialized instruction and support that the Student currently receives at [REDACTED]. The BCPS contends that IEP goals must be based on current data that reflects a need for specialized instruction, and that there is no data to support a conclusion that the Student has a current social, emotional, or behavioral need for such instruction. I agree with the BCPS.

First, I emphasize that, in defining an IEP, the IDEA begins with the child’s “present levels of academic achievement and functional performance,” including specifically “how the child’s

disability affects the child’s involvement and progress in the general education curriculum.” 20 U.S.C.A. § 1414(d)(1)(A)(i)(I)(aa). That the definition starts with a student’s present levels underscores how foundational the child’s current performance – and not her educational history or past challenges – are to the development of the IEP. As noted above, the statement of present levels is to be followed by “a statement of measurable annual goals,” both academic and functional. 20 U.S.C.A. § 1414(d)(1)(A)(i)(I), (II).⁸⁴ 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 and strategies and supports to address that behavior. 34 C.F.R. § 300.324(a)(2)(i).

The Parents offered the testimony of [REDACTED], family advocate, who stated that the small-class environment and minimal transitions at [REDACTED] effectively manage the Student’s impulsivity and are conducive to better emotional regulation, both because the pacing is individualized and appropriate and because the Student has the adult support she needs for transitions. [REDACTED], the head-of-school at [REDACTED], also testified, noting that that the Student still had emotional outbursts during the school day in the fall of her third-grade year that sometimes required her removal from the classroom, and that the Student’s anxiety over a field trip during her fourth-grade year required a one-to-one aide (a role that Ms. [REDACTED] herself took on). Ms. [REDACTED] further noted that the Student exhibits continuing anxiety about the school bus, sometimes boarding and then exiting the bus multiple times in the afternoon and once suddenly running from the bus, placing herself in danger, and requiring [REDACTED] to monitor her carefully and ensure the presence of adult support.

⁸⁴ COMAR 13A.05.01.09 similarly defines an IEP and outlines the required content. It is a written description of the special education needs of the student and the special education and related services to be provided to meet those needs. The IEP must take into account:

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

See 20 U.S.C.A. § 1414(d)(3)(A).

██████████, the school counselor at ██████████, echoed Ms. ██████████'s testimony, emphasizing that the Student seeks out adult attention and reassurance and has a number of supports available to her to calm her in the classroom (calm down area, fidget tools, visual aids for calming methods) but still exhibits anxiety through pacing, repetitive questions, and physical complaints of headaches and stomachaches. Additionally, Ms. ██████████ noted that the Student needs constant reminders to manage impulsive behaviors, such as suddenly attempting to exit the classroom to retrieve something. Ms. ██████████ explained that at ██████████, she provides whole-group counseling to classes, though the topic may be prompted by the needs of an individual student, and she is available to provide as-needed support to the Student.

Mr. ██████████ also testified at length about the Student, compellingly describing the family's confusion when the Student began acting out at school in first grade at ██████████. The Student engaged in conflicts with teachers, peers, and her four siblings and parents, and she struggled academically and emotionally. He detailed the Student's transition to ██████████ in fall 2020, noting that she initially struggled but that as her frustration with academics eased, her behaviors improved. However, Mr. ██████████ emphasized that the Student is not "cured" and still exhibits anxiety about the weather, severe enough to lead her to refuse to attend school, as well as outsized nervousness about transitions and new experiences. Mr. ██████████ noted that when he took the Student to ██████████ for writing and math assessments with Ms. ██████████ in April 2021, the Student cried and he ended up accompanying her during testing so that she remained calm.

Regarding the IEP at issue, Mr. ██████████ testified that he told the team at the November 17, 2022 IEP meeting that the Student still gets upset about minor inconveniences.⁸⁵ He also shared social/emotional concerns at the February 28, 2023 IEP team meeting, by which time it had become clear that the BCPS IEP team members did not believe a social/emotional goal was

⁸⁵ This is also reflected in Parents Ex. 31, p. 1278.

needed. Specifically, he noted that it takes the Student so much effort to regulate her emotions and behaviors at school that she “loses it” at home. Subsequent to the February 28, 2023 meeting, Mr. [REDACTED] prepared a parental input statement addressing the current need for social/emotional support, citing a March 2, 2023 parent-teacher conference at [REDACTED] where her parents learned she still struggles with social/emotional challenges at school and requires interventions to calm her.⁸⁶ He also described continuing emotional dysregulation at home.

The BCPS offered the testimony of [REDACTED], who chaired the IEP teams, and who noted that while she recalls discussion of social/emotional challenges at IEP meetings, the primary input she recalled from the Parents was that the Student’s behaviors have improved significantly during her time at [REDACTED]. Ms. [REDACTED] explained that the IEP team reviewed all documents and information provided by [REDACTED] and found no data to support the need for specialized instruction in the social/emotional area. She testified that early in the IEP review process, the team sought updated data on the Student’s social/emotional needs because the IEP for the previous school year reflected significant concerns in this area. This is why, for example, the IEP team sent [REDACTED] staff a list of questions that included “[d]escribe [the Student’s] emotional strengths and needs.”⁸⁷ The response from [REDACTED] highlighted three issues – that the Student can “have disproportionate responses to mild stressors”; she receives counseling services and was a flight risk over a year ago but is no longer; and she “[n]eeds familiarity” and a “visual schedule to feel comfortable and stable”⁸⁸ Ms. [REDACTED] testified that these needs factored into the IEP team’s consideration of social/emotional supports, but did not support the inclusion of a goal in this area.

Ms. [REDACTED] also stated that the team considered social worker [REDACTED]’s report⁸⁹ regarding her classroom observation and discussions with teachers, which did not indicate that the

⁸⁶ Parents Ex. 52.

⁸⁷ This is in the record at Parents Ex. 38 and BCPS Ex. 40, p.11.

⁸⁸ Parents Ex. 38.

⁸⁹ Parents Ex. 40.

Student had any social/emotional difficulties at school. Indeed, Ms. [REDACTED] described her visit to [REDACTED] as primarily intended to obtain information regarding the Student's social/emotional functioning, and her own testimony amplified Ms. [REDACTED]'s positive assessment. Ms. [REDACTED] noted that when she arrived at [REDACTED], the Student greeted her with a smile and a friendly manner; easily transitioned from the classroom to recess and lunch, as well as to and from informal assessment sessions that day with Ms. [REDACTED]; and generally presented as well adjusted, confident, and social. None of the teachers Ms. [REDACTED] spoke with noted any issues with the Student's behaviors or anxiety.

Ms. [REDACTED] further testified that key to the IEP team's rejection of a social/emotional goal was the lack of any specialized social/emotional instruction at [REDACTED], where the Student received whole-class counseling and assistance as needed, but no specific instruction. Ms. [REDACTED] (as well as BCPS School Psychologist [REDACTED]) emphasized that not requiring specialized instruction does not mean that the Student has no social/emotional needs, but rather that her needs are most appropriately addressed through the availability of supports, and not instruction pursuant to individualized goals and objectives. Ms. [REDACTED] also noted that [REDACTED] provides a program to meet the social/emotional needs of students that is comparable to services the Student receives at [REDACTED], i.e., whole-class lessons on a "Tier 1" level (meaning the least individualized level).

Ms. [REDACTED] was repeatedly pressed to explain why the IEP team made a different decision on the inclusion of a social/emotional goal in March 2023 than it had in March 2022, when the team basically had the same type of data. Ms. [REDACTED]'s response was compelling: in fact, the IEP team had significantly more information in 2023 than it did in 2022, primarily because it had an updated psychoeducational evaluation from Dr. [REDACTED], a point underscored by Ms. [REDACTED] in her testimony as well.

Consistent with Ms. [REDACTED] and Ms. [REDACTED]'s testimony, Dr. [REDACTED]'s January 2023 report⁹⁰ is indeed referenced in some detail in the IEP's discussion of social/emotional concerns, specifically the BASC-3 subscale ratings from her [REDACTED] teacher and Parents, which reflect only a single elevated area (as assessed by her mother): attention problems. No elevations were noted in any other areas rated, including hyperactivity, aggression, anxiety, depression, withdrawal, or conduct problems. The IEP also cites Ms. [REDACTED]'s feedback on the classroom observation she conducted,⁹¹ as well as the fall 2022 [REDACTED] Teacher report that highlighted only a few concerns,⁹² all of which Ms. [REDACTED] persuasively testified could best be addressed through supports, rather than specialized instruction. Additionally, Mr. [REDACTED]'s full statement is included in the IEP as information considered by the IEP team.⁹³

The record makes clear that there is simply no evidentiary support for the Parents' contention that the Student presently requires specialized instruction, pursuant to a social/emotional/behavioral goal, to meet social/emotional needs that affect her ability to access her education. In addition to the BASC-3 subscale ratings, Dr. [REDACTED]'s January 2023 report describes the Student as "friendly" and "outgoing," and notes that she "transitioned nicely into the room and separated easily from her father."⁹⁴ She was "eager" and "ready to participate."⁹⁵ While she needed breaks, fidgeted at times, and sometimes seemed overwhelmed, breaks and movement helped her and did not interfere with her engagement or performance.⁹⁶ Even though the Student became emotional during the lunch break, "she agreed to keep working and performed well in the afternoon."⁹⁷ The only aspect of Dr. [REDACTED]'s report that suggests any social/emotional

⁹⁰ Parents Ex. 39.

⁹¹ Parents Ex. 53, p. 1366.

⁹² Parents Ex. 38.

⁹³ Parents Ex. 53, p. 1373.

⁹⁴ Parents Ex. 39, p. 1321.

⁹⁵ Parents Ex. 39, p. 1322.

⁹⁶ Parents Ex. 39, p. 1322.

⁹⁷ Parents Ex. 39, p. 1322.

difficulties is the Student's own self-report, where she noted depression, challenges in her relationship with her Parents, and some elevations in anxiety, inattention/hyperactivity, and other areas.⁹⁸ Ms. [REDACTED] credibly explained that based on the underlying data, these elevations appear to be due to inconsistencies in the Student's responses to questions, as she frequently defaulted to marking "sometimes" on the scale of options.

