

██████████,

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE KRISTIN E. BLUMER,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-MONT-OT-23-11058

### DECISION

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
ORDER

### STATEMENT OF THE CASE

On April 25, 2023, ██████████ and ██████████ (Parents),<sup>1</sup> through counsel, filed a Due Process Complaint (Complaint) on behalf of their child, ██████████ (Student),<sup>2</sup> with the Office of Administrative Hearings (OAH), requesting a hearing to review the identification, evaluation, or placement of the Student by Montgomery County Public Schools (MCPS) under the Individuals with Disabilities Education Act (IDEA).<sup>3</sup>

On June 6, 2023, I conducted a remote pre-hearing conference (Conference) using the Webex videoconferencing platform. Jani Tillery, Esquire, participated on behalf of the Parents; the Student's mother was present. Craig S. Meuser, Esquire, participated on behalf of MCPS.

---

<sup>1</sup> To protect confidentiality and for ease of redaction purposes, I refer to the Parents individually throughout this decision as "the Student's mother" and "the Student's father."

<sup>2</sup> The Student identifies as female and uses female pronouns. She prefers to be called "██████." Some exhibits and testimony refer to the Student using male pronouns. I use female pronouns for the Student throughout this decision.

<sup>3</sup> 20 U.S.C.A. § 1415(f)(1)(A) (2017); 34 C.F.R. § 300.511(a) (2021); Md. Code Ann., Educ. § 8-413(d)(1) (2022); Code of Maryland Regulations (COMAR) 13A.05.01.15C(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. "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. Unless otherwise noted, all citations herein to the Education Article are to the 2022 Replacement Volume of the Maryland Annotated Code.

On August 23-24, 29-31, September 1 and 27, 2023, I held the hearing remotely by Webex. Michael J. Eig, Esquire, and Jani Tillery, Esquire, represented the Parents. Craig S. Meuser, Esquire, represented MCPS.

Under the applicable law, a decision in this case normally would be due by June 23, 2023, forty-five days after May 10, 2023, the date the parties agreed in writing that no resolution could be reached.<sup>4, 5</sup> However, the parties requested hearing dates outside that timeframe.<sup>6</sup>

During the prehearing conference, the parties reviewed their calendars, noting the time needed to exchange documents and dates they were scheduled for other matters.<sup>7</sup> Based on their schedule constraints, the parties jointly requested an extension of time to hold the hearing and issue the decision, agreeing that the earliest dates that the parties would be able to have all witnesses available, keep the hearing dates reasonably close together, and comply with subpoena procedures and the discovery rule, were August 23-24, 29-31, September 1 and 25, 2023. However, in a letter dated July 17, 2023, counsel for the Parents notified me that September 25, 2023 is the religious holiday of Yom Kippur and, therefore, requested to reschedule the final day of the hearing.

On July 17, 2023, my administrative aide emailed counsel for the parties and requested that they confer and identify a mutually agreeable date for the seventh and final day of hearing

---

<sup>4</sup> 34 C.F.R. §§ 300.510(b)(2), (c), 300.515(a); Educ. § 8-413(h); COMAR 13A.05.01.15C(14).

<sup>5</sup> Forty-five days from May 11, 2023 is Sunday, June 25, 2023. Per OAH policy, when a deadline in a Special Education matter falls on a weekend or holiday, the last business day before the weekend or holiday is the operative deadline. Therefore, the deadline fell on Friday, June 23, 2023.

<sup>6</sup> 34 C.F.R. § 300.515(c); Educ. § 8-413(h).

<sup>7</sup> Ms. Tillery stated that she was not available in June due to pre-scheduled Individualized Education Program (IEP) meetings and due process hearings. She noted that Mr. Eig had a pre-planned trip outside of the country from June 26 to July 10, 2023. I was not available the week of July 10, 2023 due to my pre-planned attendance at a week-long conference. Ms. Tillery had only four non-sequential dates available between July 17 and her departure on a pre-planned vacation on August 1, 2023. Ms. Tillery was scheduled to return to work on August 9, 2023; however, I had a pre-planned vacation scheduled for the weeks of August 7 and August 14, 2023. Mr. Meuser did not have availability for all of his witnesses with respect to any preplanned vacations but noted that MCPS staff were scheduled to return to school on August 21, 2023. August 23, 2023 was identified as the earliest mutually agreeable date on which to start the hearing.

and notify OAH of the agreed-upon date by July 21, 2023. On July 21, 2023, counsel for the parties emailed various dates to one another and copied my administrative aide on the emails; the parties were unable to agree upon a date as instructed. Based on the available dates provided by counsel for the parties in their email correspondence, I selected October 12, 2023 for the seventh and final day of the hearing. At the end of the day on September 1, 2023, the parties and I again conferred about scheduling and agreed to reconvene on September 27, 2023. As the hearing concluded on September 27, 2023, the October 12, 2023 hearing date was cancelled.

The regulations authorize me to grant a specific extension of time at the request of either party.<sup>8</sup> Based on the availability of the parties, counsel, and witnesses, I found good cause to extend the timeline and schedule the hearing on the hearing dates selected by the parties; I agreed to issue my decision no later than thirty days after the conclusion of the hearing.<sup>9, 10</sup>

On August 30, 2023, during the hearing, counsel for the Parents made an oral Motion for Disqualification (Motion) of this Administrative Law Judge, alleging that my rulings during the hearing up to that point created an appearance of bias against the Parents and in favor of MCPS.<sup>11</sup> Counsel for MCPS opposed the Motion. After hearing arguments from both parties, I denied the Motion on the record on the grounds that my legal rulings during the hearing did not create the appearance of, or reflect, any bias against or in favor of either party on my part.<sup>12</sup> I stated that nothing about the case affected my ability to be fair and impartial in the

---

<sup>8</sup> 34 C.F.R. § 300.515(c).

<sup>9</sup> *Id.* § 300.515(a); Educ. § 8-413(h).

<sup>10</sup> The hearing concluded on September 27, 2023. The thirtieth day thereafter, and decision deadline, is October 27, 2023.

<sup>11</sup> COMAR 28.02.01.11C(2)(a).

<sup>12</sup> COMAR 28.02.01.11C(2)(b)(i); COMAR 28.02.01.11C(1)(a). *See also Attorney Grievance Comm'n v. Shaw*, 363 Md. 1, 10-12 (2001) (upholding the trial judge's denial of motion to recuse, the basis of which was information acquired during the proceedings before him); *Goldman, Skeen & Wadler, P.A. v. Cooper, Beckman & Tuerk, L.L.P.*, 122 Md. App. 29, 59-60 (1998) (upholding the trial judge's denial of motion to recuse, as "pre-trial and trial rulings by the judge . . . are generally not considered to be evidence of personal bias" and failed to form a pattern); OAH's Code of Judicial Conduct for Administrative Law Judges, Rules 2.1, 2.2.1, 2.2.2, 2.2.3.

proceedings.<sup>13</sup> Counsel for the Parents renewed the Motion twice on August 31, 2023 and I further denied it for the reasons stated above.<sup>14</sup>

Procedure is governed by the contested case provisions of the Administrative Procedure Act; the Education Article; the Maryland State Department of Education (MSDE) procedural regulations; and the Rules of Procedure of the OAH.<sup>15</sup>

### ISSUES<sup>16</sup>

1. Did MCPS fail to offer the Student a FAPE for the 2021-2022 school year by stopping the process of reevaluating the Student in December 2021 when it disenrolled the Student from [REDACTED] High School ([REDACTED])?
2. Did MCPS fail to offer the Student a FAPE for the 2022-2023 school year by failing to timely develop an IEP designed to meet the Student's needs?
3. Did MCPS fail to offer the Student a FAPE for the 2022-2023 school year by failing to propose an appropriate placement for the Student?
4. If so, are the Parents entitled to the relief<sup>17</sup> requested?

---

<sup>13</sup> COMAR 28.02.01.11C(1)(a).

<sup>14</sup> COMAR 28.02.01.11C(2)(b)(i); COMAR 28.02.01.11C(1)(a).

<sup>15</sup> Educ. § 8-413(e)(1); Md. Code Ann., State Gov't §§ 10-201 through 10-227 (2021 & Supp. 2023); COMAR 13A.05.01.15C; COMAR 28.02.01.

<sup>16</sup> I have rephrased the issues before me based on the statements of counsel for the Parents during closing arguments on September 27, 2023. The issues as originally stated in the Complaint alleged that MCPS failed to offer the Student a free appropriate public education (FAPE) for the 2021-2022 and 2022-2023 school years by failing to propose an IEP designed to meet the Student's needs and failing to propose appropriate placement for the Student.

<sup>17</sup> In the Complaint, the Parents requested reimbursement for tuition and related services incurred for the Student's placement at [REDACTED] ([REDACTED]), [REDACTED] ([REDACTED]), and [REDACTED] ([REDACTED]) for the 2021-2022 and 2022-2023 school years. However, during closing arguments on September 27, 2023, counsel for the Parents conceded that the evidence and testimony did not support a finding that the Student received any educational benefit during placement at [REDACTED] and orally amended their reimbursement request to include [REDACTED] and [REDACTED] only. The Parents also seek future placement of the Student at an MCPS school for purposes of participating in a modified online high school program. In the alternative, the Parents seek reimbursement for courses at a "reputable online high school . . . or comparable college courses" and, upon successful completion, addition of those courses to the Student's transcript. Complaint, p. 5. The Parents further request that the Student be awarded a diploma from [REDACTED] upon completion of all required credits and that [REDACTED] provide guidance services to the Student to support her transition to college.

## SUMMARY OF THE EVIDENCE

### Exhibits

I have attached a complete Exhibits List as an Appendix.

### Testimony

The Parents presented the following witnesses:

- The Student's mother;
- [REDACTED], Psy. D., admitted as an expert in psychology;
- [REDACTED], Ed. D., admitted as an expert in special education with a concentration on the educational needs of emotionally disabled students;
- [REDACTED], LCSW-C,<sup>18</sup> admitted as an expert in social work.

The MCPS presented the following witnesses:

- [REDACTED], Ph. D., admitted as an expert in school psychology;
- [REDACTED], Ed. D., admitted as an expert in school administration;
- [REDACTED], admitted as an expert in special education;
- [REDACTED], admitted as an expert in special education;
- [REDACTED], admitted as an expert in general education and school administration;
- [REDACTED], admitted as an expert in general education and special education;
- [REDACTED], admitted as an expert in special education.

---

<sup>18</sup> Licensed Certified Social Worker-Clinical.

## FINDINGS OF FACT

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

### ***Background***

1. The Student turned eighteen years old in [REDACTED] 2023.<sup>19</sup>
2. The Parents adopted the Student from [REDACTED] when the Student was approximately one year old.<sup>20</sup>
3. The Student was assigned male gender at birth but verbally identified herself as female at age three.<sup>21</sup>
4. The Parents requested MCPS screen the Student when she was a toddler and attention delays were identified at that time.<sup>22</sup>
5. In the second grade, the Student reported to the Parents that words trailed off of the page when she was reading, which caused the Parents to inquire with the Student's guidance counselor and teacher about her progress. An IEP meeting was convened, but the IEP team concluded that special education services were not needed at that time.<sup>23</sup>
6. Between the second and fourth grades, the Student's reading scores fluctuated and decreased, causing the Parents to seek private testing of the Student, which identified a language disorder.<sup>24</sup>

---

<sup>19</sup> On February 28, 2023, the Student appointed the Parents as her agents for purposes of the control and management of her education, including but not limited to participating on her behalf in all due process hearings concerning her education, in a duly executed Special Durable Power of Attorney, a copy of which is retained in the OAH file. *See* COMAR 28.02.01.22B.

<sup>20</sup> Transcript (Tr.), Volume (Vol.) 2, p. 303.

<sup>21</sup> Tr., Vol. 2, p. 313.

<sup>22</sup> Tr., Vol. 2, p. 307.

<sup>23</sup> Tr., Vol. 2, pp. 308-09.

<sup>24</sup> Tr., Vol. 2, p. 309.

7. MCPS first identified the Student as eligible for special education services at the end of fourth grade due to the language disorder, and an IEP was developed for her at that time.<sup>25</sup>

8. Between the fourth and fifth grades, the Student was diagnosed with gender dysphoria<sup>26</sup> and began participation in the gender dysphoria program at [REDACTED]

[REDACTED].<sup>27</sup>

9. The Student was diagnosed with depression in the sixth grade and began therapy.<sup>28</sup>

10. The Parents withdrew the Student from MCPS and placed the Student at the [REDACTED] [REDACTED] for the sixth grade.<sup>29</sup>

11. The Parents returned the Student to [REDACTED] Middle School ([REDACTED]), an MCPS school, for seventh grade, because they concluded that the [REDACTED] was not an appropriate placement for the Student.<sup>30</sup>

12. The Student began presenting as a female at school starting in the seventh grade.<sup>31</sup>

13. On May 7, 2018, at the end of the Student's seventh grade year, the Parents engaged [REDACTED], Ph. D., to conduct a psychological evaluation of the Student.<sup>32</sup>

14. Dr. [REDACTED] noted that the Student demonstrated "significant difficulties maintaining attention, sustaining attention, and impulsive responding."<sup>33</sup> Dr. [REDACTED] diagnosed the Student with Attention Deficit Hyperactivity Disorder (ADHD), Combined Type.<sup>34</sup>

---

<sup>25</sup> Tr., Vol. 2, p. 309.

<sup>26</sup> The Student's mother generally described gender dysphoria as psychological discomfort experienced by a person whose genitalia does not correlate with the sense of self. Tr., Vol. 2, p. 313. [REDACTED], Ph. D., generally described gender dysphoria as feelings of sadness or discomfort related to one's gender identity. Tr., Vol. 6, p. 1183.

<sup>27</sup> Tr., Vol. 2, p. 311.

<sup>28</sup> Tr., Vol. 2, p. 320.

<sup>29</sup> Tr., Vol. 2, p. 311.

<sup>30</sup> Tr., Vol. 2, pp. 312, 314-15.

<sup>31</sup> Tr., Vol. 2, p. 315.

<sup>32</sup> See MCPS 1.

<sup>33</sup> *Id.*, p. 5.

<sup>34</sup> See *id.*, pp. 5-6.

15. On a date not specified in the record but in the Student's eighth or ninth grade year, the Parents notified the Student's guidance counselor and case managers of the Student's diagnoses of ADHD and depression.<sup>35</sup> The Parents requested that ADHD be added to the disability section of the Student's IEP, but it was not added; MCPS staff advised the Parents that it would be noted but that the diagnosis would not make a difference in the services provided to the Student.<sup>36</sup> The depression diagnosis was not included in or addressed by an IEP at that time.<sup>37</sup>

16. The Parents observed the Student become more withdrawn at the end of her time at [REDACTED] and found the Student's transition to high school to be difficult.

17. The Student attended the ninth grade at [REDACTED], an MCPS school, for the 2019-2020 school year.

18. On a date not specified in the record, [REDACTED], M.D., attending psychiatrist at [REDACTED], began treating the Student for depression, which included prescribing medications. The Student took the medications for some time but when she was in ninth grade, she told the Parents that they made her feel like a "zombie" and that she wished to stop taking them.<sup>38</sup>

19. The Student participated in an elite [REDACTED] team outside of school while in middle school. The Parents encouraged her to join the [REDACTED] team when she started at [REDACTED], and she did so, despite some initial reluctance.<sup>39</sup> The Student was placed on the varsity [REDACTED] at [REDACTED]; [REDACTED] was her coach.<sup>40</sup>

---

<sup>35</sup> Tr., Vol. 2, pp. 320-21.

<sup>36</sup> Tr., Vol. 2, p. 321.

<sup>37</sup> Tr., Vol. 2, p. 322.

<sup>38</sup> Tr., Vol. 2, p. 320.

<sup>39</sup> Tr., Vol. 2, p. 318.

<sup>40</sup> Tr., Vol. 2, p. 318.



20. In late March 2020, the Parents were both hospitalized after contracting Covid-19.<sup>41</sup> At that time, schools shut down due to the Covid-19 pandemic declaration.<sup>42</sup>

21. The Student was home alone for approximately four days in March 2020 when the Parents were initially hospitalized and then went to stay with the family of a friend on Maryland's [REDACTED].<sup>43</sup>

22. The Student began using marijuana and alcohol during ninth grade and continued to use both during the summer and fall of 2020, in addition to experimenting with other substances.<sup>44</sup>

23. Sometime in 2020, the Student was sexually assaulted, which she did not report to her mother until the following year.<sup>45</sup>

24. The Student attended tenth grade at [REDACTED] for the 2020-2021 school year.

25. In November 2020, the Student changed therapists and began therapy with [REDACTED], LCSW-C, due to the Parents' concerns about the Student's increased substance use.<sup>46</sup>

26. In April 2021, the Student's mother attempted to wake her up during a sleep-over with friends and could not wake her.<sup>47</sup> The Student's friends advised the Student's mother that she had taken numerous antihistamine pills all at once.<sup>48</sup>

27. The Student was hospitalized as a result of this incident and then transferred to an inpatient psychiatric unit.<sup>49</sup>

---

<sup>41</sup> Tr., Vol. 2, p. 325.