There is additional evidence that the IEP team sought to obtain as complete a picture of the Student's current social and emotional needs as possible and was not arbitrarily resistant to a goal in this area. For example, in addition to the questions the BCPS posed to [REDACTED] staff regarding social emotional strengths and needs, which resulted in the report referenced in the IEP⁹⁹ (addressed above), Mr. [REDACTED] emailed Ms. [REDACTED] after the November 17, 2022 IEP meeting to follow up on the team's inquiries regarding the Student's difficulty with staying on task.¹⁰⁰ Mr. [REDACTED] passed along the IEP team's specific questions ("What are the barriers for [the Student] staying on task? Is it an attention-based issue, or something else?"); the response from [REDACTED], via Ms. [REDACTED] to Mr. [REDACTED], was unhelpfully terse: "Impulsivity. Excitement. Social child."¹⁰¹

Ms. [REDACTED] conceded that she was unaware of any meaningful data collected by [REDACTED] on the Student's social/emotional challenges. Ms. [REDACTED] provided anecdotal information about the field trip (and acknowledged that the Student ultimately had no social/emotional issues on the trip), and similarly anecdotal information regarding issues on the school bus (an apparently single incident of elopement, and generalized anxiety), but cited no data. Ms. [REDACTED] testified regarding her observations of signs of stress and anxiety in the Student (without details regarding either intensity or frequency) but acknowledged that [REDACTED] has not tracked or charted the frequency,

⁹⁸ Parents Ex. 39, p. 1334-35.

⁹⁹ Parents Ex. 38.

¹⁰⁰ The IEP team's question specifically reference "[REDACTED]'s report" (i.e., "The report indicates that [the Student] struggles to stay on task.") Parents Ex. 34, p. 1272. It is not clear who [REDACTED] is or to which report this refers.

¹⁰¹ Parents Ex. 34, p. 1273.

intensity, or triggers for any behaviors, or the specific interventions, including the effectiveness of such interventions, used to manage them.

Overall, the Parents' position effectively acknowledges the lack of current behavioral difficulties but implies that a kind of Catch-22 undermines their ability to produce data to support the social/emotional goal they want. Essentially, they argue that ██████'s program so effectively manages the Student's academic and social/emotional needs that her social/emotional challenges have receded substantially, but that once removed from the ██████ environment and placed in a larger, general education classroom, these behaviors will likely to emerge again, based on the Student's past experience in a general education setting at ██████. However, Ms. ██████ persuasively addressed this point in her testimony, noting that the reduction in the Student's behaviors cannot be attributed only to the small class size at ██████, because other significant factors have also changed since the Student's attendance at ██████, including that the Student is now older and more mature, with greater experience in both school and in life. The Parents' concern that problematic behaviors will emerge with a shift in the Student's educational environment is understandable, but any goal crafted to address that concern would be both entirely unsupported by current data and also proactive by design, with objectives and instruction entirely untethered from any presently demonstrated need. This is contrary to the purpose and requirements of the goals of an IEP; accordingly, the absence of such a goal does not render it a failure to provide a FAPE.

Importantly, the IEP team determined that even though the Student did not require instruction, and thus a goal, to address social/emotional needs, her disability still affects her in this area.¹⁰² To address this concern, the IEP contains a number of social/behavior supports, including frequent changes in activity or opportunity for movement (daily); use of positive/concrete reinforcers (daily); social skills training (weekly); home-school communication system (weekly);

¹⁰² Parents Ex. 53, p. 1358.

frequent eye contact/proximity control (daily); structured time for the organization of materials (weekly); strategies to initiate and sustain attention (daily); encouraging the student to ask for assistance when needed (daily); manipulatives and/or sensory activities to promote listening and focusing skills (daily); and advance preparation for schedule changes (as needed).¹⁰³ The IEP also notes the need to monitor the Student's engagement to discern if a break is needed, a token system or chart for social/emotional learning, the importance of subtlety in providing accommodations so as to curb any anxiety, a plan to ease transitions during the school day, and an integrated approach to specialized instruction.¹⁰⁴ These strategies are clearly consistent with information provided by [REDACTED] staff and the Parents, current observational and assessment data, as well as the Student's educational history. (The IEP documents, for example, "previous concerns with anxiety" and Ms. [REDACTED]'s classroom observation noting that the Student required reminders.¹⁰⁵) With such targeted attention to the social/emotional issues raised by the Parents, I cannot conclude that the IEP is not reasonably calculated to provide the Student with meaningful educational benefit because of any deficiency regarding the Student's social/emotional needs.

The IEP Writing Goals Are Appropriate, Without a Goal in Written Expression

The Parents also contend that the March 2023 IEP's goals in writing are not appropriate. Specifically, the Parents allege that the Student requires a goal in written expression, and that without such a goal, it fails to provide a FAPE. The BCPS did not dispute that the Student performs below grade-level expectations in written expression but maintains that her demonstrated difficulties are primarily in spelling (encoding), and that she appears to have received little instruction in written expression at [REDACTED]. An IEP goal, contends the BCPS, is not intended to address an area where a Student's below-grade performance is due to lack of instruction, but rather areas demonstrably

¹⁰³ Parents Ex. 53, pp. 1382-83.

¹⁰⁴ Parents Ex. 53, pp. 1382-83.

¹⁰⁵ Parents Ex. 53, pp. 1366, 1382-83.

impacted by disability. I agree with the BCPS that the evidence does not support the need for a goal in written expression and that the encoding goal is appropriate and well supported.

Ms. [REDACTED] testified regarding her opinion that a goal in written expression was needed, citing benchmark data from [REDACTED] collected over the 2022-2023 school year reflecting the Student's performance on sentence identification and writing. Specifically, Ms. [REDACTED] focused on the Student's performance on basic paragraph writing, including a topic sentence, three supporting sentences, and a concluding sentence, which [REDACTED] evaluated three times during the 2022-2023 school year (with the last benchmark evaluation occurring after the IEP process at issue in this case). In both September 2022 and January 2023, the Student scored a 70% on this benchmark, primarily because she was missing a title both times and a concluding sentence the latter time.¹⁰⁶

Ms. [REDACTED] testified that the January 2023 benchmark, when compared to MSDE writing content standards, indicated that the Student was not performing at a fourth-grade level. Ms. [REDACTED] noted that the Student's writing benchmark did not include a "narrative that developed real or imagined experiences or events using descriptive details," or dialogue or description.¹⁰⁷ Additionally, the Student's difficulty with spelling made the writing hard to decipher. The graphic organizer that the Student used in writing the paragraph reflects overly simple sentences and is missing reasons supported by facts, linking opinions using phrase words, and a concluding sentence.¹⁰⁸ The Student also used commas where she should have used periods. Ms. [REDACTED] also addressed a separate January 2023 writing benchmark on sentence writing, noting that the sentences were "immature" for a fourth grader, with spelling mistakes that severely impact the reader's ability to understand the text. Additionally, the Student's sentences were very simple, lacking linking words

¹⁰⁶ Parents Ex. 66, p. 1446.

¹⁰⁷ Ms. [REDACTED]'s written analysis is Parents Ex. 56. The benchmark she refers to is Parents Ex. 66, pp. 1446 and 1450.

¹⁰⁸ The graphic organizer is Parents Ex. 66, p. 1449.

or descriptions.¹⁰⁹ Finally, Ms. [REDACTED] cited Dr. [REDACTED]'s findings, noting that the Student was “below average” in spontaneous writing, contextual conventions, and story composition, with a low average written language composite.

First, I note that Ms. [REDACTED]'s written report is factually incorrect in her characterization of Dr. [REDACTED]'s assessment results. Dr. [REDACTED]'s report does not state that the Student was “below average” in spontaneous writing, contextual conventions, or story composition; she was *low average*, meaning that she was on the lower end of the average range – or at about a third grade level (in story composition, she was slightly below third grade level).¹¹⁰ Second, Ms. [REDACTED]'s report omits the reason for the Student's low average score on the written expression composite, as measured by the KTEA-3 assessment: the Student's “extremely low” score in spelling. The written expression composite combines the spelling score with a score in “written expression”; in the latter, the Student scored in the average range.¹¹¹ Third, Ms. [REDACTED]'s analysis repeatedly refers to fourth-grade standards (though she also provides an excerpt from third-grade standards in her report¹¹²). At no time did the IEP team determine that the Student was performing at a fourth-grade level. Instead, it concluded that the Student was performing at the third-grade level, with particularly weak spelling abilities, which is consistent with Dr. [REDACTED]'s findings.¹¹³ These deficiencies in Ms. [REDACTED]'s analysis severely undermine her opinion that the Student requires a goal in written expression, and I give her opinion on this issue little weight.

I also do not find Ms. [REDACTED]'s claim that the modest nature of the encoding goal is itself evidence that a goal in written expression is needed. As discussed above, Dr. [REDACTED]'s report, as well as [REDACTED] data, make clear that the Student's deficit in spelling is significant, but also distinct from other skills in written expression, which did not reflect such a deficit.

¹⁰⁹ This benchmark is Parents Ex. 68, p. 1455 and Parents Ex. 69, p. 1453.

¹¹⁰ Parents Ex. 39, p. 1332.

¹¹¹ Parents Ex. 39, p. 1331.

¹¹² Parents Ex. 56.

¹¹³ Parents Ex. 53, p. 1370; Parents Ex. 39, p. 1332 (TOWL-4 assessment).

The BCPS offered compelling evidence that the Student's writing goal in encoding is appropriate, and that no goal in written expression is merited. Ms. [REDACTED] testified that the IEP team looked closely at the Student's present level of performance in writing, citing the sources identified in the IEP: Dr. [REDACTED]'s evaluation, the Student's Term 1 report card from [REDACTED] (2022 – 2023 school year), the same [REDACTED] writing benchmarks from January 2023 addressed by Ms. [REDACTED], and a [REDACTED] writing sample reflecting a significant spelling deficit. Ms. [REDACTED] noted that the Student was able to write sentences, including a topic sentence and supporting sentences, but that spelling was an issue. Accordingly, the IEP team crafted a goal that aimed to improve the Student's performance in spelling (encoding) to fourth-grade level, with measurable objectives, with a focus on multisyllable words containing digraphs and words with a long vowel and silent "e." Ms. [REDACTED] noted that the goal for silent "e" was only 70% accuracy, in recognition that the Student's present level of performance in this skill was 0%. She also explained that some supplementary aids and supports were selected to assist the Student in achieving the writing goal, including a proofreading checklist, manipulatives, and a word bank. Additionally, the IEP provides for special education services in encoding (five sessions of 30 minutes each week, outside of general education with a special education teacher).