<sup>42</sup> Tr., Vol. 2, p. 325.

<sup>43</sup> Tr., Vol. 2, p. 325.

<sup>44</sup> Tr., Vol. 2, pp. 323-24, 326.

<sup>45</sup> Tr., Vol. 2, p. 343.

<sup>46</sup> Tr., Vol. 2, pp. 323-24, 326-27.

<sup>47</sup> Tr., Vol. 2, p. 327.

<sup>48</sup> Tr., Vol. 2, pp. 326-28.

<sup>49</sup> Tr., Vol. 2, pp. 328-29.

28. While the Student was hospitalized, the Parents searched her room on the advice of the Student's treating providers and discovered an undated suicide note<sup>50</sup> written by the Student.<sup>51</sup>

29. In the Spring of 2021, on dates not specified in the record, the Student returned to [REDACTED] to complete the tenth grade after her discharge from the hospital.<sup>52</sup> She also attended an [REDACTED] ([REDACTED]) at [REDACTED] in May and June 2021 to address her substance abuse.<sup>53</sup>

30. On July 30, 2021, the Student stopped therapy with Ms. [REDACTED].

31. In the summer of 2021, on a date not specified in the record, the Student was raped at a party and told her mother about the rape the following day.<sup>54</sup> The Student did not wish to report the rape to the police at that time but engaged in trauma therapy with a provider recommended by Dr. [REDACTED].<sup>55</sup> The Student told her mother that the perpetrator of the rape did not attend [REDACTED].<sup>56</sup>

32. The Student ran away from home several times in July and August 2021.<sup>57</sup> She was withdrawn at home, slept all day, and went out with friends in the evening.<sup>58</sup> She refused to participate in summer activities and planned trips.<sup>59</sup>

33. The Student also engaged in self-harm. In August 2021, on a date not specified in the record, she cut herself deeply, requiring medical treatment at the emergency room.<sup>60</sup>

---

<sup>50</sup> See Parents' Exhibits (P.) 2.

<sup>51</sup> Tr., Vol. 2, pp. 330-31.

<sup>52</sup> Tr., Vol. 2, p. 334.

<sup>53</sup> Tr., Vol. 2, pp. 334, 339-40.

<sup>54</sup> Tr., Vol. 2, pp. 341-42.

<sup>55</sup> Tr., Vol. 2, p. 342.

<sup>56</sup> Tr., Vol. 2, p. 356.

<sup>57</sup> Tr., Vol. 2, p. 343.

<sup>58</sup> Tr., Vol. 2, p. 343.

<sup>59</sup> Tr., Vol. 2, p. 341.

<sup>60</sup> Tr., Vol. 2, p. 345.

34. In a letter dated August 10, 2021, addressed “To Whom It May Concern,” Dr.

█ indicated that he was treating the Student for Major Depressive Disorder.<sup>61</sup> He further explained:

I am writing this letter to express my concern regarding [the Student’s] recent history of inpatient psychiatric hospitalization in April of 2021, and patient’s more recent history of increased risky behaviors. Since discharge, [the Student] has recently had an increase in depressive symptoms and concerning risk taking behavior, including substance abuse, running away from home and according to parents’ [sic] expression of not feeling safe at home. Given the context of patient’s recent medical history and concerns, if patient continues to engage in unsafe behaviors such as running away from home and expression of feeling unsafe; [sic] I feel it is warranted for patient to be brought to the nearest emergency room for an emergency psychiatric evaluation to further assess safety. In the event of [the Student] being brought in for an emergency evaluation, I can be reached at the contact below for further collateral information and collaboration in care.<sup>[62]</sup>

35. The Parents did not share Dr. █’s letter with MCPS in 2021 or 2022.

***The IEP for the 2021-2022 School Year (Eleventh Grade)***

36. The IEP team convened on June 7, 2021 for the annual review of the Student’s IEP.

37. The IEP team identified the Student’s primary disability as a specific learning disability (SLD) in reading and written expression.<sup>63</sup> The team identified the areas affected by the Student’s SLD as reading comprehension and written language expression in academics, and social emotional/behavioral.<sup>64</sup> The team included the Student’s 2018 diagnosis of ADHD, combined type, as part of the disability that qualified her for services, and an area subject to reevaluation due to the passage of time.<sup>65</sup>

38. During the IEP meeting, the Parents advised the school team members that the Student had experienced several mental health crises to date.<sup>66</sup> The Parents told the school team

---

<sup>61</sup> P. 4.

<sup>62</sup> P. 4.

<sup>63</sup> See P. 3, p. 1; MCPS Exhibit (MCPS) 6, p. 1.

<sup>64</sup> See P. 3, p. 1; MCPS 6, p. 1.

<sup>65</sup> See P. 3, p. 3; MCPS 6, p. 2.

<sup>66</sup> See P. 3, p. 8; MCPS 6, p. 7.

members that the Student had participated in treatment outside of school through full and partial hospitalization as well as therapeutic treatments, but did not provide the school team members with specific information related to the Student's mental health issues and substance abuse.<sup>67</sup>

The Parents requested that MCPS perform reevaluations of the Student, to include a psychological reevaluation, as soon as possible.<sup>68</sup>

39. The school team agreed to conduct reevaluations but noted that the reevaluation calendar was full at that time; the reevaluation meeting would be scheduled, if possible, over the summer and as soon as the school psychologist was available.<sup>69</sup>

40. The IEP team discussed the following specific supplementary aids and supports for the Student based on the information about the Student's mental health as provided by the Parents:

- check-ins with a counselor or school psychologist;
- use of a flash-pass to allow her to see a counselor, her case managers, or a member of the administration with adult escort to and from the location;
- daily review of her planner to support her executive functioning;
- home/school communication;
- teacher employment of positive reinforcement and relationship building with the Student; and
- allowing the Student to preview questions to create a sense of success when being called on in class.<sup>[70]</sup>

41. The IEP team added these supplementary aids and supports to the June 7, 2021 IEP, except for the check-in with the counselor; the team noted that this request would "be discussed further at the Reevaluation meeting to determine how it will be implemented."<sup>71</sup>

---

<sup>67</sup> See P. 3, p. 8; MCPS 6, p. 7;

<sup>68</sup> See P. 3, p. 8; MCPS 6, p. 7.

<sup>69</sup> See MCPS 7.

<sup>70</sup> See *id.*

<sup>71</sup> MCPS 7, p. 2; see also P. 3, pp. 14-16; MCPS 6, pp. 12-15.

42. The June 7, 2021 IEP included the following additional supplementary aids, services, program modifications, and supports for the Student:

- break down steps for math problem solving;
- break down multi-step processes into chunks and check in to ensure understanding; allowing use of computer for extended written responses;
- providing access to books through text-to-speech, by e-reader, and/or by audio;
- providing checklist for extended writing and long-term assignments;
- teacher check-ins with student to ensure understanding of concepts and directions;
- social engineering of group work;
- break-down of longer assignments into smaller units; and
- preferential seating close to the point of instruction.<sup>[72]</sup>

43. The June 7, 2021 IEP called for the Student to attend classroom instruction in the general education setting with special education support for four academic classes daily, amounting to three hours and twenty minutes spent in the general education setting each day.<sup>73</sup> The IEP also called for the Student to attend a self-contained resource class in the special education setting for fifty minutes daily.<sup>74</sup>

44. The IEP team developed the June 7, 2021 IEP based on the Student's educational record, quarterly progress reports, teacher reports, the psychological and educational assessments completed in 2018, and input from the Parents.<sup>75</sup>

45. At the June 7, 2021 IEP meeting, the IEP team did not have any reports from outside providers who evaluated or treated the Student.<sup>76</sup>

46. On July 27, 2021, Ms. [REDACTED] emailed the Parents to introduce herself as the new resource teacher for special education (RTSE) at [REDACTED] and inquired about scheduling a

---

<sup>72</sup> See P. 3, pp. 13-16; MCPS 6, pp. 12-15.

<sup>73</sup> See P. 3, p. 26; MCPS 6, p. 25.

<sup>74</sup> See P. 3, p. 26; MCPS 6, p. 25.

<sup>75</sup> See MCPS 7, p. 2.

<sup>76</sup> See *id.*

meeting in August to discuss the reevaluations.<sup>77</sup> Ms. [REDACTED] noted that a new school psychologist had been hired at [REDACTED].<sup>78</sup>

47. On July 27, 2021, the Student's mother replied to the email, with copies to the Student's father, Dr. [REDACTED], and Ms. [REDACTED], and stated that the Parents were available in the requested timeframe.<sup>79</sup> The Student's mother noted that the Student's providers were copied on the email and indicated that she could obtain release forms from them as needed for discussions between the private providers and the IEP team members.<sup>80</sup>

48. On July 28, 2021, Ms. [REDACTED] replied to the Student's mother's email, with copies to the Student's father, Dr. [REDACTED], and Ms. [REDACTED], and stated that the planning meeting was scheduled for August 12, 2021.<sup>81</sup> Ms. [REDACTED] advised that the team would also discuss the options related to emotional/social support for the Student.<sup>82</sup> Ms. [REDACTED] requested that the Parents share "[a]ny reports or discharge recommendations" from the Student's outside providers as that information would be helpful.<sup>83</sup> Ms. [REDACTED] attached a form for the release of confidential information to the email and requested that the Parents complete and return it so that the team could reach out to Dr. [REDACTED] and Ms. [REDACTED].<sup>84</sup>

49. Ms. [REDACTED] attached a parents' guide to habilitative services and Maryland's procedural safeguards for families to the July 28, 2021 email.<sup>85</sup>

50. Ms. [REDACTED] attached a Notice of IEP Team Meeting for the meeting on August 12, 2021 to the July 28, 2021 email.<sup>86</sup>

---

<sup>77</sup> See MCPS 9, p. 2.

<sup>78</sup> See *id.*

<sup>79</sup> See *id.*, p. 1.

<sup>80</sup> See *id.*, p. 2.

<sup>81</sup> See *id.*, p. 1.

<sup>82</sup> See *id.*, p. 1.

<sup>83</sup> *Id.*, p. 1.

<sup>84</sup> See *id.*, p. 1.

<sup>85</sup> See *id.*, p. 1.

<sup>86</sup> See *id.*

51. The Student's father signed the Notice of IEP Team Meeting on August 10, 2021 and indicated that the Parents would attend the meeting.<sup>87</sup>

52. The purpose of the meeting, as set forth in the Notice of IEP Team Meeting, was to review existing information and consider reevaluation of the Student to determine the need for additional data, determine services, and/or to determine continued eligibility.<sup>88</sup>

53. The Notice of IEP Team Meeting also indicated that the booklet entitled "Procedural Safeguards Parental Rights"<sup>89</sup> had been enclosed with the Notice of IEP Team Meeting.<sup>90</sup>

54. The IEP team convened on August 12, 2021. During the meeting, the Parents indicated that the Student was "going through a lot emotionally" and "shutting down," which caused them concern for her well-being; the Parents shared that the Student had been sexually assaulted earlier in the summer.<sup>91</sup> The Parents again requested more social emotional supports for the Student at school and noted that they would like to know more about the [REDACTED]<sup>92</sup> program.<sup>93</sup> The IEP team agreed that reevaluations of the Student were needed in the areas of cognitive/intellectual functioning and social/emotional/behavioral development to ensure appropriate supports for and placement of the Student to meet her needs.<sup>94</sup>

55. The IEP team agreed to meet again upon completion of the reevaluations to discuss the results and update the Student's IEP as needed.<sup>95</sup>

---

<sup>87</sup> See *id.*, pp. 3-4.

<sup>88</sup> See *id.*, p. 3.

<sup>89</sup> It is unclear from the record if this document is the same as the rights that were attached to the email as discussed in Findings of Fact 49. Neither document was offered as evidence.

<sup>90</sup> *Id.*, p. 3.

<sup>91</sup> See P. 3A, p. 1; MCPS 10, p. 2; Tr., Vol. 2, p. 348; Tr., Vol. 6, pp. 1167, 1182.

<sup>92</sup> [REDACTED].

<sup>93</sup> See P. 3A, p. 1-2; MCPS 10, pp. 1-2.

<sup>94</sup> See P. 3A, p. 1; MCPS 10, pp. 1-2.

<sup>95</sup> See P. 3A, p. 1; MCPS 10, p. 2.

56. On a date not specified in the record, Ms. [REDACTED] sent the notice and consent for reevaluation form to the Parents by email.<sup>96</sup>

57. The Parents did not sign and return the consent for reevaluation form to MCPS.

58. At the August 12, 2021 meeting, the Parents provided anecdotal information regarding the Student's ongoing treatment to the school team.<sup>97</sup>

59. At the August 12, 2021 meeting, the Parents did not provide the school team members with any reports from outside providers who evaluated or treated the Student.

### ***The Student's Hospitalizations in August 2021***

60. In the evening of August 12, 2021, the Student was asleep at home and the Parents could not wake her. The Student was hospitalized and treated for an overdose of [REDACTED] and other substances.

61. After August 12, 2021, on a date not specified in the record, the Student was transferred between [REDACTED] and [REDACTED]. On a date not specified in the record, the Student eloped from [REDACTED] and spent the night in an abandoned car with a friend in [REDACTED]. The Student then returned to [REDACTED] for two days.

62. On August 16, 2021, the Student was admitted to [REDACTED] from [REDACTED] [REDACTED] on the basis that she presented a danger to herself and/or others.<sup>98</sup>

63. On August 22, 2021, the Student's mother notified Ms. [REDACTED], Ms. [REDACTED], and [REDACTED] school psychologist [REDACTED], Ph. D., by email that the Student was hospitalized at [REDACTED] and the Parents were working to identify future treatment options for the Student.<sup>99</sup>

---

<sup>96</sup> See P. 3A, p. 1; MCPS 10, p. 2.

<sup>97</sup> See MCPS 10, p. 1.

<sup>98</sup> See MCPS 12.

<sup>99</sup> See P. 3B; MCPS 11, pp. 2-3.



64. At that time, the Student's mother further advised MCPS staff that she did not know if the Student's providers would refer her to a residential treatment center or an [REDACTED].<sup>100</sup> The Student's mother advised that the Student would start the school year at [REDACTED] as scheduled if she was placed in an [REDACTED].<sup>101</sup>

65. The Student's mother requested placement in the [REDACTED] program in the event that the Student returned to [REDACTED] and asked if that could be accomplished by MCPS staff speaking with Dr. [REDACTED].<sup>102</sup>

66. The Student's mother further requested to "set aside the cognitive evaluations for a later time[.]"<sup>103</sup>

67. The Student's mother provided Dr. [REDACTED]'s contact information to MCPS staff and requested that Dr. [REDACTED] contact him to discuss the Student.<sup>104</sup>

68. The next day, August 23, 2021, the Student's mother followed up with an email to Ms. [REDACTED], Dr. [REDACTED], and Ms. [REDACTED] and notified them that the Student would be returning home and would return to [REDACTED], but that she would update MCPS staff if anything changed.<sup>105</sup>

69. The Student's mother again requested that MCPS place the Student in the [REDACTED] program.<sup>106</sup> She indicated that she looked "forward to learning more from you about how all this will work – her IEP re-evaluation and school coordination should she go to a residential treatment center."<sup>107</sup>

---

<sup>100</sup> See P. 3B; MCPS 11, p. 3.

<sup>101</sup> See P. 3B; MCPS 11, p. 3.

<sup>102</sup> See P. 3B; MCPS 11, p. 3.

<sup>103</sup> P. 3B; MCPS 11, p. 3.

<sup>104</sup> See P. 3B; MCPS 11, p. 3.

<sup>105</sup> See MCPS 11, p. 2.

<sup>106</sup> See MCPS 11, p. 2.

<sup>107</sup> MCPS 11, p. 2.