I agree with the BCPS that the writing goal, focused on encoding, is tailored to the Student's specific, documented deficits in writing. The IEP team's conclusion is clearly evidence-based and is consistent with the data explicitly relied upon in the IEP. I further agree that the evidence does not support a need for a separate goal in written expression, even though the Student was not writing complex sentences and multiple paragraphs in March of her fourth-grade year, because the Student had not yet been taught these skills. As Ms. [REDACTED] is an expert in special education and an experienced IEP chair, I found her explanation that an IEP goal would not be appropriate for a skill

that a student has not yet been taught highly persuasive, as IEP goals are to address needs that result from the student's disability.

Ms. [REDACTED]'s testimony on this point is contrary to Ms. [REDACTED]'s. Ms. [REDACTED] testified that the Student requires direct, specialized instruction in written expression, and cited that as a deficiency of the IEP. However, the Student's [REDACTED] report card makes clear that paragraph writing was only minimally introduced during the first term of the 2022 -2023 school year (finding a topic and writing supporting sentences), and that only writing a single paragraph was covered during the second term.¹¹⁴ This is not a criticism of the [REDACTED] curriculum, which moves a student through skills in a systematic, diagnostic manner. But it does mean that an assessment of the Student's present level of performance in written expression, which Dr. [REDACTED] found to be in the low average to average range (except for spelling), and which the IEP team was also able to evaluate through benchmark data and writing samples, must factor in the limited, below-grade level instruction she has received at [REDACTED], as IEP goals are not crafted to address skills that have not yet been taught, absent data reflecting specific needs associated with a student's disability. While Ms. [REDACTED] was an impressively knowledgeable witness and accepted as an expert in her field, she has no particular training in IEP development and no expertise in that area; I give her opinion regarding appropriate IEP goals little weight.

A final point regarding written expression: in recognition that the Student's spelling challenges make it difficult for her to fully participate in writing activities in a general education classroom, the IEP provides for the Student's use of speech-to-text technology as a program modification on writing assignments, available for her daily use. Ms. [REDACTED] noted that this technology is commonly used in the classroom, including by students with no disabilities. This technology allows the Student to develop her abilities in the creative and analytical processes

¹¹⁴ Parents Ex. 60C.

associated with written expression, unburdened by the mechanical challenge of spelling.

The IEP Goals in Reading are Appropriate, Without a Goal in Reading Comprehension

The IEP identifies three reading-related areas affected by the Student's disability: phonemic awareness, phonics (or decoding), and fluency. Accordingly, it contains goals in phonological awareness, decoding, and fluency. Based on the evidence presented, I conclude that the Parents' objections to the IEP's provisions addressing both phonological awareness and phonics relate not to the goals themselves, but to the alleged lack of integrated special education services and lack of direct special education instruction, as well as the sufficiency of specialized instruction outside of general education. I therefore discuss these objections below. However, the Parents do challenge the IEP team's basis for the goal in fluency, including the IEP team's determination of the Student's baseline performance. Additionally, the Parents contend that the IEP inappropriately lacks a goal in reading comprehension. I conclude that the IEP team appropriately crafted an evidence-based, well supported goal in reading fluency. I further conclude that the IEP team appropriately determined that the Student's current academic performance did not merit a goal in reading comprehension. The Parents did not show that the IEP has deficiencies regarding either reading fluency or reading comprehension goals that support a finding that it is not reasonably calculated to provide educational benefit and thus fails to provide a FAPE.

First, I address reading fluency. Ms. [REDACTED], an expert in reading, dyslexia, and language-based learning disabilities, provided illuminating testimony regarding the prerequisites for fluency, and how dyslexia impacts these prerequisites. She explained that for learners without a language-based disability, skills in phonological awareness (the ability to manipulate sounds) are applied to letters and letter combinations (phonics), which allows the decoding of about eighty percent of words in English. The remaining twenty percent of words are irregular words, or sight words, that students learn to recognize through repetition. For neurotypical children, this facility

with phonics leads to a mostly intuitive understanding of decoding, but the Student’s disability disrupts this intuitive process. Becoming a fluent reader requires that one’s pace and accuracy allow the decoding process to become sufficiently automatic for the reader to understand meaning (i.e., reading comprehension).

Ms. █████ testified that the IEP team inaccurately characterized the Student’s present skill level in reading fluency. The IEP reflects the team’s determination that the Student’s current instructional grade level performance is second grade in the Present Level of Academic Achievement and Functional Performance (PLAAF) section; however, in the Goals section, the fluency goal uses a fourth-grade reading passage as the Student’s baseline.¹¹⁵ Ms. █████ pointed to the Reading Fluency Benchmark scores from the 2022 – 2023 school year as inconsistent with this baseline.¹¹⁶ These benchmarks show that in January 2023, the Student was able to read a first-grade level passage at a rate of 86 words correct per minute with 98% accuracy. She read a second-grade level passage at a rate of 89 words correct per minute with 95% accuracy. (This latter data is crossed out on the benchmark, apparently because that indicates it was not a passing score due to the Student’s rate, discussed further below.) Ms. █████ maintained that it made no sense to craft a goal that requires the Student to read a grade-level passage when she was only reading at a first- or second-grade level.¹¹⁷

The March 2023 IEP cites several sources¹¹⁸ for its determination of a second-grade instructional level in the PLAAF section: the informal assessments conducted by Ms. █████ on

¹¹⁵ The baseline Ms. █████ refers to appears at Parents Ex. 53, p. 1388.

¹¹⁶ These benchmarks appear in Parents Ex. 67B.

¹¹⁷ I note that goals are supposed to be grade level unless the student needs to attain foundational skills. See guidance from the Office of Special Education Programs: “[T]he IDEA Part B regulations define the term ‘specially designed instruction,’ the critical element in the definition of ‘special education,’ as ‘adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child’s disability and to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.’ 34 CFR §300.39(b)(3) (emphasis added). . . The Department interprets ‘the same curriculum as for nondisabled children’ to be the curriculum that is based on a State’s academic content standards for the grade in which a child is enrolled.” U.S. Dep’t of Educ., Office of Special Educ. & Rehabilitative Servs., *Dear Colleague Letter on Free and Appropriate Education (FAPE)*, 2-3 (November 16, 2015), available at <https://sites.ed.gov/idea/idea-files/osep-dear-colleague-letter-on-free-and-appropriate-public-education-fape/>.

¹¹⁸ Parents Ex. 53, pp. 1366-67.

January 10, 2023; Dr. [REDACTED]'s formal assessment;¹¹⁹ and the [REDACTED] term 1 report card from the 2022 - 2023 school year. The IEP specifically documents the Student's reading fluency skills as about a first-grade level as reflected in Dr. [REDACTED]'s report and progressing (or not yet taught) according to her report card. Ms. [REDACTED]'s assessments are summarized as reflecting 76% accuracy when reading a fourth-grade passage, and 64% accuracy on a third-grade passage (with a benchmark of 96% for each). This data is consistent with a current instructional level of about second grade, and the parties do not appear to disagree on this, as it appears in the PLAAF section of the IEP.

However, as Ms. [REDACTED] points out, the IEP Fluency Goal page of the IEP¹²⁰ confusingly lists the following baseline: "4th grade passage – 86% accuracy per the [REDACTED] Reading Fluency Benchmark." It then sets a goal of 95% accuracy by February 2024, with intermittent objectives that gradually increase the target percentage. Ms. [REDACTED] is correct that this baseline does not match the underlying data and appears to be a clerical error. The [REDACTED] benchmark to which it refers¹²¹ includes an accuracy rate of 86% (in September 2022), but for a first-grade passage, not a fourth-grade one. It also includes January 2023 benchmark data reflecting an accuracy rate of 95% for a second-grade passage and 92% for a third-grade passage.

Adding to the confusion, some of the data on this [REDACTED] Reading Fluency Benchmark is crossed out: specifically, the data on the second-grade passage and on the third-grade passage the Student read in January 2023. Ms. [REDACTED] explained that data is crossed out to show that the Student did not meet the relevant standard. [REDACTED]'s application of a standard, unspecified in the record, further complicates consideration of the data because the standard includes the Student's score in "words correct per minute." Ms. [REDACTED] was adamant that timed reading

¹¹⁹ According to Dr. [REDACTED]'s report, the Student's reading fluency score was borderline (KTEA-3). She had particular weaknesses in letter and word recognition (borderline, KTEA-3), fluency rate and accuracy (borderline, GORT-5, with grade equivalent of 1.4 and 1.2, respectively), and reading comprehension (borderline, GORT-5; low average, KTEA-3). Her decoding fluency and silent reading fluency were low average (KTEA-3). Her Oral Reading Quotient was borderline (GORT-5).

¹²⁰ Parents Ex. 53, p. 1388.

¹²¹ Parents Ex. 67B.

scores (as represented by words correct per minute) are important to evaluating fluency because only when a reader achieves a certain rate are they able to understand meaning (i.e., reading comprehension). Ms. [REDACTED] testified to the same.

However, Ms. [REDACTED] testified that the BCPS takes an entirely different approach, based on concern that timing a student reading at the Student's level can cause anxiety and thus result in unreliable data. For this reason, the IEP fluency reading goal explicitly states that progress in reading fluency is to be measured through *untimed* trials; a student's reading comprehension is separately evaluated through questions about the text read. And in fact, Ms. [REDACTED] pointed out that the [REDACTED] reading fluency benchmark data separately reflects that the Student understood the passages she read, including those with crossed-out scores, as she answered all four "explicit comprehension" questions correctly in January 2023 for both the second-grade level and third-grade level passages.

In any case, despite the apparent clerical error in the fluency baseline used in the IEP (which I conclude to be harmless error, as the data is correctly stated elsewhere in the IEP) and the different approaches to evaluating fluency taken by [REDACTED] and the BCPS, I conclude that the reading fluency goal in the IEP is reasonably calculated to allow the Student to make progress in this area. The goal may be ambitious; however, the IEP provides for significant instructional services in reading fluency, including two hours and 30 minutes of pull-out time with a special education teacher each week, as well as fifteen minutes daily in the general education classroom with an instructional assistant. Ms. [REDACTED] further testified that the Student would also have supplementary aids available to her, such as use of a highlighter during instruction and assignments. Ms. [REDACTED] also explained that the IEP provides for quarterly reporting on data collection so that the Student's progress can be carefully tracked, and adjustments can be made as needed. The IEP clearly offers special education services, and supplementary aids and

supports, tailored to her deficit in reading fluency and tied to a goal crafted with consideration of the extent of that deficit.

I now turn to the March 2023 IEP's lack of a goal in reading comprehension. The Parents maintain that the Student needs a goal in this area to receive a FAPE. Ms. [REDACTED] stated that reading comprehension is a struggle for the Student, citing her low average performance (equivalent to first grade on the GORT-5 administered by Dr. [REDACTED] in January 2023) and the [REDACTED] reading fluency benchmarks.¹²² With regard to the latter, Ms. [REDACTED] stated that the Student did not even read quickly enough for comprehension to be measured and maintained that the Student has difficulty with reading comprehension separate from her struggle with decoding, although her comprehension is also impacted by her decoding deficits. Ms. [REDACTED] testified that because the Student's reading comprehension is significantly below grade level; for example, she would not be able to read a fifth-grade science or social studies textbook in a general education classroom. The BCPS maintains that the Student struggles with decoding, which impacts her comprehension, but that there is no evidentiary support for a separate reading comprehension goal in her IEP.

In actuality, there is relatively scant data on the Student's reading comprehension skills, likely for the reason described by Ms. [REDACTED]: the Student has undergone little evaluation in reading comprehension because she is not yet able to decode well enough to read independently. Ms. [REDACTED] testified that decoding difficulties and reading comprehension difficulties can be intertwined, or they may be quite separate, meaning that as some students gradually master decoding, reading comprehension naturally follows, while for others, reading comprehension requires additional instructional attention. Because the Student does not yet read well enough to

¹²² Specifically, Parents Ex. 67A and Parents Ex. 67B.

comprehend what she is reading, she does not receive a reading comprehension intervention at [REDACTED].

Ms. [REDACTED]'s explanation makes clear that the [REDACTED] data on reading comprehension, which appear to be high scores, should not be understood to reflect that the Student's reading comprehension is strong. For example, while the Student's report card shows that she has "mastered" the only skill appearing under "comprehension," the skill listed is "global understanding of words encountered in text," which Ms. [REDACTED] credibly explained to mean that the Student understood the meaning of individual words.¹²³ The reading comprehension scores marked on the reading fluency benchmarks¹²⁴ are of similarly limited value, as Ms. [REDACTED] explained that the reading comprehension questions asked as part of the fluency assessment are extremely basic.

It is also true that Dr. [REDACTED]'s assessments suggest the Student has some difficulty with reading comprehension, as her scores were borderline on the GORT-5 and low average on the KTEA-3. While these scores are on the weaker side, I conclude that the BCPS appropriately determined that the IEP did not require a reading comprehension goal for the same reason that she does not receive a reading comprehension intervention at [REDACTED]: her decoding deficits make it difficult to assess whether she needs specialized instruction that specifically focuses on reading comprehension, or if any weakness she shows in reading comprehension is purely a function of her decoding challenges.

Importantly, the IEP team's conclusion that a reading comprehension goal was not needed did not mean that it did not consider and provide for the Student's need for support in this area. In fact, the IEP team considered exactly the concern Ms. [REDACTED] raised regarding the Student's ability to keep up in a grade-level general education classroom, where she would need to read

¹²³ Parents Ex. 60C, p. 1471.

¹²⁴ Parents Ex. 67B.

grade level texts with comprehension. Consequently, the IEP provides for text-to-speech technology for instruction and assessments in mathematics, science, government, and English Language Arts/literacy instruction and assessments. The IEP notes the text-to-speech accommodation is provided so that the Student can be more accurately evaluated in these areas.

The IEP Goal in Math is Appropriate

The IEP team determined that the Student's present instructional grade level of performance in mathematics was consistent with third grade. As the sources for this determination, the team cited Dr. ██████'s report, informal assessments conducted by Ms. ██████ on January 10, 2023, ██████ classroom-based assessments, and the ██████ report card from Term 1 (2022 – 2023 school year). The Parents contend that the IEP misrepresents the Student's grade level in math; specifically, Ms. ██████ points to language in the IEP stating that "[f]ormal testing and informal work samples in math show [the Student] is working on grade level and has one area of need that can be supported inside general education."¹²⁵ This characterization, maintains Ms. ██████, is incorrect. The BCPS acknowledged that overall, assessments of the Student's math skills have yielded somewhat mixed results, though she showed some strength in problem-solving.

That assessments of the Student's skills in math are mixed is consistent with Dr. ██████'s evaluation.¹²⁶ The Student's mathematics composite score fell in the average range (KTEA-3), as did her word-problem solving ability (KTEA-3). Basic math computation skills were low average (KTEA-3). However, her numerical operations skills were average (3.9 grade level equivalent), and math fluency was high average as measured by the WIAT-4 (but average as measured by the KTEA-3). I give these formal, objective assessments significant weight. The assessments by Ms. ██████ teased out some specific skills that the Student struggled

¹²⁵ Parents Ex. 53, p. 1399.

¹²⁶ Parents Ex. 39, p. 1332.

with, including a word problem and fractions other than halves.¹²⁷ With regard to the data from ██████, Ms. ██████ explained that the math units do not align clearly with MSDE grade level standards, which Ms. ██████ agreed with in her testimony. For this reason, the IEP team looked closely at the Student's report card, which is skill-specific, and the ██████ classroom assessments.

Using this data, the IEP team developed a math goal focusing on comparing two fractions with uncommon denominators. The goal includes two objectives relating to the mastery of this goal (in four of five trials, as measured by a classroom-based assessment).¹²⁸ Though the issues for hearing as identified at the prehearing conference included the mathematics goal, the Parents did not identify any specific deficiencies in this goal, its objectives, or the evaluation method or criteria for measuring progress; rather, the Parents challenge the IEP's determination that the Student shall receive instruction in mathematics in a general education classroom. I discuss the latter issue below; here, I conclude that the goal itself, which is tailored to a deficit reflected in the data reviewed by the IEP team, including current formal assessment data, is reasonably calculated for the Student to make educational progress in mathematics.

The IEP Goal in Speech (Articulation) is Appropriate

I briefly address the Student's IEP speech goal (articulation), as the issues agreed upon by the parties at the prehearing conference include a broad challenge to all of the IEP goals, though speech is not singled out in particular. The IEP notes that the Student performs below grade level in this area, due to her difficulty with the /r/ sound. The IEP team cites the most recent Speech Assessment, conducted January 27, 2023, as well as parent and teacher interviews.¹²⁹ While not cited in the IEP, the Student's 2022-2023 report cards also indicate that her speech difficulty is limited to the /r/sound, and that at the time the March 2023 IEP was drafted, she had still not mastered producing the

¹²⁷ Parents Ex. 53, p. 1371-72.

¹²⁸ Parents Ex. 53, pp. 1392-93.

¹²⁹ Parents Ex. 53, p. 1372.

sound.¹³⁰ The IEP provides for one weekly thirty-minute session outside of general education to address her speech goal, which is producing the sound in a set of at least twenty words with 80% accuracy.¹³¹ The Parents presented no evidence that the goal was inappropriate, or the service provided for in the IEP insufficient. I conclude that the IEP addresses the Student's needs in speech/articulation in a manner reasonably calculated for her to make progress in this area.

II. The IEP Does Not Lack Direct Special Education Instruction Nor Require Integrated Special Education Services Throughout the Day to Provide the Student with a FAPE

The Student Does Not Require Integrated Special Education Services Throughout the Day

The Parents contend that the BCPS has failed to provide sufficient basis, or data, for placing the Student in mostly general education through the March 2023 IEP, when she has progressed with the all-day, integrated specialized instruction provided at [REDACTED] and endorsed by the BCPS in the March 2022 IEP approved only seven months prior to the initiation of IEP at issue in this case.¹³² The Parents frame their case, in part, around an alleged failure by the BCPS to justify this shift from all-day specialized instruction at a private school in the March 2022 IEP to a mostly general education environment in public school in the March 2023 IEP. This framing by the Parents is contrary to the IEP process as outlined in the governing law.

While the annual IEP process is referred to as a “review and revision,”¹³³ a revised IEP has the same fundamental structure as a newly developed IEP: measurable annual goals tailored to “meet the child’s needs” that result from her disability, and identification of the special education and related services, supplementary aids and services, and program modifications or supports for school personnel that will be provided for the child. In other words, the Student’s current needs resulting from her disability are the starting point for an IEP, and not her current

¹³⁰ Parents Ex. 60C.

¹³¹ Parents Ex. 53, p. 1394.

¹³² In referring to a shift occurring “seven months” later, the Parents cite the October 2022 initiation of the process leading to the March 2023 IEP.

¹³³ See 34 C.F.R. § 300.324(b) and 20 U.S.C.A. § 1414(d)(4).

special education and related services, whether the IEP is in initial development or undergoing its annual review and revision.

Additionally, the IDEA mandates that provided a disabled child receives 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)(A); 34 C.F.R. §§ 300.114(a)(2)(i). 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. *Id.*

Because including children with disabilities in regular school programs may not be appropriate for every child with a disability, the IDEA requires public agencies like the BCPS 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 classroom placement. *Id.* § 300.115(b); COMAR 13A.05.01.10B(1); COMAR 13A.05.01.03B(71)(a).

Ms. [REDACTED] testified that in her opinion as an expert in special education, the Student requires a full-time special education program. She noted that the Student still struggled academically at [REDACTED] when she was provided pull-out specialized instruction because it was

insufficient to meet her needs. Ms. [REDACTED] further testified that the Student lacks the skills to learn in a general education environment, as she continues to exhibit both impulsivity and limited attention and focus, despite the structure and individualization of the [REDACTED] program. Additionally, Ms. [REDACTED] maintains that the March 2023 IEP involves frequent transitions between general education and pull-out special education services that would be difficult for the Student to manage emotionally.

Ms. [REDACTED] further testified that because the Student is still so far behind her peers in both reading and writing, she needs the all-day, specialized, skill-based interventions offered by [REDACTED] in a small-group environment to make progress. Without this level of support, Ms. [REDACTED] maintains that the Student's skills will regress. Ms. [REDACTED] also challenged the logistical feasibility of implementing the general education components of the Student's March 2023 IEP. How, for example, would the Student receive mathematics assignments within her capability in a fifth-grade classroom, when she performs at a third-grade level? Similarly, how would she receive instruction in a general education classroom in phonemic awareness, as the IEP provides, when this is not a fifth-grade skill? It was Ms. [REDACTED]'s position that shifting the Student to so much time in general education, after three years in a full-time special education environment, renders the March 2023 IEP not reasonably calculated for her to make educational progress.