70. MCPS could not place the Student in the [REDACTED] program based solely on a telephone call from the Student's private provider.<sup>108</sup>

71. On August 25, 2021, after conferring with her colleagues and supervisors, Ms. [REDACTED] followed up with the Parents and requested an update on the Student's discharge and possible placement.<sup>109</sup> Ms. [REDACTED] further explained that she had arranged for [REDACTED], the social worker in the [REDACTED] program, to provide the Student with social-emotional support for fifteen to twenty minutes per week while the reevaluations were pending.<sup>110</sup> She explained that Dr. [REDACTED] would work to schedule the reevaluations when the Student came back to school to "help guide us in [sic] appropriate placement."<sup>111</sup>

72. The Student was discharged from [REDACTED] on August 27, 2021.<sup>112</sup>

73. On August 27, 2021, Dr. [REDACTED] and Dr. [REDACTED] spoke by telephone about the Student.<sup>113</sup> During the call, Dr. [REDACTED] requested that the school team put the reevaluations on hold and halt discussion of the [REDACTED] placement in light of the Student's hospitalization; Dr. [REDACTED] agreed.<sup>114</sup>

74. On August 30, 2021, Ms. [REDACTED] informed the Parents that she and Dr. [REDACTED] had spoken and agreed to postpone the reevaluations in full, rather than conducting them without the cognitive portion as earlier requested by the Student's mother, because the team had "planned for a full comprehensive assessment and only doing a part of this would not be beneficial."<sup>115</sup>

---

<sup>108</sup> Tr., Vol. 6, p. 1220.

<sup>109</sup> See MCPS 11, p. 1.

<sup>110</sup> See *id.*

<sup>111</sup> *Id.*, p. 1.

<sup>112</sup> See MCPS 12.

<sup>113</sup> Tr., Vol. 6, p. 1143.

<sup>114</sup> Tr., Vol. 6, pp. 1143-44.

<sup>115</sup> MCPS 11, p. 4.

75. MCPS staff recommended waiting three to four weeks to allow the Student time to transition into the new school year, at which time the MCPS staff would “re-send the notice and consent for the comprehensive evaluation and move forward with testing.”<sup>116</sup>

76. Ms. ██████ asked if the Parents were “comfortable” with that plan.<sup>117</sup> The Student’s mother responded that it would be “wise” to proceed in that fashion.<sup>118</sup>

***Start of 2021-2022 School Year***

77. On or about August 30, 2021, the Student started the eleventh grade at ██████ as scheduled.

78. On the first day of school or shortly thereafter, on a date not specified in the record, the Student advised her mother that ██████,<sup>119</sup> the perpetrator of the rape that occurred earlier that summer, attended ██████.<sup>120</sup>

79. The Student’s mother believed that the Student was mistaken about ██████’s attendance at ██████ and took no action.<sup>121</sup>

80. On or about September 2, 2021, the Student and ██████ were involved in a physical altercation at ██████ in the presence of other students.<sup>122</sup>

81. After the incident between the Student and ██████, on a date not specified in the record, the Parents informed ██████ administrators of the Student’s allegation that ██████ had raped her the previous summer.<sup>123</sup>

82. On September 7, 2021, ██████, Ed. D., principal of ██████, notified the Parents that he suspended the Student from school for a period of ten days and recommended

---

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> This person was identified by first name only in exhibits and testimony. I use the first initial in this decision to preserve confidentiality.

<sup>120</sup> Tr., Vol. 2, p. 356.

<sup>121</sup> Tr., Vol. 3, pp. 514-15.

<sup>122</sup> Tr., Vol. 2, pp. 357, 360-61.

<sup>123</sup> Tr., Vol. 2, pp. 360-61.

expulsion from MCPS as a result of the investigation conducted into the incident between the Student and [REDACTED] that occurred at [REDACTED] on September 2, 2021.<sup>124</sup>

83. On or about September 8, 2021, upon further consideration of information provided by the Parents, Dr. [REDACTED] amended the Student's punishment to a six-day suspension and rescinded the expulsion recommendation.<sup>125</sup>

**[REDACTED] *Partial Hospitalization Program (PHP)***

84. On September 13, 2021, the Student's mother notified Dr. [REDACTED] by email that the Student would start attending the [REDACTED] PHP on September 15, 2021.<sup>126</sup>

85. That same date, the Student's father further explained to Dr. [REDACTED], Ms. [REDACTED], and other MCPS staff that the program that the Student needed was a full-day program that would likely last at least six weeks and requested information from Dr. [REDACTED] about coordinating the Student's classwork while attending the program; he further inquired about maintaining her safety and separation from [REDACTED] upon her return to [REDACTED].<sup>127</sup>

86. That same date, Dr. [REDACTED] informed the Parents that the MCPS "does not permit a student to be enrolled and not at school unless they have qualified for interim instructional services [(IIS)] (which used to be known as home and hospital instruction)."<sup>128</sup> Dr. [REDACTED] further explained that [REDACTED] staff were working with the police to develop a plan to keep the Student and [REDACTED] apart during the school day upon her return to [REDACTED].<sup>129</sup>

87. On or about September 15, 2021, the Student started the [REDACTED] PHP. [REDACTED], M.D., conducted a psychiatric evaluation of the Student at the outset of her

---

<sup>124</sup> See MCPS 13, p. 1.

<sup>125</sup> See P. 5, p. 3. This exhibit states that the suspension would be imposed "for a period of ten (6) [sic] days . . . ." *Id.* Dr. [REDACTED] testified that he modified the suspension to six days but the mention of "ten" days in the exhibit was a typographical error on his part. Tr., Vol. 5, p. 1073.

<sup>126</sup> See P. 5, p. 7.

<sup>127</sup> See P. 5, pp. 8-9.

<sup>128</sup> P. 5, p. 7.

<sup>129</sup> See *id.*

treatment and diagnosed the Student with major depressive disorder, single episode, moderate; ADHD, unspecified type; and gender dysphoria, unspecified.<sup>130</sup> Dr. [REDACTED] noted that further assessment was needed related to issues of anxiety.<sup>131</sup>

88. On September 15, 2021, the Student's mother executed [REDACTED]'s "Authorization to Use, Disclose, and/or Receive Protected Health Information" form that authorized [REDACTED] to disclose school transcripts and records to [REDACTED] by checking the boxes next to those items; no authorization was given to permit [REDACTED] to disclose progress and treatment reports, medical history, discharge planning, psychosocial history, psychiatric evaluations, substance abuse treatment records, and/or drug screening results; although such disclosures were identified on the form, those boxes were not checked.<sup>132</sup>

89. The Student's placement in the PHP prevented her from attending [REDACTED] on a daily basis.

90. MCPS approved the Student for IIS from September 24, 2021 to November 20, 2021 for three courses to be attended virtually, as well as completion of art assignments, while the Student attended the PHP.<sup>133</sup>

91. On October 11, 2021, the Student ran away from home.<sup>134</sup>

92. As of October 12, 2021, the Student was "[b]ehind in all IIS classes" and struggling "with attendance and regulation in the classroom."<sup>135</sup>

---

<sup>130</sup> See P. 6, p.10.

<sup>131</sup> See P. 6, p.10.

<sup>132</sup> See MCPS 14.

<sup>133</sup> See MCPS 15, pp. 1-2.

<sup>134</sup> See P. 10, p. 3.

<sup>135</sup> P. 11, p. 7.

93. On October 22, 2021, the PHP discharged the Student because the Student had not been attending sessions at the PHP since October 11, 2021 and had been admitted to inpatient care.<sup>136</sup>

94. At the time of discharge, the Student's PHP treatment team recommended residential treatment for the Student to address her substance abuse.<sup>137</sup>

### ***The Student's Hospitalizations in October 2021***

95. On October 14, 2021, the Parents located the Student after a three-day absence from home and obtained a petition for emergency evaluation of the Student.<sup>138</sup> The Student remained in the emergency department at [REDACTED] until she was voluntarily admitted to [REDACTED] ([REDACTED]) on October 22, 2021.<sup>139</sup>

96. The [REDACTED] treatment team diagnosed the Student with Bipolar II Disorder, depressed-type, moderate, as well as substance abuse disorders for cannabis, alcohol, and sedatives, which were described as mild.<sup>140</sup>

97. On October 29, 2021, [REDACTED] discharged the Student for transport to [REDACTED] [REDACTED] in [REDACTED], [REDACTED].<sup>141</sup>

### ***Communications Between the Parents and Their Educational Consultant in October 2021 and Efforts to Identify Private Placement***

98. On or about October 7, 2021, the Parents began working with [REDACTED], a private consultant.<sup>142</sup> The Parents requested that Mr. [REDACTED] "research long-term treatment needs" for the Student.<sup>143</sup> The Parents noted that the Student had a dual diagnosis of substance

---

<sup>136</sup> See P. 12, p. 1.

<sup>137</sup> See P. 12, p. 2.

<sup>138</sup> See P. 10, p. 4.

<sup>139</sup> See P. 12A, p. 1; MCPS 18, p. 4.

<sup>140</sup> See P. 12A, p. 2.

<sup>141</sup> See P. 12A; MCPS 18, p. 4; MCPS 19, pp. 3-5.

<sup>142</sup> See MCPS 17, p. 1.

<sup>143</sup> See MCPS 17, p. 1; P. 10, p. 1.

abuse and mental health issues and specified that the Student also suffered from major clinical depression, anxiety, trauma from the sexual assault in the summer of 2021, and ADHD.<sup>144</sup> They emphasized that they sought a program for the Student “to keep her safe and contained (with some mental health therapy)” and hoped to identify a placement quickly.<sup>145</sup> Until a placement was identified, the Parents believed they could not keep the Student safe absent an inpatient admission.<sup>146</sup>

99. On October 11, 2021, the Parents requested that Mr. ██████ consult with the Student’s private providers and the staff at the PHP program in evaluating a placement for the Student.<sup>147</sup> The Parents noted that they were considering residential treatment for the Student based on conversations with the Student’s private providers.<sup>148</sup>

100. The Parents did not include any MCPS staff on this request.<sup>149</sup>

101. On October 13, 2021, when the Student was missing, the Student’s mother notified Mr. ██████ that a placement was “very urgent” and stated that, upon finding the Student, “she needs to go straight to a placement.”<sup>150</sup> The Student’s mother again reiterated that the Parents could not “keep her safe at home.”<sup>151</sup>

102. On October 14, 2021, in an email to Mr. ██████, the Student’s mother described the Student’s IEP as “boilerplate Montgomery County BS” and explained that the IEP placed the student in general education with support in English and math; she noted that the “teachers should do things such as pre-teach and re-teach, but they don’t really do that, so it’s more formulaic than actual.”<sup>152</sup>

---

<sup>144</sup> See MCPS 17, pp. 1-2.

<sup>145</sup> See *id.*

<sup>146</sup> See *id.*, p. 2-3.

<sup>147</sup> See P. 10, pp. 1-2.

<sup>148</sup> *Id.*

<sup>149</sup> See P. 10.

<sup>150</sup> *Id.*, p. 3.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*, p. 5.

103. On or about October 15, 2021, the Student's mother completed a Psycho-social Assessment Form for Elevations that detailed the Student's personal history, educational history, substance abuse history, problem behaviors, diagnoses, prior treatments, hospitalizations, and family dynamics.<sup>153</sup> The Parents did not share this document with MCPS.

104. Between October 15 and 26, 2021, while the Student was hospitalized, the Parents investigated several placements for the Student recommended by Mr. [REDACTED], including [REDACTED], [REDACTED], a therapeutic boarding school, and others.<sup>154</sup>

***Communications Between the Parents and the MCPS between October and December 2021***

105. On October 12, 2021, Ms. [REDACTED] contacted the Student's mother by email and inquired as to the Student's progress at the PHP and in the IIS.<sup>155</sup> Ms. [REDACTED] stated that she wanted to set up a meeting with the IIS staff to ensure that the Student's IEP was being implemented and stated that she would send some possible meeting dates and times.<sup>156</sup>

106. On October 17, 2021, the Parents advised Ms. [REDACTED] that the Student was in the emergency room at that time and that they expected her to be admitted for inpatient care.<sup>157</sup> The Student's mother explained that they had been preoccupied with the Student's care and unable to respond before then, and stated that she would be in touch during the upcoming week "when able in between working with [the Student's] providers."<sup>158</sup> She further stated that the Student had been recommended for "a therapeutic boarding school/residential treatment center."<sup>159</sup>

107. In a letter addressed to Dr. [REDACTED] dated October 17, 2021, Patrick J. Hoover, Esquire, on behalf of the Parents, informed MCPS that the Parents intended to place the Student

---

<sup>153</sup> See P. 8.

<sup>154</sup> See P. 8; MCPS 17, pp. 2-6.

<sup>155</sup> See P. 14, p. 5; MCPS 18, p. 6.

<sup>156</sup> See P. 14, p. 5; MCPS 18, p. 6.

<sup>157</sup> See P. 14, p. 4; MCPS 18, p. 6.

<sup>158</sup> P. 14, p. 5; MCPS 18, p. 6.

<sup>159</sup> P. 14, p. 4; MCPS 18, p. 6.



at [REDACTED] in [REDACTED] “on an emergency basis” and the placement was “made in order to provide for [the Student’s] health and safety.”<sup>160</sup>

108. On October 18, 2021, Ms. [REDACTED] replied to the Student’s mother’s email from the previous day and offered assistance if needed.<sup>161</sup>

109. On October 19, 2021, the Student’s mother replied to Ms. [REDACTED] and explained that a program they were considering for the Student had requested a “full psychological testing battery.”<sup>162</sup> The Student’s mother asked if MCPS “could arrange neuro-psychological testing . . . as we discussed in the August meeting” and, if so, how quickly, noting that the testing discussed previously had been delayed due to “emergent events.”<sup>163</sup> The Student’s mother further inquired if it would be possible to conduct that evaluation of the Student while she was hospitalized.<sup>164</sup>

110. On October 20, 2021, Ms. [REDACTED] replied that Dr. [REDACTED] was consulting with her supervisor to see “what can be done” with respect to the request to conduct the testing of the Student in the hospital and that they would respond as soon as they had “a clear answer on next steps.”<sup>165</sup>

111. Pursuant to the Parents’ request, Ms. [REDACTED] discussed with her supervisors whether MCPS could conduct the Student’s testing while she was hospitalized.<sup>166</sup>

112. On October 27, 2021, Ms. [REDACTED] advised the Student’s mother that MCPS would be able to proceed with the reevaluations while the Student was hospitalized if her providers indicated that she was well enough to be tested.<sup>167</sup> Ms. [REDACTED] clarified that the

---

<sup>160</sup> P. 9.

<sup>161</sup> See P. 14, p. 4; MCPS 18, p. 6.

<sup>162</sup> P. 14, p. 4; MCPS 18, p. 5.

<sup>163</sup> P. 14, p. 4; MCPS 18, p. 5.

<sup>164</sup> See P. 14, p. 4; MCPS 18, p. 5.

<sup>165</sup> MCPS 18, p. 1.

<sup>166</sup> Tr., Vol. 6, p. 1235.

<sup>167</sup> See P. 14, p. 3; MCPS 18, p. 5.

assessments would not include neuro-psychological testing but “would be the testing the school team had previously agreed upon for a psychological, which includes a cognitive, social/emotional, and educational assessments [sic].”<sup>168</sup> Ms. ██████ requested that the Student’s mother let her know how they “would like to proceed” and stated that she would send “an updated notice and consent forms for assessments.”<sup>169</sup>

113. On October 29, 2021, the Student’s mother informed Dr. ██████, Dr. ██████, Ms. ██████, Ms. ██████, and Assistant Principal ██████ that the Student had been hospitalized at ██████ earlier in the month, where her treatment team diagnosed her with Bipolar II Disorder and prescribed ██████ for treatment.<sup>170</sup> The Student’s mother informed MCPS staff that the Student had been released from the hospital overnight and placed at ██████ that day.<sup>171</sup>

114. The Student’s mother stated that the Parents “needed to ensure she is withdrawn from classes in the MCPS hospitalization program . . . .”<sup>172</sup>

115. The Student’s mother requested that the Parents and MCPS “revisit testing when [the Student] returns from the program in January.”<sup>173</sup> The Student’s mother stated that the Parents were “not sure what the best environment will be” for the Student but requested information about how the Student “would resume classes at ██████ if she is up to it in the second semester” and “the logistics of the process for her returning.”<sup>174</sup>

116. Between August 12, 2021 and October 29, 2021, the Parents did not return to any MCPS staff a signed consent to proceed with the reevaluations that had been discussed.<sup>175</sup>

---

<sup>168</sup> P. 14, p. 3; MCPS 18, p. 5.

<sup>169</sup> P. 14, p. 3; MCPS 18, p. 5.

<sup>170</sup> See P. 14, p. 3; MCPS 18, p. 4.

<sup>171</sup> See P. 14, p. 3; MCPS 18, p. 4.

<sup>172</sup> P. 14, p. 3; MCPS 18, p. 4.

<sup>173</sup> P. 14, p. 3; MCPS 18, p. 4.

<sup>174</sup> P. 14, p. 3; MCPS 18, p. 4.