Ms. [REDACTED]'s expert opinion was essentially the same. She emphasized that the Student is still building foundational skills and remains far behind her peers. If the Student is required to complete tasks beyond her ability in a general education classroom, Ms. [REDACTED] opined that she might find it destabilizing emotionally, but also that her frustration would disrupt the systematic, repetitive approach that is essential for the Student to learn. If forced to guess on her assignments, the Student is likely to regress in her skills because her learning would deviate from

the neural pathways that a systematic, appropriately paced process continually reinforces and develops.

Ms. [REDACTED] also testified that she believes small classes are critical to the Student's progress, as they allow for necessary redirection and reassurance from adult providers. She described the highly organized, highly structured classroom environment for the Student's fourth-grade year at [REDACTED]. She also noted the same concern regarding the feasibility of the IEP, as the Student still requires significant repetitive instruction in skills that are not fifth-grade level, such as phonological awareness, and she wondered how this instruction could be accomplished in a general education classroom.

Ms. [REDACTED] testified that the IEP team sought information about the classroom setting and supports the Student receives at [REDACTED] in order to understand her needs and to consider whether and how these needs could be met in the least restrictive environment. All-day specialized instruction is, noted Ms. [REDACTED], an extremely restrictive environment. She explained that in a general education environment, a student's needs and goals due to a disability may be met through differentiated instruction, meaning modifications to the assignments, as well as targeted supports and aids, and that general education teachers are specifically trained to provide such differentiated instruction. Ms. [REDACTED] acknowledged that the Student receives small-group instruction at [REDACTED] but maintained that this does not establish that she requires instruction in such a setting. She emphasized that small class size is itself not specialized instruction.

Ms. [REDACTED] described the IEP team's consideration of general education versus special education as starting with an understanding of a student's needs but also strengths, setting goals in light of current data, determining special education services needed, and then moving through the least-restrictive-environment continuum to determine where those needs can best be met, and

strengths further developed. Ms. [REDACTED] testified in detail regarding each of the Student's goals, explaining that the team considers the nature of the intervention needed, how much time should be devoted to the intervention, and whether it is best provided outside general education or inside general education – or a combination of both. She was also able to describe in detail the daily schedule the Student would have had, had she enrolled at [REDACTED] including the small-group instruction model that would allow the Student's special educational needs to be met even when working on below-grade level skills in a general education classroom.

The approach Ms. [REDACTED] describes, with its emphasis on the least restrictive environment, is consistent with the law. At no time does this process involve the requirement that an IEP team justify a change from or modifications to a prior IEP; the prior IEP is not the starting point for developing the content of a revised IEP. I am persuaded that the process Ms. [REDACTED] describes, with the participation of the full IEP team, including a [REDACTED] special educator and general educator, resulted in a carefully considered, data-driven determination of the appropriate instructional level and nature of the special education services required to meet the Student's needs. While the March 2023 IEP does not provide for all-day specialized instruction, it includes some integrated services,¹³⁴ provided by a special educator in the general education classroom in mathematics (two hours and thirty minutes weekly), and by an instructional assistant in the general education classroom in phonological awareness, phonics, and reading fluency (an hour and fifteen minutes weekly in each area).

While Ms. [REDACTED] and Ms. [REDACTED] made broad statements regarding the Student's need for all-day specialized instruction, neither is an expert in general education. Ms. [REDACTED] is not certified in general education and has not taught in any type of classroom, special education, or general education, in over twenty-two years. Ms. [REDACTED] has extensive and impressive

¹³⁴ Parents Ex. 53, pp. 1396-97.

experience in designing and implementing an academic intervention program for children with language-based learning disabilities, but she is not certified in either special education or general education, does not have a degree in teaching, and has no teaching or other professional experience in any public school. Accordingly, I give their opinions that the Student's needs can only be met in an all-day special education program little weight.

The IEP Does Not Lack Direct Special Education Instruction

Finally, I note that the IEP clearly provides for direct special education instruction to be provided by a special educator outside of general education in each reading and writing area in which a goal has been identified (phonological awareness, decoding, fluency, and encoding). Specifically, this includes seventy-five minutes weekly for phonological awareness (deleting initial phonemes); three hours and forty-five minutes weekly for decoding (multisyllabic words with specific letter combinations); two hours and thirty minutes weekly for fluency (reading grade-level text with 95% accuracy); and two hours and thirty minutes weekly for encoding (spelling multisyllabic words with specific letter combinations). As noted above, the IEP also requires additional direct special education instruction in the general education classroom, delivered by a special educator (mathematics) and an instructional assistant (phonological awareness, phonics, and reading fluency). The Parents also object to the sufficiency of the special educational instructional time outside of general education (addressed below), but it is not the case that the IEP lacks direct special education instruction. In fact, about a third of the Student's instructional time is special education instruction outside of general education.

What the IEP does lack is direct special education instruction in some specific areas (social/emotional/behavioral; written expression; and reading comprehension), as the Parents and the BCPS disagreed about the need for direct special education in these areas. I have concluded above that to be reasonably calculated to provide the Student with meaningful educational

benefit, the IEP does not require goals in the social/emotional/behavioral area, written expression, and reading comprehension because the evidence does not support a demonstrated, current need for direct special instruction in these areas to address deficits associated with the Student's disability. Accordingly, it is appropriate and consistent with the Student's needs that the March 2023 IEP lacks direct special instruction in these areas.

III. The March 2023 IEP Does Not Have Insufficient Hours of Specialized Instruction Outside of General Education Such that It Fails to Provide the Student with a FAPE

I have previously addressed the appropriateness of the tailored goals in the areas of reading fluency and writing (encoding), finding that the present levels are well supported, and the goals are appropriate. The Parents did not explain how the level of direct special education services offered in the March 2023 IEP for these areas falls short of what they believe the Student needs, other than their contention she needs nothing less than all-day integrated specialized instruction. As I have found to the contrary above, I do not address reading fluency and writing further, except to note that the IEP team, including a special educator, determined the special education time outside of general education was needed to meet these goals and objectives.

Ms. [REDACTED] testified to this process, stating, without contradiction, that the IEP team considered parental input, Dr. [REDACTED]'s formal evaluation, Ms. [REDACTED]' informal assessments, information from [REDACTED] staff gathered by Ms. [REDACTED] during her observation, as well as emailed responses from Ms. [REDACTED] and her contributions to the March 8, 2023 meeting, and data collected from [REDACTED] work samples, report cards, and assessments. The documentation of the IEP team meetings corroborates her account.¹³⁵ In light of Ms. [REDACTED]'s expertise in both special education and general education, as well as the overwhelming evidence

¹³⁵ Parents Exs. 31, 47, 50, and 54.

of the IEP team's data-driven approach to determining the time needed outside of general education for the Student to receive special education instruction in fluency and writing, I am persuaded that the time is sufficient, and the March 2023 IEP reasonably calculated to provide educational benefit.

I reach the same conclusion regarding the other areas in which educational time is devoted to special education outside of general education: phonological awareness and decoding.¹³⁶ I also find that the IEP team appropriately determined that the Student does not require special education instruction outside of general education in mathematics. I explain below.

I first address phonological awareness. The IEP team determined that the Student's current instructional level in phonemic awareness was third grade.¹³⁷ As Dr. [REDACTED]'s report makes clear, phonological processing, which is the ability to break down and manipulate the sounds of letters to be applied in spoken and written language, has three components: phonological awareness, phonological memory, and rapid retrieval.¹³⁸ Dr. [REDACTED] assessed these skills using the CTOPP-2. The Student was in the average range in phonological awareness, with weaknesses in elision (the omission of a sound). She was also in the low average range in phonological memory, with particular weakness in nonword repetition.

The IEP team also looked at the Student's Term 1 [REDACTED] report card,¹³⁹ which showed she had mastered isolating phonemes, was progressing with LiPS¹⁴⁰ tracking, had mastered blending sounds into words and segmenting words, as well as p, b, v, and f sounds, and was progressing with deleting sounds from words. She had not yet received instruction in additional

¹³⁶ The Parents do not contend that additional time outside of special education is needed to address speech/articulation.

¹³⁷ Parents Ex. 53, p. 1369.

¹³⁸ Parents Ex. 39, p. 1326.

¹³⁹ Parents Ex. 60C.

¹⁴⁰ Ms. [REDACTED] testified that LiPS is a phoneme-related intervention published by Lindamood-Bell.

phonological awareness skills listed on the report card, such as substituting sounds within words, segmenting syllables, blending syllables into words, deleting syllables from words, and substituting syllables within words. Based on this, the IEP team developed a goal focusing on mastery in deleting initial phonemes; as I noted above in section one, neither the present instructional level nor the goal is in dispute.

Similarly, for decoding, the IEP team looked at Dr. ██████████'s report. The Student's reading, decoding, and orthographic processing composite scores were borderline (KTEA-3). She had particular weaknesses in letter and word recognition (borderline, KTEA-3). Her decoding fluency was low average (KTEA-3).¹⁴¹ The Student's Term 1 ██████████ report card reflects that the Student was working on (and progressing in) specific beginning blends and ending blends, and had a number of phonics skills that had not yet been introduced.¹⁴² The team also considered decoding scores collected by ██████████ in September 2022 in specific skills, such as welded sounds, floss, ending blends, and certain vowel-consonant combinations.¹⁴³ Ms. ██████████ also identified specific difficulties in her January 10, 2023 informal assessment, which is documented in the IEP.¹⁴⁴ Based on these sources, the IEP team determined that the Student's instructional level was end-of-first-grade, and it developed a goal and objectives focusing on multisyllabic words with specific letter combinations. Again, neither the present instructional level nor the goal is in dispute.

However, the Parents contend that the Student cannot make meaningful progress towards these goals with so little special education instructional time outside of general education devoted to phonological awareness and decoding. As discussed above, Ms. ██████████ and Ms. ██████████ testified that at ██████████, the Student receives instruction in these two areas throughout her

¹⁴¹ Parents Ex. 39, pp. 1331-32.

¹⁴² Parents Ex. 60C.

¹⁴³ Parents Ex. 62C.