<sup>175</sup> Tr., Vol. 6, p. 1218

117. On November 5, 2021, Ms. [REDACTED] advised the Parents that the reevaluations could be revisited upon the Student's discharge from [REDACTED], and explained that prior to discharge, "the school team and the treatment team" could meet "to discuss a return to learning or return to school plan" and the treatment team could "provide the school team with updates about how [the Student] is doing."<sup>176</sup>

118. Ms. [REDACTED] suggested scheduling the meeting for December, "if [the Student] is planning to be discharged in January."<sup>177</sup>

119. That same day, the Student's mother asked Ms. [REDACTED] about what grades the Student would receive for the IIS classes in the first quarter of the school year, given that she was "too sick to take them."<sup>178</sup>

120. On November 11, 2021, Ms. [REDACTED] advised the Student's mother that she had "informed the IIS staff that [the Student] will no longer be accessing those classes."<sup>179</sup>

121. On November 11, 2021, Ms. [REDACTED] further informed the Student's mother that the Student would "be given a 'NG' or no grade"<sup>180</sup> for the first quarter of the school year.<sup>181</sup>

122. Ms. [REDACTED] explained that, if the Student received educational programming at [REDACTED] the Student would need to be withdrawn from [REDACTED] and reenrolled upon her return.<sup>182</sup>

123. Ms. [REDACTED] also requested to convene a meeting with the school team to discuss the Student's "current placement and a plan for moving forward" and proposed a meeting date of November 17, 2021.<sup>183</sup>

---

<sup>176</sup> P. 14, p. 2.

<sup>177</sup> See *id.* (emphasis added).

<sup>178</sup> *Id.*

<sup>179</sup> P. 14, p. 1.

<sup>180</sup> Ms. [REDACTED] testified that an "NG" can be later replaced by a grade earned by a student when they retake the class. Tr., Vol. 6, pp. 1238-39.

<sup>181</sup> P. 14, p. 1.

<sup>182</sup> See *id.*

<sup>183</sup> *Id.*, p. 1.

124. On November 12, 2021, the Student's mother advised Ms. [REDACTED] that the Student was not receiving educational programming<sup>184</sup> at [REDACTED], since it is a therapeutic program, and agreed to the proposed meeting date of November 17, 2021.<sup>185</sup>

125. On November 17, 2021, the IEP team convened to conduct a periodic check-in with the Parents.<sup>186</sup> The school team requested that the Parents provide updates to them regarding the Student's progress at [REDACTED] documentation regarding the Student's diagnosis of bipolar disorder, and the Student's discharge documents from the [REDACTED] PHP program.<sup>187</sup> The school team further requested that the Parents provide them with the Student's discharge documents from [REDACTED] when that time came.<sup>188</sup>

126. The school team recommended that, prior to the Student's discharge from [REDACTED], a reevaluation determination and annual review meeting take place to determine what supports and services in the school setting would be appropriate for the Student.<sup>189</sup>

127. The Parents agreed with the school team recommendation regarding the reevaluation determination and annual review meeting and agreed to send the requested documents.<sup>190</sup>

128. The Parents did not inquire about the Student resuming the IIS program while she was at [REDACTED], either at the meeting or thereafter.

129. The Parents did not send the requested documents prior to December 10, 2021.

---

<sup>184</sup> The Student's mother testified that she later learned that there was an educational component to the Student's program at [REDACTED]. Tr., Vol. 2, p. 395. *See also* P. 21.

<sup>185</sup> *See id.*, p. 1.

<sup>186</sup> *See* P. 15, p. 1; MCPS 20, p. 1.

<sup>187</sup> *See* P. 15, p. 1; MCPS 20, p. 1.

<sup>188</sup> *See* P. 15, p. 1; MCPS 20, p. 1.

<sup>189</sup> *See* P. 15, p. 1; MCPS 20, p. 1.

<sup>190</sup> *See* P. 15, p. 1; MCPS 20, p. 1.

130. On a date not specified in the record, Ms. [REDACTED] informed Dr. [REDACTED] that the Student was no longer receiving instruction through IIS and that the Student was receiving educational programming at [REDACTED].<sup>191</sup>

131. As a result of learning this information, Dr. [REDACTED] consulted with the MCPS Resolution and Compliance Unit (RACU) on next steps to ensure compliance with the IDEA in light of the Student's IEP.<sup>192</sup>

132. On December 10, 2021, Dr. [REDACTED] emailed the Parents, with copies to Ms. [REDACTED], Dr. [REDACTED], Ms. [REDACTED], and other MCPS staff, and advised that the Student would be withdrawn from enrollment at [REDACTED] "due to [her] sustained absence from school" and that staff took this action "based on guidance from the Resolution and Compliance Unit in MCPS."<sup>193</sup> Dr. [REDACTED] stated that MCPS staff hoped that the Student "can be reenrolled at [REDACTED] in the future."<sup>194</sup> He advised the Parents to be in touch with any questions.<sup>195</sup>

133. On December 13, 2021, Mr. Hoover sent Dr. [REDACTED] a letter dated December 11, 2021 and noted the Parents' opposition to MCPS' withdrawal of the Student from [REDACTED].<sup>196</sup>

134. On December 15, 2021, Dr. [REDACTED] advised Mr. Hoover by email that the withdrawal from [REDACTED] was effective that day and stated that the Student could "be reenrolled in MCPS/[REDACTED] when she is ready to return to school."<sup>197</sup>

135. The Parents and MCPS did not communicate with each other between December 16, 2021 and December 7, 2022.

---

<sup>191</sup> Tr., Vol. 5, p. 1085. *See also* P. 21.

<sup>192</sup> Tr., Vol. 5, p. 1086.

<sup>193</sup> P. 17, p. 1; MCPS 22.

<sup>194</sup> P. 17, p. 1; MCPS 22.

<sup>195</sup> *See* P. 17, p. 1; MCPS 22.

<sup>196</sup> *See* P. 17, p. 2, P. 18, p. 2.

<sup>197</sup> P. 18, p. 1.

***The Student's Enrollment at ██████████ from October 2021 to January 2022***

136. On October 29, 2021, ██████████, located in ██████████, ██████████, admitted the Student.<sup>198</sup>

137. Between October 29, 2021 and January 26, 2022, the Student enrolled in the ██████████/██████████, a private school in partnership with ██████████, and attended classes in Participation Skills/P.E.<sup>199</sup>; Environmental Science; Character Education; English/Language Arts; Health Education; and Psychology Daily Living.<sup>200</sup>

138. On January 26, 2022, ██████████ discharged the Student to the Parents' care.<sup>201</sup>

139. ██████████, M.Ed., LMFT,<sup>202</sup> the Student's therapist at ██████████, recommended that the Student attend a residential treatment center upon discharge from ██████████ "to support continued growth and success" and continue to engage in individual and family therapy.<sup>203</sup> She further recommended that the Student "receive academic accommodations in line with academic needs (see psychological evaluation and/or previous individualized education plan)."<sup>204</sup>

***The Psychological Evaluation of the Student – November/December 2021***

140. On November 30, and December 7-8, 2021, ██████████, Psy. D., conducted a psychological evaluation of the Student at the request of ██████████ and the Parents to "provide updated information about her emotional, cognitive, memory, academic, and interpersonal functioning."<sup>205</sup> Additionally, the "assessment was requested to update records regarding learning abilities to help inform school accommodation plans."<sup>206</sup>

---

<sup>198</sup> See P. 19-21; MCPS 21, 24.

<sup>199</sup> Physical education.

<sup>200</sup> See P. 21.

<sup>201</sup> See P. 20, pp. 1, 12; P. 21; MCPS 24, pp. 1, 12.

<sup>202</sup> Licensed Marriage and Family Therapist.

<sup>203</sup> See P. 20, p. 12; MCPS 24, p. 12.

<sup>204</sup> P. 20, p. 13; MCPS 24, p. 13.

<sup>205</sup> P. 16, p. 1.

<sup>206</sup> *Id.*

141. As part of the evaluation, Dr. [REDACTED] conducted interviews with the Student and the Parents and consulted with Ms. [REDACTED]. Dr. [REDACTED] also reviewed clinical records.<sup>207</sup>

142. Dr. [REDACTED] and her colleague, Dr. [REDACTED],<sup>208</sup> conducted numerous assessments<sup>209</sup> of the Student, including but not limited to:

- Wechsler Adult Intelligence Scale – Fourth Edition
- Woodcock Johnson Tests of Academic Achievement – Fourth Edition
- Behavior Rating Inventory of Executive Function-Second Edition: Self-& Informant Report
- Social Responsiveness Scale-2
- Minnesota Multiphasic Personality Inventory – Adolescent Edition
- Millon Adolescent Clinical Inventory – Second Ed
- Trauma Symptom Checklist for Children questionnaire
- A Finishing Game
- Substance Abuse Subtle Screening Inventory – Adolescent Edition

143. The Student declined to participate in specialty learning disability testing.<sup>210</sup> Dr. [REDACTED] perceived that the Student struggled with the testing that was conducted, but Dr. [REDACTED] believed that she was able to obtain an accurate picture of the Student at the time of the evaluation, although the results may have underrepresented the Student's true abilities.<sup>211</sup>

144. Dr. [REDACTED] concluded from the testing that the Student is bright, capable, and of average to high average intelligence, but her processing speed is slow, which means that it takes the Student two to three times longer than others to process and understand information.<sup>212</sup> Additionally, the Student suffers executive functioning deficits, which, coupled with a slower processing speed, makes school difficult for her.<sup>213</sup>

---

<sup>207</sup> See *id.*, p. 1.

<sup>208</sup> Dr. [REDACTED] testified that Dr. [REDACTED] is one of her partners and that they often conduct assessments for each other in the field at [REDACTED]. Tr., Vol. 3, pp. 611, 618.

<sup>209</sup> See P. 16, pp. 1, 17.

<sup>210</sup> See P. 16, p. 7; Tr., Vol. 3, p. 599.

<sup>211</sup> See P. 16, p. 18; Tr., Vol. 3, pp. 600, 611.

<sup>212</sup> See P. 16, p. 18; Tr., Vol. 3, pp. 612-13.

<sup>213</sup> See P. 16, p. 18; Tr., Vol. 3, pp. 621-22.

145. The Student did not present with symptoms of posttraumatic stress in a self-reporting assessment, which Dr. [REDACTED] found surprising in light of the Student's life experiences in the year prior to the evaluation.<sup>214</sup> Dr. [REDACTED] found that the Student tended to underreport symptoms related to trauma and downplay the effects of the challenges she has faced in her life to date.<sup>215</sup>

146. Dr. [REDACTED] identified the following diagnoses of the Student:

- ADHD, combined presentation
- Major Depressive Disorder, recurrent episode, moderate, with anxious distress
- Other specified trauma
- Gender dysphoria
- Cannabis use disorder
- Tobacco use disorder, moderate
- Alcohol use disorder, mild
- Other substance abuse disorder, moderate (experimentation with multiple substances)
- Specific learning disorder with impairment in mathematics (fluency and calculation skills)
- Language disorder
- Parent-Child relational problem
- Personal history of self-harm<sup>[216]</sup>

147. In a report dated December 20, 2021, Dr. [REDACTED] made recommendations for the Student based on her evaluation.<sup>217</sup> Dr. [REDACTED] recommended that the Student be placed in a residential aftercare program for her safety, to continue to address her mental health issues, to help her maintain her sobriety, and to help her "reengage" academically with a focus on her learning difficulties.<sup>218</sup> She recommended that the Student seek support from a mentor in the transgender community as she continues in identity development.<sup>219</sup> She further recommended

---

<sup>214</sup> See P. 16, p. 17.

<sup>215</sup> See P. 16, p. 17; Tr., Vol. 3, pp. 610, 626.

<sup>216</sup> See P. 16, p. 20-21.

<sup>217</sup> See *id.*, pp. 21-24.

<sup>218</sup> P. 16, p. 21; Tr., Vol. 3, p. 640.

<sup>219</sup> See P. 16, p. 21.



that the Student continue to engage in therapy, individually, in groups, and with her family.<sup>220</sup>

Dr. [REDACTED] recommended enrollment in a residential treatment program for the Student's substance use disorders, followed by a day treatment program and then an [REDACTED] with a sober living placement.<sup>221</sup>

148. With respect to the Student's slower processing speed and executive functioning weaknesses, Dr. [REDACTED] recommended the following educational supports:

- Concept maps, lecture outlays, and/or presentation notes to help her organize incoming information
- Connecting her current learning to her already existing knowledge base to increase her ability to learn more advanced conceptual material
- Frequent summarization of information that has been presented during instructional periods
- Frequent checking in to ensure understanding<sup>[222]</sup>

149. To address the Student's ADHD and history of learning struggles, Dr. [REDACTED] recommended the following supports:

- Tutoring
- Preferential seating
- Additional/modified instruction materials
- Extended time on tests, with a recommendation for double time
- Books in audio form
- Distraction-free test settings
- Check-ins with instructors for proper understanding
- Remedial reading intervention<sup>[223]</sup>

***The Student's Enrollment at [REDACTED] from January to March 2022***

150. On or about January 20, 2022, the Parents decided to enroll the Student at [REDACTED] a residential treatment facility, upon the Student's discharge from [REDACTED]<sup>224</sup>

---

<sup>220</sup> See P. 16, pp. 21-22; Tr., Vol. 3, p. 641.

<sup>221</sup> See P. 16, p. 22; Tr., Vol. 3, p. 641-44.

<sup>222</sup> P. 16, p. 23.

<sup>223</sup> See *id.*, p. 23.

<sup>224</sup> See MCPS 26, p. 4.

151. On January 28, 2022, [REDACTED], located in [REDACTED], [REDACTED], admitted the Student.<sup>225</sup>

152. On dates not specified in the record, but while the Student was living at [REDACTED], the Student also enrolled in [REDACTED], a private day school, and attended classes in Study Skills, Environmental Science, World History, Life Skills, P.E., and Studio Art.<sup>226</sup>

153. On March 18, 2022, [REDACTED] discharged the Student to the Parents' care.<sup>227</sup>

***The Student's Enrollment at [REDACTED] from March to April 2022***

154. On March 22, 2022, [REDACTED] readmitted the Student.

155. On April 21, 2022, [REDACTED] discharged the Student to [REDACTED] in [REDACTED], [REDACTED].

***Communications Between the Parents and Their Educational Consultant between January and April 2022***

156. On January 10, 2022, the Parents requested that Mr. [REDACTED] continue to investigate educational and therapeutic placements for the Student.<sup>228</sup> The Parents specified that they sought recommendations for placements that met one of two categories:

1. Primary focus is ADHD, impulsivity, executive functioning issues. We would consider a school focused solely on this issue with trauma treatment on the side.
2. Primary focus is trauma treatment, with a contingent of students with ADHD/executive dysfunction and therefore good support for these problems in the academics.<sup>[229]</sup>

157. The Parents indicated that the program did not need to have substance abuse treatment, although they would consider such a program.<sup>230</sup>

---

<sup>225</sup> See P. 22; MCPS 25.

<sup>226</sup> See P. 24.

<sup>227</sup> See P. 22; MCPS 25.

<sup>228</sup> See MCPS 26, p. 1.

<sup>229</sup> *Id.*, pp. 1-2.

<sup>230</sup> See *id.*, p. 1.

158. Based on information received from Mr. [REDACTED], the Parents investigated [REDACTED] as a placement for the Student upon her discharge from [REDACTED].<sup>231</sup>

159. On March 25, 2022, after the Student had left [REDACTED] and returned to [REDACTED], the Parents again asked Mr. [REDACTED] to find another placement for the Student.<sup>232</sup> The Parents indicated that they sought a placement with a “strong therapist” to work with her and asked if there was “an [REDACTED] type program that has a therapy component, even if it does not include school” as the Student’s greatest need at that time, having recently turned seventeen years old, was “to learn a constructive approach to behaving and relating to others, including when times are tough.”<sup>233</sup>

160. On April 1, 2022, a representative from [REDACTED] contacted the Parents after speaking with Mr. [REDACTED] about having the Student approved for admission to [REDACTED].<sup>234</sup>

***The Student’s Enrollment at [REDACTED] from April 2022 to March 2023***

161. On April 21, 2022, [REDACTED] admitted the Student.

162. On dates not specified in the record, between April 21, 2022 and March 6, 2023, the Student attended classes at [REDACTED] in English, Earth and Space Science, World History and Geography, Musical Arts, P.E., Advisory,<sup>235</sup> Sociology, and Economics.<sup>236</sup>

163. The Student “frequently missed school due to refusing or being restricted to the dorm building because she was a run risk” but, after some time, “became more consistent with school attendance and performance overall.”<sup>237</sup>

---

<sup>231</sup> See *id.*, pp. 3-4.

<sup>232</sup> See *id.*, pp. 5-6.

<sup>233</sup> *Id.*

<sup>234</sup> See *id.*, p. 7.

<sup>235</sup> The purpose and content of this class was not explained in the record.

<sup>236</sup> See P. 32, 33.

<sup>237</sup> P. 31, p. 85.

164. On or about March 6, 2023, ██████████ awarded the Student a high school diploma.<sup>238</sup>

165. On March 6, 2023, ██████████ discharged the Student, who was then eighteen years old.<sup>239</sup>

166. At the time of discharge, the Student's treatment team at ██████████ did not recommend the Student's further placement within the same level of care as that provided at ██████████ and recommended "a more independent living situation with some wrap around services" for the Student.<sup>240</sup>

***Communications Between the Parents and Their Educational Consultant in October 2022 and January 2023***

167. On October 25, 2022, the Student's mother emailed Mr. ██████████ and requested that he "begin the search for a young adult placement for [the Student] . . . ."<sup>241</sup>

168. On January 10, 2023, the Student's mother emailed Mr. ██████████ indicating that the Student and the Parents considered ██████████<sup>242</sup> ██████████, a young adult placement in ██████████, ██████████ to be their top choice for the Student's placement upon discharge from ██████████.<sup>243</sup> She further noted that the Parents wanted to determine whether the Student could be awarded a diploma from ██████████ by completing "her few remaining courses" online or taking courses at a local community college or university.<sup>244</sup> The Parents sought a diploma from ██████████, in part, to allow the Student to move to ██████████ with a "fresh start."<sup>245</sup>

---

<sup>238</sup> There is no evidence in the record as to whether the Student was awarded a regular high school diploma.

<sup>239</sup> See P. 31; MCPS 40.

<sup>240</sup> P. 31, p. 83; MCPS 40, p. 6.

<sup>241</sup> MCPS 30, p. 1.

<sup>242</sup> The meaning of this acronym was not addressed by the parties.

<sup>243</sup> See MCPS 30, p. 12.

<sup>244</sup> *Id.*, p. 12.

<sup>245</sup> *Id.*, p. 19.

169. On January 17, 2023, the Student's mother emailed Mr. [REDACTED] and asked for his "intervention" to facilitate the award of a diploma from [REDACTED] to the Student.<sup>246</sup>

***The Student's Enrollment at [REDACTED] in March 2023***

170. On or about March 8, 2023, [REDACTED] accepted the Student.<sup>247</sup> The Student remained at [REDACTED] through the commencement of the hearing in this matter on August 23, 2023.<sup>248</sup>

***The IEP for the 2022-2023 School Year***

171. On December 7, 2022, the Parents, through current counsel, requested that MCPS "reinstigate and expedite the IEP process" for the Student.<sup>249</sup>

172. After December 7, 2022 and prior to the 2022-2023 IEP team meetings, on a date not specified in the record, the Parents sent the following documents to the school team: Dr. [REDACTED]'s December 20, 2021 report of the psychological evaluation of the Student, three treatment plans from [REDACTED], a discharge summary from [REDACTED], the Student's [REDACTED] report cards (including teacher comments), two discharge summaries from [REDACTED], and a treatment plan summary from [REDACTED].<sup>250</sup>

173. The IEP team met on January 30, 2023 and February 15, 2023 to develop the Student's 2022-2023 IEP and determine the Student's educational placement.<sup>251</sup>

174. Prior to developing the Student's 2022-2023 IEP, the school team members reviewed the Student's file, the documents provided by the Parents, and considered parental input.<sup>252</sup>

---

<sup>246</sup> *Id.*, pp. 15-20.

<sup>247</sup> *See* MCPS 36, p. 1.

<sup>248</sup> Tr., Vol. 1, pp. 162, 210.

<sup>249</sup> MCPS 26.

<sup>250</sup> *See* P. 29, p. 2; MCPS 34, p. 2.

<sup>251</sup> *See* P. 29, p. 1; MCPS 34, p. 1.

<sup>252</sup> *See* P. 29, p. 2; MCPS 34, p. 2.

175. During the development of the Student’s 2022-2023 IEP, the school team members did not have information from [REDACTED] as to any modifications to the Student’s instruction to meet her needs during her enrollment there.<sup>253</sup>

176. Dr. [REDACTED] found that the Student met the criteria for Emotional Disability based on her review of the information provided to the school team.<sup>254</sup>

177. At the January 30, 2023 IEP team meeting, the IEP team unanimously agreed with Dr. [REDACTED]’s finding as to Emotional Disability.<sup>255</sup>

178. The IEP team changed the Student’s primary disability in the IEP for the 2022-2023 school year to “Multiple Disabilities (Emotional Disability, Specific Learning Disability, Other Health Impairment).”<sup>256</sup> The team identified the areas affected by the Student’s disability in academics as cognitive, math calculation, reading comprehension, and written language expression.<sup>257</sup> The team further identified the areas affected by the Student’s disability in behavioral self-management, social emotional/behavioral, and social interaction skills.<sup>258</sup>

179. The school team proposed the following specific supplementary aids and supports for the Student:

- Daily check of plan book to help with executive functioning
- Preview of questions to allow thinking time
- Break-down of steps for math problem solving
- Break-down of multi-step processes into chunks and check for understanding
- Allowing use of computer for extended written responses
- Providing access to books through text-to-speech, e-reader, or audio
- Providing checklist for extended writing or long-term assignments
- Check-in to ensure understanding
- Socially engineer groups for group work
- Break-down of assignments into smaller units

---

<sup>253</sup> Tr., Vol. 6, pp. 1259-60.

<sup>254</sup> See P. 27; MCPS 32.

<sup>255</sup> See P. 27; MCPS 32.

<sup>256</sup> P. 28, p. 1; MCPS 33, p. 1.

<sup>257</sup> See P. 28, p. 1; MCPS 33, p. 1.

<sup>258</sup> See P. 28, p. 1; MCPS 33, p. 1.

- Reinforcement of positive behavior through verbal and nonverbal communications
- Encouragement of Student to ask for assistance when needed
- Use of a flash-pass to allow her to go to the guidance office, see her case manager, or a member of the administration with adult escort to and from the location
- Positive reinforcement by and positive interactions with teachers
- Implementation of home/school communication system regarding submission of late work or behavioral problems
- Preferential seating close to the point of instruction<sup>[259]</sup>

180. The school team proposed placing the Student in a self-contained setting for five class periods daily in English, Math, Science, Social Studies, and Resource, for a total of three hours and forty-five minutes per day.<sup>260</sup> The school team further proposed placing the Student in general education with adult support for two elective classes daily, for a total of one hour and thirty minutes per day.<sup>261</sup>

181. The school team members also proposed providing counseling services to the Student with the school psychologist for thirty minutes per week and social work services to the Student with the school social worker for one hour per month, which could be split up into shorter sessions as needed.<sup>262</sup>

182. The Parents agreed with the Student’s present levels and the goals and objectives set forth in the 2022-2023 IEP.<sup>263</sup>

183. The school team members proposed placing the Student in the [REDACTED] program at [REDACTED].<sup>264</sup>

184. The Parents disagreed “with the proposed services and placement in the [REDACTED] program . . . .”<sup>265</sup>

<sup>259</sup> See P. 28, pp. 27-31; MCPS 33, pp. 27-31; MCPS 34, p. 1.

<sup>260</sup> See P. 28, pp. 38-40; MCPS 33, pp. 38-40; MCPS 34, p. 1.

<sup>261</sup> See P. 28, pp. 38-40; MCPS 33, pp. 38-40; MCPS 34, p. 1.

<sup>262</sup> See P. 28, p. 38; MCPS 33, p. 38; MCPS 34, p. 1.

<sup>263</sup> Tr., Vol. 6, p. 1256.

<sup>264</sup> See P. 28, p. 40; MCPS 33, p. 40; MCPS 34, p. 1.

<sup>265</sup> P. 29, p. 2; MCPS 34, p. 2.

185. The Parents requested a referral to MCPS' Central Placement Unit (CIEP).<sup>266</sup> The school team members declined to make the referral.

186. The Parents further expressed concern about sending the Student back to

██████████.<sup>267</sup>

187. Based on the Parents' concern about sending the Student to ██████████, the school team members explained the change of school assignment (COSA) process to the Parents.<sup>268</sup>

188. The Parents did not make any suggestions for services or placement in lieu of the school team members' proposals for implementation of the 2022-2023 IEP in the ██████████ program at ██████████.

189. Although the school team members had some transcripts from the Student's prior placements, they did not have sufficient information to assess the Student's credits to date and determine her graduation status. The school team members requested transcripts from the Student's previous placements to complete that task.<sup>269</sup>

190. The Parents did not inform the school team members at the January 30, 2023 or the February 15, 2023 IEP meetings of their efforts to secure a diploma for the Student from ██████████ in ██████████, that the Student extended her time at ██████████ to earn sufficient credits to graduate, or her progress towards doing so.

191. After February 15, 2023, the Parents did not inform MCPS of the Student's enrollment at ██████████ or the award of the ██████████ diploma to the Student.

192. The Parents did not request tuition reimbursement for any of the Student's prior unilateral placements at the January and February 2023 IEP meetings.

---

<sup>266</sup> See MCPS 34, p. 2.

<sup>267</sup> See *id.*

<sup>268</sup> See *id.*

<sup>269</sup> See *id.*



193. The Parents first requested tuition reimbursement for the Student’s prior unilateral placements in the Complaint, filed on April 25, 2023.

## **DISCUSSION**<sup>270</sup>

### **BURDEN OF PROOF**

The standard of proof in this case is a preponderance of the evidence.<sup>271</sup> 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.<sup>272</sup> The burden of proof rests on the party seeking relief.<sup>273</sup> In this case, the Parents and Student are seeking relief and bear the burden of proof to show that the challenged actions by MCPS did not meet the requirements of the law and that the relief requested by the Parents is the appropriate remedy.

### **APPLICABLE LAW**

#### **FAPE**

The identification, evaluation, and placement of students in special education are governed by the IDEA.<sup>274</sup> 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.”<sup>275</sup> To be eligible for special education and related services under the IDEA, a student must meet the

---

<sup>270</sup> My findings, analysis, and legal conclusions are based upon consideration of all of the parties’ arguments and the credible evidence of record. All testimonial and documentary evidence was considered and given the weight it was due, regardless of whether it has been recited, cited, referenced, or expressly set forth in the Decision. *See, e.g., Mid-Atl. Power Supply Ass’n v. Md. Pub. Serv. Comm’n*, 143 Md. App. 419, 442 (2002) (emphasizing that “[t]he Commission was free to accept or reject any witness’s testimony” and “the mere failure of the Commission to mention a witness’s testimony” does not mean that the Commission “did not consider that witness’s testimony”).

<sup>271</sup> *See* 20 U.S.C.A. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3); COMAR 28.02.01.21K(1).

<sup>272</sup> *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

<sup>273</sup> *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005).

<sup>274</sup> 20 U.S.C.A. §§ 1400-1482; 34 C.F.R. pt. 300; Educ. §§ 8-401 through 8-417; COMAR 13A.05.01.

<sup>275</sup> 20 U.S.C.A. § 1400(d)(1)(A); *see also* Educ. § 8-403.

definition of a “child with a disability” as set forth in section 1401(3)(a) of the United States Code and the applicable federal regulations. The statute provides as follows:

(A) In General

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

- (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
- (ii) who, by reason thereof, needs special education and related services.<sup>[276]</sup>

The Supreme Court addressed the FAPE requirement in *Board of Education of the Hendrick Hudson Central School District v. Rowley*,<sup>277</sup> holding that FAPE is satisfied if a school district provides “specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.”<sup>278</sup> The Court identified a two-part inquiry to analyze whether a local education agency satisfied its obligation to provide FAPE: first, whether there has been compliance with the procedures set forth in the IDEA; and second, whether the IEP, as developed through the required procedures, is reasonably calculated to enable the child to receive some educational benefit.<sup>279</sup> The *Rowley* Court found that, because special education and related services must meet the state’s educational standards, the scope of the benefit required by the IDEA is an IEP reasonably calculated to permit the student to meet the state’s educational standards; that is, generally, to pass from grade to grade, on grade level.<sup>280</sup>

In 2017, the Supreme Court revisited the meaning of a FAPE in *Endrew F. v. Douglas Count School District*,<sup>281</sup> and held 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

---

<sup>276</sup> 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).

<sup>277</sup> 458 U.S. 176 (1982).

<sup>278</sup> *Rowley*, 458 U.S. at 201 (footnote omitted).

<sup>279</sup> *Id.* at 206-07.

<sup>280</sup> *Rowley*, 458 U.S. at 204; 20 U.S.C. § 1401(9).

<sup>281</sup> 137 S. Ct. 988 (2017).

to make progress appropriate in light of the student’s circumstances. Consideration of the student’s particular circumstances is key to this analysis; the Court emphasized in *Andrew F.* that the “adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.”<sup>282</sup>

The Supreme Court set forth a “general approach” to determining whether a school has met its obligation under the IDEA, explaining that:

[w]hile *Rowley* declined to articulate an overarching standard to evaluate the adequacy of the education provided under the Act, the decision and the statutory language point to a general approach: to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.<sup>[283]</sup>

The “reasonably calculated” qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. The IDEA contemplates that this fact-intensive exercise will involve consideration not only of the expertise of school officials but also the input of the child’s parents or guardians. Any review of an IEP must include the recognition that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.<sup>284</sup> The Supreme Court stated:

[t]he IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement. This reflects the broad purpose of the IDEA, an ‘ambitious’ piece of legislation enacted ‘in response to Congress’ perception that a majority of handicapped children in the United States ‘were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to ‘drop out.’” A substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act.<sup>285</sup>

A focus on the particular student is at the core of the IDEA, and so it is unsurprising that the Court concluded that the progress contemplated by the IEP must be appropriate in light of the

---

<sup>282</sup> *Andrew F.*, 136 S. Ct. at 1001.

<sup>283</sup> *Andrew F.*, 137 S.Ct. at 998-99.

<sup>284</sup> *Id.*, at 999

<sup>285</sup> *Id.*, at 999 (quoting *Rowley*, 458 U.S. at 179).

particular student’s circumstances. “The instruction offered must be ‘*pecially* designed’ to meet a child’s ‘*unique* needs’ through an ‘*[i]ndividualized* education program.’”<sup>286</sup> The Court expressly rejected the Tenth Circuit’s interpretation of what constitutes *some* benefit:

[w]hen all is said and done, a student offered an educational program providing “merely more than *de minimis*” progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to ‘sitting idly . . . awaiting the time when they were old enough to ‘drop out.’” The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.<sup>287</sup>

Directly adopting language from *Rowley*, and expressly stating that it was not making any “attempt to elaborate on what ‘appropriate’ progress will look like from case to case,” the *Endrew F.* Court instructs that the “absence of a bright-line rule . . . should not be mistaken for ‘an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.’”<sup>288</sup> At the same time, the *Endrew F.* Court observed 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.”<sup>289</sup>

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

---

<sup>286</sup> *Id.*, at 999 (citations omitted; emphasis in original).

<sup>287</sup> *Id.* at 1001 (citation omitted).

<sup>288</sup> *Id.* (quoting *Rowley*, 458 U.S. at 206).

<sup>289</sup> *Id.* at 1002.

chance to meet challenging objectives.”<sup>290</sup> Moreover, the IEP must be reasonably calculated to allow him to advance from grade to grade, if that is a “reasonable prospect.”<sup>291</sup>

Regarding procedural violations, the IDEA<sup>292</sup> states:

(ii) Procedural issues

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies--

(I) impeded the child’s right to a free appropriate public education;

(II) significantly impeded the parents’ opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents’ child; or

(III) caused a deprivation of educational benefits.

The existence of a procedural violation does not necessarily establish the presence of a substantive one. In *MM ex rel. DM v. School District of Greenville County*,<sup>293</sup> the Fourth Circuit Court of Appeals explained:

It is clear that, under the IDEA, the failure of a school district to have a final IEP in place at the beginning of the school year is a procedural defect. When such a procedural defect exists, we are obliged to assess whether it resulted in the loss of an educational opportunity for the disabled child, or whether, on the other hand, it was a mere technical contravention of the IDEA. *Gadsby v. Grasmick*, 109 F.3d 940, 956 (4th Cir.1997) (“[T]o the extent that the procedural violations did not actually interfere with the provision of a free appropriate public education, these violations are not sufficient to support a finding that an agency failed to provide a free appropriate public education.”). If a disabled child received (or was offered) a FAPE in spite of a technical violation of the IDEA, the school district has fulfilled its statutory obligations.<sup>[294]</sup>

---

<sup>290</sup> *Id.* at 1000.