¹⁴⁴ Parents Ex. 53, pp. 1368-69.

school day, embedded in all lessons; neither recommended a specific, greater amount of specialized instruction outside of general education, other than all-day integration, which I have concluded is not essential for the Student to make meaningful progress for the reasons discussed above.

Ms. ██████ testified that at the March 8, 2023 meeting, the IEP team increased the time outside of general education for instruction in phonics (decoding) to forty-five minutes daily, rather than the thirty minutes the team had originally proposed.¹⁴⁵ Again, it was Ms. ██████'s opinion that the IEP team, which included both a general and special educator in addition to the knowledge and expertise she, the Parents, and their advocate brought to the table, determined the amount of time needed for specialized instruction in phonological awareness and decoding outside of general education based on the Student's needs as reflected in the data available. I give significant weight to her opinion in recognition of her expertise in both general education and special education, as well as her direct involvement as both a member of the IEP team and Assistant Principal at ██████. I am thus persuaded that the special education instruction time outside of general education in phonological awareness and decoding is sufficient and the IEP therefore reasonably calculated to provide educational benefit to meet the Student's needs.

My analysis regarding mathematics is essentially the same, except that the IEP provides for no time outside of general education for special education instruction. Instead, as discussed above, all special education services are provided by a special educator inside of general education. Ms. ██████ explained that the IEP team made this determination for mathematics instruction because the data relied upon reflects that the Student retains math concepts easily and requires less intensive support. The team concluded that the Student is able to perform grade-level work, with differentiated instruction and the support of a special educator.

¹⁴⁵ This is documented in Parents Ex. 54.

While Ms. [REDACTED] testified that the Student lacks the prerequisite skills to participate in a general education math class and would not be able to get the repetition of information that she needs, she did not cite any specific data, has not taught the Student personally, and has no expertise in general education. As I find Ms. [REDACTED] and the determination of the IEP team, as explained by Ms. [REDACTED] and corroborated by documentation of the IEP process, more persuasive, I conclude that the lack of special education instruction in mathematics outside of general education does not compromise the March 2023 IEP such that it is not reasonably calculated to provide educational benefit to meet the Student's needs.

IV. That the IEP Does Not Provide a Special Education Instructor or Related Services Staff as the Primary Provider Throughout the School Day is Not a Failure to Provide a FAPE

The Parents argue that the March 2023 IEP fails to provide a FAPE because it does not specify that a special education instructor or related services staff is the primary provider of instruction throughout the entire school day. This issue appears to have been first raised by the Parents at the March 8, 2023 IEP meeting. The IEP specifies that special education services and supplementary aids, services, program modifications, and supports are to be provided by different providers, as the Student's educational program includes special education services both inside and outside of the general education classroom, as well as participation in the general education classroom. For example, a proofreading checklist and manipulatives are to be provided on a weekly basis by a special educator, while highlighters, organizational aids, and having the student repeat/paraphrase information are to be provided by a general educator. Similarly, most social/behavioral supports specify that a general educator is to provide them.

With regard to special education services, a special education teacher provides services delivered outside of general education for phonological awareness, reading (decoding and fluency), writing (encoding), and speech (as a related service). Instruction/support is provided by a special

educator inside general education for mathematics and by an instructional assistant inside general education in phonological awareness, phonics, and reading fluency.

The Parents presented no persuasive evidence that the Student requires a special education teacher or related services staff as her primary provider for the entire school day. No evidence was presented, for example, of any credentials, knowledge, skills, or training that is necessary for the effective delivery of services as specified in the IEP, or the implementation of supplementary aids and services, and that the specified providers lack. Accordingly, I conclude that the Parents have failed to show that the providers identified in the IEP compromise in any way the Student's ability to receive a FAPE.

V. The IEP Does Not Fail to Provide Needed and Recommended Supplementary Aids and Accommodations

The Parents contend that the IEP does not provide needed and recommended supplementary aids and accommodations, naming specifically small class size, a human reader, graph paper, a graphic organizer, checklists for task completion, or other adult support. The Complaint states that these supplementary aids and accommodations were recommended by Dr. [REDACTED] and/or are currently provided by [REDACTED]. The BCPS maintains that the IEP team reviewed Dr. [REDACTED]'s report, as well as information from [REDACTED], and that having weighed this information, it developed an IEP that offers sufficient supplementary aids and services, consistent with the Student's documented needs.

The term "supplementary aids and services" is defined in the IDEA as "aids, services, and other supports that are provided in a regular education classes or other education-related settings to

enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with Section 1412(a)(5)¹⁴⁶ of this title.” 20 U.S.C.A. § 1401(33).¹⁴⁷

Ms. [REDACTED] testified that the Student needs small-group instruction, as having fewer classmates reduces distractions, allows for more appropriate pacing, and provides an environment in which the Student is able to better manage her impulsivity and emotions. She correctly noted that the March 2022 IEP provides for small group instruction under “instructional and assessment accessibility features.”¹⁴⁸ Ms. [REDACTED] opined that the Student has been successful at [REDACTED] because the Student’s class size is very small. She cited the Student’s tendency to fidget and her need to move at times to remain focused and engaged, as documented by Dr. [REDACTED]¹⁴⁹ and some of the Student’s teachers at [REDACTED]. Ms. [REDACTED] agreed that the Student needs a small class, and she described the model at [REDACTED] when the Student first enrolled as a small primary classroom of seven to eight students, where students rotate through a schedule of an individualized intervention, one-to-one tutoring, and independent work. For fifth grade, she is in the elementary program, which is eight or nine students.

The small class size enables the Student to be redirected as needed and to access the adult support she needs, Ms. [REDACTED] explained. However, Ms. [REDACTED] acknowledged that at times, the Student is grouped with a larger number of students. The Student’s physical education class has about sixteen students. Specials, such as art, could be ten or so students.

During the IEP process, the BCPS staff told the Parents and their counsel that small class size is not a “supplementary aid or service” when they requested that it be added to the March 2023 IEP as a physical/environmental support.¹⁵⁰ I agree; the definition of a supplementary aid or service has to do with aids, services or supports provided in an academic setting, and not the nature of the

¹⁴⁶ This is the least restrictive environment section.

¹⁴⁷ See also 34 C.F.R. § 300.42, which adds extracurricular and nonacademic settings.

¹⁴⁸ Parents Ex. 23, p. 1217.

¹⁴⁹ Parents Ex. 39.

¹⁵⁰ Parents Ex. 54.

academic setting itself. Nonetheless, the Parents' contention is best understood as reflecting their position that the Student cannot receive a FAPE in a large classroom, as she requires more attention and fewer distractions. As discussed above, Ms. [REDACTED] testified regarding the Student's need for redirection to manage her impulsivity and ADHD, which would be difficult in a classroom with many students. Ms. [REDACTED] testified regarding similar concerns about attention and impulsivity. While I agree with the BCPS that small class size is not a supplementary aid or service, I will address it here, as it is important to the Parents' argument that the Student cannot receive a FAPE under the March 2023 IEP.

Ms. [REDACTED] testified that the IEP team was not provided with data to support a determination that the Student requires a small class in order to receive educational benefit. She acknowledged that at [REDACTED], the Student's class is small, and that the Student has been successful within this model. But Ms. [REDACTED] persuasively explained that the mere fact that the Student has been successful in the small-class size model is not the same as data to support that she *requires* such an instructional model to receive educational benefit, and that such data is lacking even though the Student has some larger classes at [REDACTED]. This, Ms. [REDACTED] suggests, indicates that the Student is able to participate in a larger group without difficulty. Ms. [REDACTED] further testified that the BCPS uses a small-group instruction model in its general education classroom, assigning each student to a small group. Individual small groups may use different texts or focus on different skills; Ms. [REDACTED] explained that the small-group instruction model allows for targeted instruction, including meeting the needs of students with disabilities.

Ms. [REDACTED] also testified that the small-group instruction model allows for seamless transitions for special education pull-out instruction, which would minimize the amount of general education time the Student would miss during these pull outs. She explained that the schedule at [REDACTED] is sufficiently flexible for general educators and special educators to work together to

provide services to the Student with minimal transitions and with attention to ensuring that special education instruction appropriately supplements and supports general education instruction.

Again, Ms. [REDACTED], Ms. [REDACTED], and Ms. [REDACTED] have no expertise in general education. Ms. [REDACTED] and Ms. [REDACTED] have no experience teaching in a large general education classroom, and Ms. [REDACTED] is not a general educator and has not taught in many years. In contrast, I found Ms. [REDACTED]'s testimony compelling that not only is there no reliable data for concluding that a small class is necessary based on the Student's current needs, but also that the model through which the Student's March 2023 IEP would be implemented would provide small-group instruction. (I note that Dr. [REDACTED]'s report recommends small-group instruction, but not small class size.)

I further find that the March 2023 IEP includes specific tools for addressing the concerns the Parents raised about the Student's ability to participate in a large classroom, such as the need for frequent breaks and reduced distractions to help her focus, and the social/emotional supports previously discussed, such as movement, changes in activity, social skills training, eye contact, strategies to initiate and sustain attention, and preferential seating. I conclude that even though the IEP does not require a small class size, it provides sufficient aids and supports addressing the concerns the Parents have raised regarding the Student's ability to function and participate in a large class.

The Parents also contend that the Student requires adult support to receive educational benefit. Ms. [REDACTED] and Ms. [REDACTED], both of whom are clearly very familiar with the Student, testified that the Student receives significant adult reassurance throughout her school day. Again, as explained by Ms. [REDACTED], that the Student currently has such support, and even that she finds such support beneficial, does not establish that she requires such support to make educational progress. Ms. [REDACTED] further explained that as the Student was completing her fourth-grade year and entering fifth grade during the time covered by the IEP, the team considered the need for her to be supported,

but also independent when possible. Additionally, frequent adult attention is in fact built into the IEP, which requires that “[t]eachers should monitor” her regarding her need for breaks and movement,¹⁵¹ that a token system or chart be used to reinforce positive behavior, that an adult be available to assist her during structured time devoted to organizing her materials, that the Student be encouraged to ask for assistance, and that she be seated near the adult instructor. In short, there is no support for the Parents’ contention that the IEP is missing needed adult support that renders it not reasonably calculated to provide educational benefit.

With regard to a human reader, as discussed earlier, the IEP provides for text-to-speech technology for instruction and assessments in mathematics, science, government, and English Language Arts/literacy instruction and assessments. The narrative provided by ██████ notes that the Student has a human reader “for any written material above her instructional or fluent level.”¹⁵² The Parents did not present evidence that the BCPS failed to consider this; in fact, the BCPS specifically requested the narrative from ██████, including information regarding her classroom supports, and Mr. ██████ provided it to the IEP team. The Parents did not present data or other evidence to support that text-to-speech technology would not appropriately support the Student, or that a human reader is needed instead.

The other items identified by the Parents as needed but missing include graph paper and a checklist for task completion. I note that the IEP does provide for “use of organizational aids,” which would include items such as checklists. Graph paper is mentioned in the narrative provided by ██████ to the IEP team as a support the Student currently receives; the Parents did not present evidence that the IEP team failed to consider the narrative from ██████, the Student’s current supports, or any recommended aids and/or supports.

¹⁵¹ Parents Ex. 53, p. 1382.

¹⁵² Parents Ex. 38.

In sum, the Parents presented no persuasive evidence that the March 2023 IEP is lacking needed and recommended supplementary aids and service, or supports, accommodations, or other special considerations, that are necessary to her IEP in order for her to make educational progress in her proposed placement.

VI. The IEP Does Not Fail to Provide an Appropriate Placement

An educational placement, as determined by the IEP team, is not the physical location at which a student should receive educational services. Rather, an educational placement “refers to the provision of special education and related services rather than a specific place, such as a specific classroom or specific school.”¹⁵³ A student’s placement must be (1) determined at least annually; (2) based on the IEP; and (3) be as close as possible to the student’s home. 34 C.F.R. § 300.116(b)(1-3). Additionally, “[u]nless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled[.]” 34 C.F.R. § 300.116(c).

The IEP notes that the team considered ██████████ and the BCPS in evaluating appropriate placement. In determining that ██████████ was suited to provide the needed special education and related services, the IEP team documented that the Student requires specially designed instruction in reading and writing, but that instruction in mathematics can be provided in a general education classroom with support. Ms. ██████████ testified that an important factor was the Student’s high cognitive functioning and the educational value of time with nondisabled peers.

As discussed above, I have found that the IEP team’s determination regarding the amount of time devoted to direct special education services, and to instructional support provided in the general education classroom, is well supported and reasonably calculated for the Student to make meaningful educational progress. In so finding, I affirm the BCPS’s placement decision. Ms. ██████████ further testified, without contradiction, that the special education and related services, as well as services and

¹⁵³ Commentary at 71 Fed. Reg. 156, 46687 (August 14, 2016). See also *A.W. ex rel. Wilson v. Fairfax Cnty. Sch. Bd.*, 372 F.3d 674, 682 (4th Cir. 2004) (“[T]he touchstone of the term ‘educational placement’ is not the location to which the student is assigned but rather the environment in which educational services are provided.”).

supports in the general education classroom, required by the IEP can be provided at [REDACTED].

Accordingly, I conclude that the BCPS has not failed to provide an appropriate placement such that the Student is unable to receive a FAPE pursuant to the March 2023 IEP.¹⁵⁴

IN SUMMARY

In my analysis, I have relied substantially on Ms. [REDACTED]'s testimony, as well as the documentation corroborating her account of the IEP process and the team's decision-making. This is consistent with *Andrew F.* 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.* at 403 (quoting *Rowley*, 458 U.S. at 206). At the same time, the 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 404.

¹⁵⁴ The Parents made an oral motion *in limine* after opening statements, arguing that the BCPS should not be permitted to present evidence challenging the Parents' contention that [REDACTED] is an appropriate placement. The Parents noted that the BCPS had not previously raised the issue of the appropriateness of [REDACTED] and that the Parents were therefore not on notice that this would need to be addressed at the hearing. I denied the motion, because the law makes clear that if the Parents meet their burden to show that the BCPS failed to provide the Student with a FAPE, they must also show that their unilateral placement is an appropriate placement. *See Sch. Comm. of Burlington v. Dep't of Educ.*, 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 Court held that placement in a private school not approved by the state is not a bar under the IDEA. Under *Burlington*, 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. *Id.* at 15-16. The private education services need not be provided in the least restrictive environment. *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 327 (4th Cir. 2009). Here, because the Parents did not meet their burden to show that the BCPS failed to offer a FAPE, I need not consider whether [REDACTED] is an appropriate placement.

There is no question that the Student has made progress during her three years at [REDACTED]. However, here, the BCPS staff has indeed offered a “cogent and responsive explanation” for their decisions in drafting and approving the March 2023 IEP. I recognize that the Parents want the best possible program for the Student, and the Student’s father is an admirably passionate, involved, and dedicated advocate for his daughter.¹⁵⁵ However, the issue before me is not whether [REDACTED] is superior to the program the March 2023 IEP provides for at [REDACTED], or which program better serves the Student.¹⁵⁶ The scope of my review is limited to whether placement at [REDACTED] pursuant to the March 2023 IEP provides the Student with a FAPE in the least restrictive environment. I am persuaded that [REDACTED] is an appropriate placement and constitutes the least restrictive environment based on the Student’s March 2023 IEP and her unique needs and circumstances.¹⁵⁷

¹⁵⁵ I note that the BCPS alleged Mr. [REDACTED] was, at times, uncooperative with the IEP process. While it is immaterial to my decision, I would be remiss not to include in my decision that there was no support in the record whatsoever that Mr. [REDACTED] was less than fully cooperative, supportive, and vigilant, ensuring that everything the BCPS educators sought was promptly provided and repeatedly inquiring as to whether anything else was needed. It was clear that Mr. [REDACTED] was mystified by this allegation, and after a thorough review of the record, so am I. Regardless, the allegation had no impact on my analysis.

¹⁵⁶ See *Hessler v. State Bd. of Educ. of Md.*, 700 F.2d 134, 139 (4th Cir. 1983) (citing *Rowley*, 458 U.S. at 176) (“First, we do not think that because a given school is allegedly more appropriate than another school, the less appropriate school becomes inappropriate. Second, the unexpressed premise of the allegations is that there is a constitutional and statutory obligation to provide the infant plaintiff the best education, public or nonpublic, that money can buy. Such a premise is in conflict with [*Rowley*]. . . Rather, the obligation is to provide personalized instruction with sufficient support services to enable the handicapped child to benefit educationally from that instruction”).

¹⁵⁷ Among the remedies requested by the Parents was reimbursement for a private educational evaluation and related expenses. To obtain the right to a publicly funded evaluation, the Parents must either disagree with an evaluation offered by the school or have the school system deny the parent’s request for an evaluation. *F.C. v. Montgomery County Public Schools*, 2016 WL 3570604 at 3 (D. Md. 2016) (quoting *T.P. v. Bryan Cty. Sch. Dist.*, 792 F.3d 1284, 1293 (11th Cir. 2015)), citing 24 C.F.R. §300.502(b)(1). Here, the Parents asked that their outside provider conduct psychological and educational assessments, after the parties agreed that such assessments were needed. The Parents also gave consent for the BCPS to conduct the assessments, and Mr. [REDACTED] and Ms. [REDACTED] both testified that coordinating the assessments was a collaborative process. There was no evidence that the Parents sought an evaluation by their own provider because they disagreed with any evaluations offered by the BCPS or that the BCPS denied the Parents request for an evaluation; in fact, Mr. [REDACTED] explained that the Parents simply felt that using the same provider would allow for greater consistency in interpreting the results.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude that the Student's March 2023 IEP does not deny the Student a FAPE due to:

1. Failing to provide appropriate goals, particularly in the following areas: writing, reading; social/emotional, and mathematics;
2. The lack of integrated special education services throughout the school day and lack of direct special education instruction;
3. Providing insufficient hours of specialized instruction outside of general education;
4. Failing to provide a special education instructor or related services staff as the primary provider throughout the entire school day;
5. Failing to provide needed and recommended supplementary aids and accommodations (including but not limited to small class size, human reader, graph paper, graphic organizer, checklists for task completion, or other adult support);
6. Failing to provide an appropriate placement.

as the IEP and placement proposed by the BCPS for the 2023-2024 school year was reasonably calculated to offer the Student a FAPE in the least restrictive environment. 20 U.S.C.A.

§ 1415(f)(3)(E)(i) (2017); 34 C.F.R. § 300.148 (2021); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49 (2005); *Andrew F. v. Douglas Cty. School Dist. RE-1*, 580 U.S. 386 (2017); *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *MM ex rel. DM v. School District of Greenville County*, 303 F.3d. 523 (4th Cir. 2002).

I further conclude as a matter of law that the Parents failed to establish that they are entitled to reimbursement for private educational evaluations or educational expenses or for tuition and expenses at [REDACTED] for the 2023-2024 school year. 34 C.F.R.

§ 300.502(b)(1) (2021); *Florence Cty. 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).

ORDER

I **ORDER** that the Parent's request for placement and reimbursement for private evaluations, private educational services, and for tuition and expenses at [REDACTED] for the 2023– 2024 school year is **DENIED**.

October 10, 2023
Date Decision Mailed

Jennifer L. Gresock
Administrative Law Judge

JLG/at
#207410

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]

██████████,
STUDENT

v.

BALTIMORE COUNTY
PUBLIC SCHOOLS

BEFORE JENNIFER L. GRESOCK,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-BCPS-OT-23-11451

APPENDIX AND FILE EXHIBIT LIST

I admitted the following exhibits on behalf of the Parents, except as noted:

- Parents Ex. 1 Meeting Notes (██████████, or ██████), dated December 12, 2019
- Parents Ex. 2 Daily Log (████), dated February and March 2020
- Parents Ex. 3 Team Meeting Notes (████), dated May 1, 2020
- Parents Ex. 4 Psychological Evaluation (Dr. ██████████), assessment dates May 13 and 15, 2020
- Parents Ex. 5 ██████████ Occupational Therapy Evaluation, dated July 20, 2020
- Parents Ex. 6 Letter, ██████████, LCSW-C, RPT,¹ Therapist, dated August 3, 2020
- Parents Ex. 7 Letter, ██████████, dated August 20, 2020
- Parents Ex. 8 Letter, ██████████, Educational Tutor (████), dated August 2020
- Parents Ex. 9 Letter, ████████, ██████ Reading Tutor (████), dated August 2020
- Parents Ex. 10 Letter, ██████████, First Grade Teacher (████), dated August 2020
- Parents Ex. 11 ██████████ Occupational Therapy Discharge Summary, dated November 23, 2020
- Parents Ex. 12 BCPS Child Find Summary, dated January 14, 2021
- Parents Ex. 13 BCPS IEP Team Summary, dated January 27, 2021 (meeting date: January 14, 2021)

¹ Registered Play Therapist.