<sup>291</sup> *Id.*

<sup>292</sup> 20 U.S.C.A. Section 1415(f)(3)(E)(ii).

<sup>293</sup> 303 F.3d 523 (4th Cir. 2002).

<sup>294</sup> *MM ex rel. DM*, 303 F.3d at 533-34; *T.B. Jr. by and through T.B., Sr. v. Prince George’s Cnty. Bd. of Educ.*, 897 F. 3d 566, 573 (4<sup>th</sup> Cir. 2018).

## The IEP

COMAR 13A.05.01.09 defines an IEP and outlines the required content of it to include a written description of the student's special education needs 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.<sup>295</sup>

Among other things, the IEP describes a student's current educational performance, explains how the student's disability affects a student's involvement and progress in the general curriculum, sets forth annual goals and short-term objectives for improvements in that performance, describes the specifically-designed instruction and services that will assist the student in meeting those objectives, describes program modifications and supports for school personnel that will be provided for the student to advance appropriately toward attaining the annual goals, and indicates the extent to which the child will be able to participate in regular educational programs.<sup>296</sup>

IEP teams must consider the student's evolving needs when developing their educational programs. The student's IEP must include "[a] statement of the child's present levels of academic achievement and functional performance, including . . . [h]ow the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for non-disabled children) . . . ."<sup>297</sup> If a child's behavior impedes his or her learning or that of others, the IEP team must consider, if appropriate, the use of positive behavioral interventions, strategies, and supports to address that behavior.<sup>298</sup> To comply with the

---

<sup>295</sup> 20 U.S.C.A. § 1414(d)(3)(A).

<sup>296</sup> 20 U.S.C. § 1414(d)(1)(A)(i)(I)-(V); COMAR 13A.05.01.09A.

<sup>297</sup> 34 C.F.R. § 300.320(a)(1)(i).

<sup>298</sup> *Id.* § 300.324(a)(2)(i).

IDEA, an IEP must, among other things, allow a disabled child to advance toward measurable annual academic and functional goals that meet the needs resulting from the child’s disability or disabilities by providing appropriate special education and related services, supplementary aids, program modifications, supports, and accommodations.<sup>299</sup>

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.<sup>300</sup> However, a “school district is only required to continue developing IEPs for a disabled child no longer attending its schools when a prior year’s IEP for the child is under administrative or judicial review.”<sup>301</sup>

#### Least Restrictive Environment

In addition to the IDEA’s requirement that a disabled child receive educational benefit, the child must be placed in the least restrictive environment (LRE) to achieve a FAPE, meaning that, ordinarily, disabled and non-disabled students should, when feasible, be educated in the same classroom.<sup>302</sup> Indeed, mainstreaming children with disabilities with non-disabled peers is generally preferred if the disabled student can achieve educational benefit in the mainstreamed program.<sup>303</sup> At a minimum, the statute calls for school systems to place children in the “least restrictive environment” consistent with their educational needs.<sup>304</sup> 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.

---

<sup>299</sup> 20 U.S.C. § 1414(d)(1)(A)(i)(II), (IV), (VI).

<sup>300</sup> 34 C.F.R. § 300.324(b)(1).

<sup>301</sup> *MM ex rel. DM*, 303 F.3d 523, 536.

<sup>302</sup> 20 U.S.C.A. § 1412(a)(5); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117.

<sup>303</sup> *DeVries v. Fairfax Cnty. Sch. Bd.*, 882 F.2d 876, 878-79 (4th Cir. 1989).

<sup>304</sup> 20 U.S.C.A. § 1412(a)(5)(A).

Because including children with disabilities in regular school programs may not be appropriate for every child with a disability, the IDEA requires public agencies like MCPS to offer a continuum of alternative placements that meet the needs of children with disabilities.<sup>305</sup> The continuum must include instruction in regular classes, special classes, special schools, home instruction, and hospitals and institutions and make provision for supplementary services to be provided in conjunction with regular class placement.<sup>306</sup>

Consequently, removal of a child from a regular educational environment may be necessary when the nature or severity of a child's disability is such that education in a regular classroom cannot be achieved.<sup>307</sup> In such a case, a FAPE might require placement of a child in a nonpublic school setting that would be fully funded by the child's public school district.

#### Unilateral Placement

Parents may be entitled to retroactive reimbursement from the state for tuition and expenses for a child unilaterally placed in a private school if it is later determined that the school system failed to comply with its statutory duties and the unilateral private placement provided an appropriate education.<sup>308</sup> The scope of reimbursement for unilateral placement was expanded in *Florence County School District Four v. Carter*,<sup>309</sup> where the Supreme Court held that placement in a private school not approved by the state is not a bar under the IDEA. Parents may recover the cost of private education only if (1) the school system failed to provide a FAPE; (2) the private education services obtained by the parent were appropriate to the child's needs; and (3) overall, equity favors reimbursement.<sup>310</sup>

---

<sup>305</sup> 34 C.F.R. § 300.115.

<sup>306</sup> *Id.* § 300.115(b); COMAR 13A.05.01.10B(1).

<sup>307</sup> COMAR 13A.05.01.10A(2).

<sup>308</sup> *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985).

<sup>309</sup> 510 U.S. 7 (1993).

<sup>310</sup> *Carter*, 510 U.S. at 12-13.



Like an IEP, a unilateral parental placement is appropriate if it is “reasonably calculated to enable the child to receive educational benefits.”<sup>311</sup> Evidence of actual progress is important but not dispositive in determining the appropriateness of the placement.<sup>312</sup> The private education services need not be provided in the least restrictive environment, but the tribunal may consider the restrictive nature of a placement in determining whether the placement was appropriate.<sup>313</sup>

### Notice

Section 1415 of title 20 of the United States Code is entitled “Procedural safeguards.” Subsection (c)(1) sets forth notification requirements and dictates that the contents of a written notice, required to be issued by a LEA to parents, include:

- (A) a description of the action proposed or refused by the agency;
- (B) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- (C) a statement that the parents of a child with a disability have protection under the procedural safeguards of this subchapter and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- (D) sources for parents to contact to obtain assistance in understanding the provisions of this subchapter;
- (E) a description of other options considered by the IEP Team and the reason why those options were rejected; and
- (F) a description of the factors that are relevant to the agency’s proposal or refusal.<sup>[314]</sup>

Section 300.503 of title 34 of the Code of Federal Regulations, entitled “Prior notice by the public agency; content of notice” states, in pertinent part:

- (a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency—
  - (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child;or

---

<sup>311</sup> *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009)

<sup>312</sup> *Id.* at 326-327.

<sup>313</sup> *Id.* at 369-370.

<sup>314</sup> 20 U.S.C.A. § 1415(c)(1).

- (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.
- (b) Content of notice. The notice required under paragraph (a) of this section must include—
- (1) A description of the action proposed or refused by the agency;
  - (2) An explanation of why the agency proposes or refuses to take the action;
  - (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
  - (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
  - (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;
  - (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and
  - (7) A description of other factors that are relevant to the agency’s proposal or refusal.

### Equitable Relief

Equitable considerations are relevant in fashioning relief and the tribunal enjoys broad discretion in fashioning such relief.<sup>315</sup> Administrative hearing officers or courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required.<sup>316</sup> Total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable.<sup>317</sup>

### Deference

School officials should be afforded deference based on their expertise, and the IDEA “vests these officials with responsibility for decisions of critical importance to the life of a

---

<sup>315</sup> *Burlington*, 471 U.S. 359 at 374, 369.

<sup>316</sup> *Carter*, 510 U.S. at 16.

<sup>317</sup> *Id.*

disabled child.”<sup>318</sup> Yet, this respect and deference is not limitless.<sup>319</sup> Therefore, “the fact-finder is not required to conclude that an IEP is appropriate simply because a teacher or other professional testifies that the IEP is appropriate.”<sup>320</sup> “Indeed, if the views of school personnel regarding an appropriate educational placement for a disabled child were conclusive, then administrative hearings conducted by an impartial decisionmaker would be unnecessary”<sup>321</sup> and “would render meaningless the entire process of administrative review.”<sup>322</sup>

### THE POSITIONS OF THE PARTIES

The Parents argue that MCPS denied the Student a FAPE for the 2021-2022 school year when it stopped the reevaluation and IEP process in December 2021 by disenrolling the Student from [REDACTED]. The Parents assert that MCPS cannot avoid its obligation to the Student to develop an IEP and offer her a FAPE merely by removing her from the rolls of the school. The Parents argue that, on October 17, 2021, they properly notified MCPS in writing of their concerns about the IEP and their intent to enroll the Student in a private placement at public expense. The Parents further argue that, in December 2021, when MCPS withdrew the Student from [REDACTED], MCPS was obligated to provide the Parents with written notice of a change in placement and their rights pursuant to the IDEA, including the right to obtain and submit an independent evaluation of the Student and the right to object to the change in placement.<sup>323</sup>

As to the 2022-2023 school year, the Parents argue that MCPS denied the Student a FAPE because the IEP and proposed placement were not developed and identified until

---

<sup>318</sup> *Andrew F.*, 137 S. Ct. 988, 1001 (2017). See also *Lessard v. Wilton-Lyndeborough Coop. Sch. Dist. (Lessard II)*, 592 F.3d 267, 270 (1st Cir. 2010) (“The standard of review is thus deferential to the educational authorities, who have ‘primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child’s needs.’”).

<sup>319</sup> See *Cty. Sch. Bd. of Henrico Cty. v. Z.P.*, 399 F.3d 298, 307 (4th Cir. 2005) (“Nor does the required deference to the opinions of the professional educators somehow relieve the [judge] of the obligation to determine as a factual matter whether a given IEP is appropriate.”).

<sup>320</sup> *Id.*; see also *Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1476 (9th Cir. 1993)

<sup>321</sup> *Id.*

<sup>322</sup> *Sch. Bd. of Prince William Cty., Va. v. Malone*, 762 F.2d 1210, 1217 (4th Cir. 1985) (citation omitted).

<sup>323</sup> See 20 U.S.C.A. § 1415(c)(1); 34 C.F.R. § 300.503.

February 15, 2023, and were, therefore, untimely. Furthermore, the Parents claim that the placement in the [REDACTED] program at [REDACTED], as recommended by MCPS in the 2022-2023 IEP, was not appropriate for the Student because the [REDACTED] program is not a therapeutic program and the Student needed therapeutic placement. Finally, the Parents assert that requiring the Student to return to [REDACTED] presented the possibility of triggering and regression for her; therefore, the school team should have chosen a different placement for the Student.

The Parents assert that, because a FAPE was not provided by MCPS for the 2021-2022 and 2022-2023 school years, their placement of the Student at [REDACTED] and [REDACTED] was proper and conferred educational benefit to the Student and reimbursement for those programs and the further relief requested is therefore warranted.

MCPS argues that the Parents have not met their burden to establish that it failed to provide the Student a FAPE in the 2021-2022 school year by stopping the reevaluation process. MCPS asserts that it was not obligated to continue the IEP process, including reevaluation, after the Parents' unilateral placement of the Student at [REDACTED] on October 29, 2021. MCPS also argues that, after the Parents placed the Student at [REDACTED] on October 29, 2021, the Parents did not request that the reevaluations proceed or provide consent for the reevaluations. MCPS asserts that the Parents' October 17, 2021 letter was insufficient to document their concerns about the IEP and to notify MCPS of their intent to enroll the Student in a private placement at public expense.

MCPS avers that the Parents have not met their burden to prove that it failed to timely develop an IEP for the 2022-2023 school year. MCPS asserts that it was not obligated to provide services to the Student after the Parents' unilateral placement in October 2021 when there was no request for reimbursement; when MCPS received the Parents' December 7, 2022 request to restart the process, they acted expeditiously to review the documents provided by the Parents and

convene the IEP meeting as required by law. MCPS further claims that the Parents have not met their burden to establish that the IEP and recommended placement for the Student in the [REDACTED] program at [REDACTED] was inappropriate. MCPS further argues that the equities do not support reimbursement in this case, given the Parents' withholding of information and lack of engagement with the school team.

## ANALYSIS<sup>324</sup>

### I. The 2021-2022 School Year

The Parents argue that MCPS denied the Student a FAPE for the 2021-2022 school year when Dr. [REDACTED] notified them by email on December 10, 2021 that the Student would be withdrawn from [REDACTED].<sup>325</sup> They assert that, by doing so, MCPS improperly terminated its obligation to the Student to conduct the reevaluations needed to develop the IEP and provide her with a FAPE and ignored its responsibilities to provide the Parents with written notice of the change and advisement of their rights under the IDEA. MCPS argues that the Parents' unilateral placement of the Student at [REDACTED] on October 29, 2021 relieved it of such obligations during the 2021-2022 school year.

An analysis of the events between August and November 2021, leading up to MCPS' December 2021 withdrawal of the Student, is relevant. I begin there.

#### A. Efforts to Schedule the Reevaluations Between August and October 2021

The Parents met with the school team members on August 12, 2021 to plan for the reevaluations.<sup>326</sup> The reevaluations did not take place immediately thereafter; the Student was

---

<sup>324</sup> While the due process complaint in this matter alleges failures by MCPS and seeks remedies solely related to the 2021-2022 and 2022-2023 school years, the parties presented evidence and testimony relating to the Student's progression in prior school years. However, I render no findings or conclusions as to the actions of MCPS for any school year prior to 2021-2022.

<sup>325</sup> See P. 17, p. 1; MCPS 22.

<sup>326</sup> See P. 3A; MCPS 10.

hospitalized later that same day and remained hospitalized until August 27, 2021.<sup>327</sup> Moreover, the Parents did not complete and return the consent form during that time or request that the reevaluations take place while the Student was hospitalized prior to the start of the school year. Instead, the Parents and the Student's private provider agreed that conducting the reevaluations during this time would not be effective. Dr. [REDACTED] testified that on August 27, 2021, Dr. [REDACTED] requested that she and the school team members put the reevaluations on hold; Dr. [REDACTED] agreed.<sup>328</sup> On August 30, 2021, in email exchanges between Ms. [REDACTED] and the Parents, the Parents agreed to MCPS' proposal to postpone the reevaluations for three to four weeks to allow the Student to get settled into the new school year.<sup>329</sup>

However, this plan was thwarted by subsequent events. The Student was suspended during the first week of school and then placed in the PHP on September 15, 2021.<sup>330</sup> On October 11, 2021, the Student ran away from home; she returned three days later and was hospitalized again.<sup>331</sup> On October 19, 2021, the Parents asked Ms. [REDACTED] if the reevaluations of the Student could be conducted in the hospital; MCPS staff consulted on this request and, on October 27, 2021, agreed to conduct the reevaluations in the hospital if the Student's providers indicated that she was well enough to participate.<sup>332</sup> However, on October 29, 2021, the Parents notified MCPS that they placed the Student at [REDACTED] in [REDACTED] that day.<sup>333</sup>

On October 29, 2021, in the same email in which the Parents informed the MCPS that they had placed the Student at [REDACTED], the Parents requested to revisit the reevaluation process

---

<sup>327</sup> See Findings of Fact 60-62, 72.

<sup>328</sup> See Findings of Fact 74.

<sup>329</sup> See Findings of Fact 75-76.

<sup>330</sup> See Findings of Fact 83, 87.

<sup>331</sup> See Findings of Fact 91, 95-97.

<sup>332</sup> See Findings of Fact 109-112.

<sup>333</sup> See Findings of Fact 113.

upon the Student's expected discharge from ██████████, which they anticipated would occur in January 2022; on November 5, 2021, the school team members agreed.<sup>334</sup>

Ms. ██████████ testified that the Parents never returned the notice and consent forms for the reevaluations between the meeting that occurred on August 12, 2021 and the Student's placement at ██████████ on October 29, 2021. The Student's mother did not dispute that they received the forms. When asked if the Parents signed and returned to the MCPS the consent form for the reevaluation in 2021, the Student's mother stated that she could not remember specifically signing a consent form for the reevaluation, although she noted that that her husband sometimes signed and sent over the forms.<sup>335</sup> However, the Parents did not identify or introduce into evidence a signed consent form for the reevaluation of the Student in 2021 or 2022 that they provided to MCPS. There is no evidence contained in the record before me to demonstrate that the Parents ever consented in writing to the reevaluations of the Student as discussed at the June and August 2021 IEP meetings.

For the foregoing reasons, I conclude that MCPS did not have the opportunity or the authority to reevaluate the Student between August 12 and October 29, 2021.

B. The October 17, 2021 Letter to the MCPS

In support of their argument that the MCPS was obligated to reevaluate the Student after October 29, 2021, the Parents assert that the October 17, 2021 letter from their prior counsel to Dr. ██████████ set forth their concerns about the provision of FAPE to the Student and rejected the placement in the 2021-2022 IEP. They argue that the letter communicated their intent to enroll the Student in a private placement at the MCPS' expense.

---

<sup>334</sup> See Findings of Fact 115, 117.

<sup>335</sup> Tr., Vol. 3, p. 495.

The October 17, 2021 letter states:

This letter is sent to you in accordance with 34 CFR § 300.148 and following, to advise you that my clients, the parents of [the Student] . . . intend to move their child's placement soon. Given the facts, they have no choice under the circumstances and conditions at hand but to take all steps necessary in having their child placed at the [REDACTED] [REDACTED] [sic] [REDACTED] located in [REDACTED] for the crucial treatment and educational services [she] requires as directed by and required of [the Student's] many professionals in charge of [her] care.

This decision is made in accordance with the view and direction of the many professionals who are involved with caring for [the Student]. This private placement is being made on an emergency basis. Frankly the placement may well commence even before the 10n [sic] days [sic] notice to [the Student's] public school [sic] As you may know, [the Student] has been in-patient in hospital since being found and recovered from [her] most recent elopement from the [REDACTED] [REDACTED] PHP where [she] had been attending as a day student.

[The Student's] mother has herself already so advised your special education department.

This placement is made in order to provide for [the Student's] health and safety.<sup>[336]</sup>

Section 300.148 of title 34 of the Code of Federal Regulations is entitled "Placement of children by parents when FAPE is at issue" and states:

(a) General. This part does not require [a local education agency (LEA)] to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with §§ 300.131 through 300.144.

(b) Disagreements about FAPE. Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in §§ 300.504 through 300.520.

(c) Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to

---

<sup>336</sup> P. 9.



that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

(d) Limitation on reimbursement. The cost of reimbursement described in paragraph (c) of this section may be reduced or denied—

(1) If—

(i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;

(2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in § 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(e) Exception. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement—

(1) Must not be reduced or denied for failure to provide the notice if—

(i) The school prevented the parents from providing the notice;

(ii) The parents had not received notice, pursuant to § 300.504, of the notice requirement in paragraph (d)(1) of this section; or

(iii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and

(2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if—

(i) The parents are not literate or cannot write in English; or

(ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child.

The Parents assert that the October 17, 2021 letter to Dr. [REDACTED] suffices to notify MCPS that the Parents challenged the 2021-2022 IEP and constitutes a request and valid justification for reimbursement for private placement. Alternatively, the Parents argue that the reimbursement cannot be reduced or denied because, pursuant to the exception set forth in paragraph (e)(1) of

the regulation, compliance with paragraph (d)(1) of the regulation would likely have resulted in physical harm to the Student. MCPS argues that the October 17, 2021 letter to Dr. [REDACTED] is insufficient to place MCPS on notice that the Parents rejected the 2021-2022 IEP and fails to demand reimbursement for the private placement.

I conclude that the Parents' October 17, 2021 letter fails to comply with the requirements of section 300.148(d)(1) to qualify them for reimbursement in this case. Mere mention of the regulation in the letter does not suffice to communicate the details required. The letter makes clear that the Parents sought to remove the Student from [REDACTED] on an emergent basis and on the advice of private professionals, for purposes of mental health treatment, and to ensure her health and safety.<sup>337</sup> The statement in the letter that the removal was also intended to provide for the Student's "educational services" does not meet the regulatory requirement because it fails to identify parental concerns regarding the services provided for the Student by MCPS or reject her placement at [REDACTED] as set forth in the 2021-2022 IEP. Furthermore, there is no request for reimbursement included in the letter.

Dr. [REDACTED] testified that he never received a request from the Parents for MCPS to pay for the Student's private placements.<sup>338</sup> Similarly, Ms. [REDACTED] testified that the Parents did not make any such request of MCPS at the November 17, 2021 meeting.<sup>339</sup> In fact, the record before me contains no evidence that the Parents notified MCPS of any placement of the Student after [REDACTED] on October 29, 2021, nor did they request reimbursement for that placement or any other. There is no request for reimbursement documented in any communications from the Parents to MCPS staff during the relevant timeframe contained in the record before me, other than in the Complaint itself.

---

<sup>337</sup> See P. 9.

<sup>338</sup> Tr., Vol. 5, p. 1082.

<sup>339</sup> Tr., Vol. 6, p. 1279.

Finally, the Parents have not established that the exception in paragraph (e)(1) of the regulation applies in this case. It is undisputed that the Student was in crisis between August and October 2021 and that her own mental health challenges and actions placed her in harm's way during that time; those facts, however, are insufficient to meet the exception to the requirements of the regulation. There is no evidence in the record before me to demonstrate how the Parents' efforts to **comply with the regulation** would have resulted in harm to the Student.

C. Application of the IDEA Requirements after October 29, 2021

The Parents assert that MCPS remained obligated to the Student under the IDEA after October 29, 2021, because its responsibility to provide the Student with a FAPE is based on her residence within Montgomery County; her placement at a private school or out of state treatment facility by the Parents does not negate MCPS' responsibility to evaluate the Student and develop an IEP. MCPS counters that the Parents' unilateral placement of the Student at [REDACTED] and request to withdraw the Student from IIS on October 29, 2021 relieved them of their obligation to provide the Student with services and support.

The Parents cite to a series of cases decided by the United States District Court for the District of Columbia in which the court addressed the failure of the local school district to evaluate and/or develop an IEP for a child who resided in the District of Columbia but was not enrolled in a local public school. The holdings in these cases establish that a LEA is not permitted to avoid its responsibility to identify, evaluate, and develop an IEP for a child simply

because the child is not enrolled in the LEA; upon **parental request** to do so, the LEA must comply, regardless of enrollment.<sup>340</sup> Here, however, there is no evidence to establish that the Parents requested any educational services,<sup>341</sup> or that MCPS reinstate the IEP process, including reevaluation of the Student, between October 29, 2021 and December 6, 2022.

Absent a request to continue development of an IEP for a student no longer attending its schools, a school district is required to do so only when a prior year's IEP is under administrative or judicial review.<sup>342</sup> In *District of Columbia v. Vinyard*,<sup>343</sup> the school district proposed an IEP for a child for the 2010-2011 school year; the parents decided to maintain the child's enrollment in a private school instead.<sup>344</sup> The school district then offered to reconvene the IEP team meeting, but the parents did not respond to the request; the parents did not suggest that the proposed IEP was inadequate, request reimbursement, or file a due process claim at that time.<sup>345</sup> In addressing the due process complaint filed over a year later, the court found that the school district "was relieved of any obligation to provide [the child] with a FAPE for the 2010-2011 school year at the point [the parents] declined the offer of services and clearly expressed their intent to keep [the child] enrolled in private school."<sup>346</sup>

---

<sup>340</sup> See *District of Columbia v. Wolfire*, 10 F. Supp.3d 89, 95 (D.D.C. 2014) ("as there is no requirement that a child be currently enrolled in a public school to be entitled to a FAPE offer, similarly there is no requirement that the child be currently enrolled in a public school in order to trigger the LEA's obligation to develop an IEP for that child"); *District of Columbia v. Vinyard*, 971 F. Supp.2d 103, 111 (D.D.C. 2010) ("nothing in [the IDEA] authorizes the school district to ignore a parent's request that an IEP be developed for a child simply because the child is presently enrolled in a private school"); *D.S. v. District of Columbia*, 699 F. Supp.2d 229, 235 (D.D.C. 2010) (reversing the hearing officer's dismissal of the complaint for lack of jurisdiction because the child was not enrolled in public school at the time the complaint was filed and holding that the LEA's obligation to provide the child with a FAPE is grounded in the child's residency, not the child's enrollment); *District of Columbia v. Abramson*, 493 F. Supp.2d 80, 85 (D.D.C. 2007) (the LEA was obligated to evaluate the child at the parent's request even if the child was enrolled in a private school out of state); see also *Letter to Eig*, 52 IDELR 136 (OSEP, January 28, 2009) (LEA cannot refuse parental request to conduct evaluation and determine FAPE eligibility because the child attends a private school in a different jurisdiction).

<sup>341</sup> The Parents withdrew the Student from IIS in October 2021 and did not request that these services recommence. See Findings of Fact 114.

<sup>342</sup> See *MM ex rel. DM v. School District of Greenville County*, 303 F.3d. 523, 536-37 (4th Cir. 2002).

<sup>343</sup> 971 F. Supp.2d 103, 111 (D.D.C. 2010).

<sup>344</sup> See *Vinyard*, 971 F. Supp.2d at 109.

<sup>345</sup> See *id.* at 110.

<sup>346</sup> *Id.*

Moreover, the Parents requested to postpone the reevaluations based on the advice of the Student's private providers, including Dr. [REDACTED], who had been working with the Student since she was in middle school. Dr. [REDACTED] and Ms. [REDACTED], after conferring with their respective supervisors, deferred to those requests, which was appropriate, given the precarious position that the Student was in between August and October 2021. The Parents may not now use the agreement of the school team with the Parents' informed requests against MCPS. As the Court of Appeals for the Fourth Circuit has noted, as "a general matter, it is inappropriate, under the IDEA, for parents to seek cooperation from a school district, and then to seek to exact judicial punishment on the school authorities for acceding to their wishes."<sup>347</sup>

Here, MCPS acted in good faith and complied with the Parents' wishes to hold off on the reevaluation; the Parents cannot meet their burden to establish a violation of FAPE because MCPS did as the Parents requested after the Parents conferred with the Student's private providers. I conclude that the Parents' decision on October 29, 2021, to place the Student at [REDACTED], along with their request to withdraw her from IIS and postpone the reevaluations until the Student was discharged from [REDACTED], relieved MCPS of its obligation to reevaluate the Student or further develop an IEP at that time and until the Parents requested that MCPS resume the Student's IEP development on December 7, 2022.<sup>348</sup>

D. Interactions Between the Parents and MCPS  
From October 29, 2021 through December 2021

Despite the Parents' unilateral placement of the Student at [REDACTED] on October 29, 2021, MCPS scheduled a check-in meeting with the Parents that took place on November 17, 2021. In the emails between Ms. [REDACTED] and the Parents leading up to the

---

<sup>347</sup> *MM ex rel. DM*, 303 F.3d at 533, n.14; *see also M.M. ex rel. J.M. v. Foose*, 165 F. Supp.3d 365, 385 (D. Md. 2015) (finding that the "District can hardly be faulted for complying with the Parents' wishes . . . and the Court is not inclined to penalize the School District for its diligent effort to craft an IEP that met the family's expectations.").  
<sup>348</sup> 20 U.S.C.A. § 1412(a)(10); *see also MM ex rel. DM*, 303 F.3d at 536-37; *Vinyard*, 971 F. Supp.2d at 109-10; *Letter to Wayne*, 119 LRP 4247 (OSEP, January 29, 2019) (If a Parent unilaterally enrolls a child in a private school AND there is no pending FAPE dispute, the LEA does not have to develop an IEP).

meeting, Ms. [REDACTED] clearly stated to the Parents that if [REDACTED] provided an educational component, the Student would need to be withdrawn from [REDACTED] and reenrolled upon her return and explained what to expect in planning for the Student to return to [REDACTED] prior to her discharge from [REDACTED].<sup>349</sup>

At the November 17<sup>th</sup> meeting, the school team members recommended that the parties meet for a reevaluation determination and annual review meeting prior to the Student's discharge from [REDACTED].<sup>350</sup> The Parents agreed with this plan and agreed to send documentation as requested; they did not express confusion about or misunderstanding of this process at the meeting. Moreover, Ms. [REDACTED] testified that the Parents did not express confusion or ask for clarification about the need to withdraw the Student from [REDACTED] and reenroll her upon her return, as previously communicated by Dr. [REDACTED] and Ms. [REDACTED], either at the meeting or thereafter.<sup>351</sup> The Parents did not request that MCPS conduct the reevaluation of the Student while she was at [REDACTED], either at the meeting or thereafter.<sup>352</sup> The Parents did not inquire about the Student resuming the IIS program while she was in treatment at [REDACTED], either at the meeting or thereafter. The Parents did not notify MCPS that they had arranged for Dr. [REDACTED] to evaluate the Student prior to November 30, 2021, the first date of Dr. [REDACTED]'s assessment, either at the meeting or thereafter.

Dr. [REDACTED] testified that the Parents had requested to withdraw the Student from IIS when they placed her at [REDACTED].<sup>353</sup> He explained that, after the Student went to [REDACTED], MCPS staff became aware that the Student was receiving educational services there and he consulted with RACU as to next steps because the Student was eligible to receive services and he wanted

---

<sup>349</sup> See Findings of Fact 117, 122.

<sup>350</sup> See Findings of Fact 126.

<sup>351</sup> Tr. Vol. 6, pp. 1244-46.

<sup>352</sup> Tr. Vol. 6, p. 1279.

<sup>353</sup> See Findings of Fact 114; Tr. Vol. 5, p. 1089.

to ensure that MCPS was complying with the IDEA.<sup>354</sup> On December 10, 2021, Dr. [REDACTED] emailed the Parents with copies to Ms. [REDACTED], Dr. [REDACTED], Ms. [REDACTED], and other staff. The email states:

I hope this message finds you well. I also hope that [the Student] is making progress in her current program. The purpose of this message is to inform you that due to [the Student's] sustained absence from school, we will be withdrawing her from [REDACTED] based on guidance from [RACU] in MCPS. Our hope is that [the Student] can be reenrolled at [REDACTED] in the future. Please let us know if you have any questions.<sup>[355]</sup>

In a letter to Dr. [REDACTED] dated December 11, 2021, sent by email on December 13, 2021, Mr. Hoover, the Parents' prior counsel, responded "noting the deepest opposition to and objection of any effort to bring about the school withdrawal of the Student" by the Parents.<sup>356</sup> Mr. Hoover requested that MCPS identify the authority of MCPS and RACU to effect the "unilateral withdrawal" of the Student in his letter.<sup>357</sup> Dr. [REDACTED] replied to Mr. Hoover's letter by email and provided a link to pertinent information;<sup>358</sup> he further stated in the email that the Student's last day of enrollment at [REDACTED] would be December 15, 2021.<sup>359</sup> Dr. [REDACTED] testified that he did not have any further communications with the Parents or their counsel after December 2021.<sup>360</sup>

The Parents argue that Dr. [REDACTED]'s December 10, 2021 email amounted to a change in the Student's placement in the midst of the IEP process and therefore, that MCPS was required to comply with the statutory and regulatory notice requirements.<sup>361</sup> MCPS counters that, after the Parents' unilateral placement of the Student at [REDACTED] on October 29, 2021, it was not obligated to reevaluate the Student for further development of the IEP absent a request to do so from the Parents.

---

<sup>354</sup> Tr. Vol. 5, p. 1086.

<sup>355</sup> P. 17, p. 1; MCPS 22.

<sup>356</sup> P. 17, p. 2; *see also* P. 18, p. 2.

<sup>357</sup> P. 17, p. 3.

<sup>358</sup> The Student's mother testified that she was unable to access any information when she clicked on the link. Tr., Vol. 2, p. 392. There was no testimony from any witness as to the information in the link.

<sup>359</sup> P. 18, p. 1.

<sup>360</sup> Tr., Vol. 5, p. 1109.

<sup>361</sup> *See* 20 U.S.C.A. § 1415(c)(1); 34 C.F.R. § 300.503.

As a threshold matter, the Parents rely on their assertion that the October 17, 2021 letter to Dr. [REDACTED] from their attorney put MCPS on notice of their challenge the 2021-2022 IEP and request for reimbursement for the placement in support of their argument that the MCPS was required to comply with the statutory and regulatory notice requirements.<sup>362</sup> For the reasons discussed above, this argument fails. Similarly, the Parents rely on their assertion that, despite their unilateral withdrawal of the Student on October 29, 2021 for placement at [REDACTED], MCPS was still obligated thereafter to engage in the IEP process for the Student. For the reasons discussed above, this argument also fails.

The record in this case demonstrates that the Parents knew as early as September 13, 2021, by way of an email from Dr. [REDACTED] before the Student went to the PHP, that the Student could not remain enrolled at [REDACTED] if she was not attending school or participating in the IIS program.<sup>363</sup> The Student's mother asked that the Student be withdrawn from IIS on October 29, 2021 and did not seek those services thereafter.<sup>364</sup> Ms. [REDACTED] further advised the Parents that the Student would need to be withdrawn from [REDACTED] if she were receiving educational instruction elsewhere.<sup>365</sup> At the hearing, there was no suggestion from any witness that enrollment in two educational institutions was permissible: Dr. [REDACTED], the Parents' expert, along with Dr. [REDACTED] and Ms. [REDACTED], testified that a student cannot be enrolled<sup>366</sup> in two educational institutions simultaneously.<sup>367</sup>

The Student's mother testified that after the Parents received Dr. [REDACTED]'s email of December 10, 2021, notifying them that the Student would be withdrawn from [REDACTED], they

---

<sup>362</sup> 34 C.F.R. § 300.148.