- Parents Ex. 14 IEP, dated April 20, 2021
- Parents Ex. 15 Emails between [REDACTED] staff and the Parents, dated May 2021
- Parents Ex. 16 Emails between [REDACTED] staff and the Parents, dated October 2021
- Parents Ex. 17 Emails between the BCPS staff, the Parents, and Ms. [REDACTED], dated November 2021
- Parents Ex. 18 NOT OFFERED OR ADMITTED
- Parents Ex. 19 BCPS IEP Team Summary, dated December 9, 2021
(meeting date: December 9, 2021)
- Parents Ex. 20 Emails between [REDACTED] staff, the BCPS staff, Ms. [REDACTED], Mr. [REDACTED], and Mr. Martin, December 2021 and January 2022
- Parents Ex. 21 Emails between the Parents, the BCPS staff, Ms. [REDACTED], and Mr. Martin, dated February 2022
- Parents Ex. 22 BCPS IEP Team Summary, dated February 23, 2022
(meeting date: February 24, 2022)
- Parents Ex. 23 IEP, dated March 15, 2022
- Parents Ex. 24 BCPS IEP Team Summary, March 15, 2022 (meeting date: March 22, 2022)
- Parents Ex. 25 Letter from the BCPS to the Parents, dated March 31, 2022
- Parents Ex. 26 Emails between the BCPS staff, the Parents, Ms. [REDACTED], and Mr. Martin, dated February and March 2022
- Parents Ex. 27 NOT OFFERED OR ADMITTED
- Parents Ex. 28 Emails between Mr. [REDACTED] and Ms. [REDACTED], dated October 2022
- Parents Ex. 29 Emails between Mr. [REDACTED] and [REDACTED] staff, dated November 2022
- Parents Ex. 30 Emails between [REDACTED] and [REDACTED], dated November 17, 2022
- Parents Ex. 31 Prior Written Notice, meeting date November 17, 2022
- Parents Ex. 32 NOT OFFERED OR ADMITTED
- Parents Ex. 33 Notice and Consent for Assessment, dated November 17, 2022 and signed November 18, 2022
- Parents Ex. 34 Emails between Mr. [REDACTED] and Ms. [REDACTED], dated November 2022

- Parents Ex. 35 Emails between Ms. [REDACTED] and Ms. [REDACTED], dated November 2022
- Parents Ex. 36 Emails between the Parents, the BCPS staff, Ms. [REDACTED], and Mr. Martin, dated November 2022
- Parents Ex. 37 Emails between the BCPS staff and [REDACTED] staff, and internal BCPS emails, dated December 2022
- Parents Ex. 38 Answers from [REDACTED] staff to IEP team questions, undated
- Parents Ex. 39 Psychological Evaluation (Dr. [REDACTED]), assessment date January 5, 2023
- Parents Ex. 40 Classroom Observation of Student Performance, dated January 10, 2023
- Parents Ex. 41 NOT OFFERED OR ADMITTED
- Parents Ex. 42 NOT OFFERED OR ADMITTED
- Parents Ex. 43 Emails between the BCPS staff and the Parents, and internal BCPS emails, dated November 2022 and February 2023
- Parents Ex. 44 Emails between the BCPS staff, the Parents, Mr. Martin, and Ms. [REDACTED], dated February 2023
- Parents Ex. 45 NOT OFFERED OR ADMITTED
- Parents Ex. 46 BCPS Notice of Documents, dated February 6, 2023
- Parents Ex. 47 Prior Written Notice, meeting date February 9, 2023
- Parents Ex. 48 NOT OFFERED OR ADMITTED
- Parents Ex. 49 NOT OFFERED OR ADMITTED
- Parents Ex. 50 Prior Written Notice, meeting date February 28, 2023
- Parents Ex. 51 Email from Ms. [REDACTED] to Mr. [REDACTED], dated March 7, 2023
- Parents Ex. 52 Emails between Mr. [REDACTED] and the BCPS staff, dated March 2023
- Parents Ex. 53 IEP, dated March 8, 2023
- Parents Ex. 54 Prior Written Notice, meeting date March 8, 2023
- Parents Ex. 55 NOT OFFERED OR ADMITTED
- Parents Ex. 56 Work Sample Analysis, [REDACTED] undated

- Parents Ex. 57 NOT OFFERED OR ADMITTED
- Parents Ex. 58 NOT OFFERED OR ADMITTED
- Parents Ex. 59 Answer of the the BCPS to the Student’s Due Process Complaint, dated June 13, 2023, with attachments
- Parents Ex. 60 Report Cards
60A – 2020-2021 school year
60B – 2021-2022 school year
60C – 2022-2023 school year
- Parents Ex. 61 Benchmarks (Math)
61A – Math Benchmark Cover Sheet 2020-2021 school year
61B – Math Benchmark Cover Sheet 2021-2022 school year
61C – Math Benchmark Cover Sheet 2022-2023 school year
- Parents Ex. 62 Benchmarks (Orton Decoding)
62A – Orton Decoding Benchmark Cover Sheet 2020-2021 school year
62B – Orton Decoding Benchmark Cover Sheet 2021-2022 school year
62C – Orton Decoding Benchmark Cover Sheet 2022-2023 school year
- Parents Ex. 63 Benchmarks (Primary Decoding)
63A – Primary Decoding Benchmark Cover Sheet 2020-2021 school year
63B – Primary Decoding Benchmark Cover Sheet 2021-2022 school year
- Parents Ex. 64 Phonological Awareness Benchmark Cover Sheet, 2022- 2023 school year
- Parents Ex. 65 Benchmarks (Irregular Word Reading)
65A – Irregular Word Reading Benchmark Cover Sheet 2020-2021 school year
65B – Irregular Word Reading Benchmark Cover Sheet 2021-2022 school year
65C – Irregular Word Reading Benchmark Cover Sheet 2022-2023 school year
- Parents Ex. 66 Benchmark (Basic Paragraph Writing) – 2022-2023 school year
- Parents Ex. 67 Benchmarks (Reading Fluency)
67A – Reading Fluency Benchmark Cover Sheet 2021-2022 school year
67B – Reading Fluency Benchmark Cover Sheet 2022-2023 school year
- Parents Ex. 68 Sentence Writing/Identification Benchmark Cover Sheet, 2022-2023 school year
- Parents Ex. 69 Educational Data from [REDACTED]
69A – 2020-2021 school year
69B – 2021-2022 school year
69C – 2022-2023 school year
- Parents Ex. 70 [REDACTED] Competency Exam ([REDACTED]), Fall 2022

- Parents Ex. 71 [REDACTED] Competency Exam ([REDACTED]), Fall 2022
- Parents Ex. 72 The Student's Schedule at [REDACTED], 2022-2023 school year
- Parents Ex. 73 [REDACTED] Tuition Invoice, dated July 1, 2023
- Parents Ex. 74 NOT OFFERED OR ADMITTED
- Parents Ex. 75 Curriculum Vitae, [REDACTED], M.Ed.
- Parents Ex. 76 Curriculum Vitae, [REDACTED]
- Parents Ex. 77 NOT OFFERED OR ADMITTED
- Parents Ex. 78 Curriculum Vitae, [REDACTED], LCPC NCC²
- Parents Ex. 79 NOT OFFERED OR ADMITTED
- Parents Ex. 80 IEP Comparison Chart, undated

I admitted the following exhibits on behalf of the BCPS, except as noted:

- BCPS Ex. 1 NOT OFFERED OR ADMITTED
- BCPS Ex. 2 NOT OFFERED OR ADMITTED
- BCPS Ex. 3 NOT OFFERED OR ADMITTED
- BCPS Ex. 4 NOT OFFERED OR ADMITTED
- BCPS Ex. 5 NOT OFFERED OR ADMITTED
- BCPS Ex. 6 NOT OFFERED OR ADMITTED
- BCPS Ex. 7 NOT OFFERED OR ADMITTED
- BCPS Ex. 8 NOT OFFERED OR ADMITTED
- BCPS Ex. 9 Letter of Agreement, dated July 13, 2022
- BCPS Ex. 10 NOT OFFERED OR ADMITTED
- BCPS Ex. 11 Parent Notification of IEP Team Meeting, dated October 7, 2022
- BCPS Ex. 12 Prior Written Notice, meeting date November 17, 2022, with related November 2022 emails

² Licensed Clinical Professional Counselor, National Certified Counselor.

BCPS Ex. 13	NOT OFFERED OR ADMITTED
BCPS Ex. 14	BCPS Receipt of Procedural Safeguards Parental Rights Document, signed November 18, 2022
BCPS Ex. 15	NOT OFFERED OR ADMITTED
BCPS Ex. 16	NOT OFFERED OR ADMITTED
BCPS Ex. 17	NOT OFFERED OR ADMITTED
BCPS Ex. 18	Parent Notification of IEP team Meeting, dated January 9, 2023
BCPS Ex. 19	NOT OFFERED OR ADMITTED
BCPS Ex. 20	BCPS Speech Assessment, dated January 27, 2023
BCPS Ex. 21	Notice of Documents, dated February 6, 2023, with related emails dated January and February 2023
BCPS Ex. 22	Prior Written Notice, meeting date February 9, 2023, with related email dated February 15, 2023
BCPS Ex. 23	NOT OFFERED OR ADMITTED
BCPS Ex. 24	Notice of Documents, dated February 21, 2023, with related email dated February 21, 2023
BCPS Ex. 25	February 28, 2023 Draft IEP
BCPS Ex. 26	NOT OFFERED OR ADMITTED
BCPS Ex. 27	NOT OFFERED OR ADMITTED
BCPS Ex. 28	NOT OFFERED OR ADMITTED
BCPS Ex. 29	NOT OFFERED OR ADMITTED
BCPS Ex. 30	NOT OFFERED OR ADMITTED
BCPS Ex. 31	NOT OFFERED OR ADMITTED
BCPS Ex. 32	NOT OFFERED OR ADMITTED
BCPS Ex. 33	NOT OFFERED OR ADMITTED
BCPS Ex. 34	Irregular Word Reading Benchmark data, 2021-2022 school year; Benchmark Cover Sheet, 2022- 2023 school year