<sup>363</sup> See Findings of Fact 86.

<sup>364</sup> Ms. [REDACTED] testified that there is an application process to qualify for IIS; parents must complete a form, along with a licensed psychiatrist or psychologist who is treating the student and can explain why the student cannot attend school in person. Tr., Vol. 6, pp. 1226-27.

<sup>365</sup> See Findings of Fact 122.

<sup>366</sup> See e.g., *Letter to Wayne*, 119 LRP 4247 (OSEP, January 29, 2019).

<sup>367</sup> Tr., Vol. 2, p. 477; Tr., Vol. 5, p. 1116; Tr., Vol 6, p. 1240.



“thought [MCPS] didn’t want to have anything more to do with [the Student].”<sup>368</sup> She stated that Dr. [REDACTED]’s email caused them some “panic” because they did not yet know what was happening with the Student.<sup>369</sup> The Parents claimed that they understood that a meeting would be further scheduled for December 2021, based on Ms. [REDACTED]’s email, but they did not hear from her about a meeting in December and did not know why.<sup>370</sup>

These assertions are mystifying. When the Parents met with the school team members on November 17, 2021, the parties discussed what to expect going forward with respect to possibly reenrolling the Student at [REDACTED] upon her discharge from [REDACTED]; the Parents agreed with MCPS’ recommendation as to next steps.<sup>371</sup> The Parents did not request to schedule a date for a December 2021 meeting or make further inquiry about it at the November 17<sup>th</sup> meeting or between then and Dr. [REDACTED]’s December 10, 2021 email. The Parents did not follow up with anyone from MCPS and request clarification on the effect of the withdrawal or next steps after December 10, 2021. The Parents never notified MCPS about the Student’s discharge from [REDACTED] or her subsequent placements.

Moreover, the Parents were not uninformed or uninvolved; the record is replete with numerous instances of the Parents making inquiries and advocating for the Student on many levels, with her private providers, with MCPS staff, with Mr. [REDACTED], and with representatives from the private placements that they considered for the Student. I am not persuaded that MCPS’ withdrawal of the Student from the rolls at [REDACTED] in December 2021 came as a surprise to them or that they did not understand the reason for it.

I conclude that Dr. [REDACTED]’s emails in December 2021, withdrawing the Student’s enrollment at [REDACTED], did not amount to a change in the Student’s placement that was subject

---

<sup>368</sup> Tr., Vol. 2, p. 389.

<sup>369</sup> Tr., Vol. 2, p. 389.

<sup>370</sup> Tr., Vol. 2, p. 392.

<sup>371</sup> See Findings of Fact 125-27.

to the statutory and regulatory notice requirements.<sup>372</sup> The information communicated by Dr. [REDACTED] in the emails merely formalized the Parents' actions in withdrawing the Student on October 29, 2021 and placing her at [REDACTED], an educational placement, as previously explained to the Parents on several occasions.

## II. The 2022-2023 School Year

The Parents assert that the IEP for the 2022-2023 school year was not timely developed.<sup>373</sup> MCPS disagrees, noting that it did not have an obligation to develop an IEP after the Parents withdrew the Student without asserting a FAPE violation as of October 29, 2021, and that the IEP for the 2022-2023 school year was promptly developed after the Parents requested it on December 7, 2022.<sup>374</sup> The Parents further argue that the services and placement stated in the IEP were inappropriate for the Student<sup>375</sup> and assert that MCPS could have placed the Student at a school other than [REDACTED].<sup>376</sup> MCPS argues that the IEP for the 2022-2023 school year provided the Student a program that was reasonably calculated to enable the Student to make progress in light of her circumstances in the LRE.<sup>377</sup> MCPS disagrees that it could have placed the Student at a school other than [REDACTED].<sup>378</sup>

I discuss each argument in turn.

### A. Timeliness

As discussed in Section I.C above, I have concluded that MCPS did not have an obligation to develop an IEP for the Student after the Parents withdrew the Student on October 29, 2021. However, when counsel for the Parents requested resumption of the IEP process by

---

<sup>372</sup> 20 U.S.C.A. § 1415(c)(1); 34 C.F.R. § 300.503.

<sup>373</sup> 34 C.F.R. § 300.324(b)(1)(i); COMAR 13A.05.01.08B(1).

<sup>374</sup> See *MM ex rel. DM*, 303 F.3d at 536-37; *Vinyard*, 971 F. Supp.2d at 109-10.

<sup>375</sup> See, e.g., *Rowley*, 458 U.S. at 201 (footnote omitted); *Endrew F.*, 137 S.Ct. at 998-99.

<sup>376</sup> 34 C.F.R. § 300.116(d) (The school district “must ensure . . . [i]n selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs . . . .”)

<sup>377</sup> See, e.g., *Rowley*, 458 U.S. at 201 (footnote omitted); *Endrew F.*, 137 S.Ct. at 998-99; see also 20 U.S.C.A. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2).

<sup>378</sup> 34 C.F.R. § 300.116(b)(3) (The school district “must ensure that . . . [t]he child’s placement . . . [i]s as close as possible to the child’s home . . . .”)

letter dated December 7, 2022, MCPS was then obliged to convene an IEP team meeting and develop an IEP for the Student. Dr. [REDACTED]'s psychological report and some of the reports from the Student's unilateral placements were provided to MCPS only after the Parents' December 7, 2022 request to resume the IEP process.<sup>379</sup> The school team reviewed the information provided to them by the Parents and convened a meeting on January 30, 2023, which continued to February 15, 2023, at which time the IEP was finalized.

In considering the timeline of events, I conclude that the IEP team worked with all haste to develop the Student's IEP promptly and expeditiously; the Parents have not met their burden to establish a delay that deprived the Student of a FAPE.<sup>380</sup>

B. The 2022-2023 IEP Services and the [REDACTED] Program

The Student's mother characterized the 2022-2023 IEP as a "cookie cutter" program.<sup>381</sup> She noted that the Parents were concerned that the school team members present at the meetings did not know the Student from her previous enrollment.<sup>382</sup> The Student's mother explained that, during the meetings, she asked the school team members questions about the [REDACTED] program; based on their responses and the Student's progress at that time, she believed that the Student could have probably been a paraeducator in the program, rather than a student.<sup>383</sup>

The Student's mother testified that she believed that the [REDACTED] program was inappropriate for the Student but did not elaborate. Her testimony seemed contradictory: on one hand, she testified that the self-contained day program in the IEP might have been appropriate for the Student, but on the other hand she then stated that the Student had advanced beyond that need.<sup>384</sup> When asked why the Parents requested a referral to the CIEP for a placement

---

<sup>379</sup> See Findings of fact 172.

<sup>380</sup> 34 C.F.R. § 300.324.

<sup>381</sup> Tr., Vol. 2, p. 409.

<sup>382</sup> Tr., Vol. 2, p. 409.

<sup>383</sup> Tr., Vol. 2, pp. 409-10.

<sup>384</sup> Tr., Vol. 2, p. 412.

recommendation, the Student's mother testified that they "felt that neither this placement nor the referral nor what the MCPS had done all along for [the Student] was fair or failed to abide by the law."<sup>385</sup> She did not specify an alternative that the Parents wished to have considered by MCPS.

Dr. [REDACTED] testified that in her interview with the Student, she observed a markedly different person than the person reflected in the records; she stated the Student currently possesses a level of maturity that she does not frequently see in the young adults with whom she works, compared with someone who had multiple areas of need and levels of distress as reflected in the documents.<sup>386</sup> Dr. [REDACTED] stated that, given the timing of the development of the IEP and what she knew of the Student's needs, she had concerns about the effectiveness of the 2022-2023 IEP and did not believe it would be beneficial to the Student, without further specifics.<sup>387</sup> She found that several of the goals needed adjustment to their implementation or should have included added support for the Student, but did not suggest alternatives.<sup>388</sup> Dr. [REDACTED] never contacted MCPS to share her opinions about the 2022-2023 IEP after the Parents hired her in March 2023.<sup>389</sup>

The school team members who attended the 2022-2023 IEP meetings did not recall specific objections raised by the Parents to the content of the IEP with respect to the present levels or the goals and objectives. Mr. [REDACTED] recalled that the Parents objected to some proposed services and the [REDACTED] program because they wanted more services than the [REDACTED] program could provide; he believed they were looking for something that matched the level of services that the Student had been receiving in private placement.<sup>390</sup> He recalled the Parents were also concerned about including the Student in the general education setting with adult support for

---

<sup>385</sup> Tr., Vol. 3, p. 517.

<sup>386</sup> Tr., Vol. 1, p. 70.

<sup>387</sup> Tr., Vol. 1, pp. 198-200.

<sup>388</sup> Tr., Vol. 1, pp. 196-97.

<sup>389</sup> Tr., Vol. 1, pp. 212-13.

<sup>390</sup> Tr., Vol. 4, pp. 886-87; Tr., Vol. 5, 914-15; 940.

two electives.<sup>391</sup> However, the Parents asserted that the Student needed no adult support during lunch.<sup>392</sup> Similarly, Ms. ██████ testified that the Parents disagreed with the services and ██████ placement.<sup>393</sup>

The evidence and testimony before me do not establish with any specificity the basis for the Parents' objection to the services outlined in the 2022-2023 IEP. In developing the IEP, the school team members considered Dr. ██████'s report on the psychological evaluation of the Student, as well as three treatment plans from ██████, the ██████ discharge summary, the Student's ██████ report cards, a treatment plan summary from ██████, and two discharge summaries from ██████. Ms. ██████ testified that the documentation from ██████, however, did not include information about any modifications to the Student's instruction to meet her needs.<sup>394</sup> Therefore, the sole document in possession of the IEP team that addressed supports and modifications for the Student's educational needs was Dr. ██████'s report.

A review of the supplementary aids and supports discussed in the 2022-2023 IEP and Dr. ██████'s recommendations does not identify significant discrepancies relating to modifications to the Student's instruction.<sup>395</sup> Dr. ██████ recommended that instructors check in frequently with the Student to ensure understanding and that the Student be given preferential seating, extended time for testing, and the ability to access books in audio form.<sup>396</sup> The 2022-2023 IEP includes these supports.<sup>397</sup> Dr. ██████ recommended supplemental and modified instruction materials be provided to the Student.<sup>398</sup> These specific recommendations were not incorporated in the IEP; it provides that the Student shall have a preview of questions to be asked during class and

---

<sup>391</sup> Tr., Vol. 5, p. 914.

<sup>392</sup> Tr., Vol. 4, p. 888.

<sup>393</sup> Tr., Vol. 5, pp. 1012, 1018.

<sup>394</sup> Tr., Vol. 6, p. 1259.

<sup>395</sup> See P. 16; MCPS 33; MCPS 34.

<sup>396</sup> P. 16, p. 23.

<sup>397</sup> See P. 28, pp. 27-31; MCPS 33, pp. 27-31; MCPS 34, p. 1.

<sup>398</sup> P. 16, p. 23.

checklists/breakdowns of assignments and processes to reinforce the Student's understanding of the lessons and assignments.<sup>399</sup> None of the Parents' witnesses explained why the other recommendations made by Dr. ██████ should have been included in the IEP, or how they could have been implemented by MCPS. Furthermore, the IEP incorporates information provided by the Student's teachers at ██████ regarding her academic progress while enrolled there.<sup>400</sup>

To meet their burden, the Parents must demonstrate the inappropriateness of the placement in the ██████ program.<sup>401</sup> The Parents and their witness presented only ambiguous objections to the 2022-2023 IEP services, supports, and placement in the ██████ program with inclusion in general education for two electives, mostly centered on their assertion that the Student had outgrown the need for such services. I give little weight to Dr. ██████'s opinion, as her assertions were vague and unsupported.

MCPS has no burden here; however, I credit the testimony of Mr. ██████, Ms. ██████, and Ms. ██████ regarding the development of the IEP. Each of them was accepted as an expert in special education, without objection. I find that, despite the fact that they did not teach the Student or work with her during her prior enrollment at ██████, each was able to understand the information presented in the records and by the Parents and provide meaningful input in developing an IEP for the Student that was reasonably calculated to allow her to make progress in light of her circumstances.<sup>402</sup> After careful consideration of the Parents' position, I am persuaded that the February 15, 2023 IEP provides the Student with a program "reasonably calculated to enable [her] to make progress appropriate in light of [her] circumstances."<sup>403</sup> Therefore, I find that MCPS offered the Student a FAPE for the 2022-2023 school year.

---

<sup>399</sup> See P. 28, pp. 27-31; MCPS 33, pp. 27-31; MCPS 34, p. 1.

<sup>400</sup> See P. 28, pp. 9, 13-14; MCPS 33, pp. 9, 13-14.

<sup>401</sup> See, e.g., *Rowley*, 458 U.S. at 201 (footnote omitted); *Endrew F.*, 137 S.Ct. at 998-99.

<sup>402</sup> See *id.*

<sup>403</sup> *Endrew F.*, 137 S.Ct. at 999.

C. The 2022-2023 IEP Placement at [REDACTED]

The Student's mother testified that the Parents had significant concerns about returning the Student to [REDACTED] and explained that "the whole building was a big emotional fire" for the Student due to her drug use there during her prior enrollment, the possible presence of [REDACTED],<sup>404</sup> and a bad academic experience.<sup>405</sup> Dr. [REDACTED], like the Student's mother, also expressed reservations about the placement of the Student at [REDACTED]. She stated that the [REDACTED] program could have been implemented elsewhere but returning to [REDACTED] created the possibility of triggering and retraumatizing the Student, which could be detrimental to her progress to date.<sup>406</sup> However, the Parents did not suggest any alternative placement.

The school team members who attended the 2022-2023 IEP meetings recalled that the Parents did not wish for the Student to return to [REDACTED]. Mr. [REDACTED] stated that he understood the Parents' concerns related to sending the Student to [REDACTED] and took them seriously.<sup>407</sup> He testified that he told the Parents that he would support a change in school assignment (COSA) for the Student in the event that the Parents decided to pursue one.<sup>408</sup> School team members explained the COSA process to the Parents.<sup>409</sup> However, the school team members testified that they could not assign the Student to a different school based on the Parents' concerns as expressed during the meeting. Mr. [REDACTED] and Ms. [REDACTED] both explained that the school assignment is determined by an articulation grid; the school team members are not at liberty to depart from it absent some unusual circumstances not present in the Student's case.<sup>410</sup> MCPS' witnesses made it clear that the school assignment must be based on the residence of the child,

---

<sup>404</sup> The Parents inquired of Dr. [REDACTED] as to whether [REDACTED] was enrolled at [REDACTED] during the 2022-2023 school year. MCPS objected to the question. I sustained the objection on the grounds of relevance and the basis of preserving the confidentiality of information related to [REDACTED]. Tr., Vol. 5, pp. 1100-03. COMAR 28.02.01.11B(3).

<sup>405</sup> Tr., Vol. 2, p. 410.

<sup>406</sup> Tr., Vol. 1, p. 199.

<sup>407</sup> Tr., Vol. 4, p. 885.

<sup>408</sup> Tr., Vol. 4, pp. 885-86.

<sup>409</sup> Tr., Vol. 4, p. 886; Tr., Vol. 5, pp. 962-63.

<sup>410</sup> Tr., Vol. 5, pp. 918-921, 961-62, 968-69.

transportation needs, and other factors, not including the wishes of the parents.<sup>411</sup> Mr. [REDACTED] and Ms. [REDACTED] testified that the Parents did not suggest an alternative placement instead of [REDACTED].<sup>412</sup>

MCPS argues equities warrant the denial or reduction of any reimbursement award in this case.<sup>413</sup> In *MM ex rel. DM*, the Fourth Circuit rejected the parents' argument that the school district was required to complete the child IEP, regardless of the parents' cooperation.<sup>414</sup> The court found "no evidence that MM's parents would have accepted any FAPE offered by the District that did not include reimbursement for the Lovaas program. . . . In these circumstances, MM suffered no prejudice from the District's failure to agree to her parents' demands."<sup>415</sup> In *Sanger v. Montgomery County Board of Education*,<sup>416</sup> the court upheld a denial of reimbursement for the parents' unilateral placement of the child at the Grove School in Connecticut after the parents failed to respond to or cooperate with the school district's efforts, noting that the parents "were wedded to funding at Grove and nothing else. It thus would not have mattered in the least when RICA<sup>[417]</sup> was written into the IEP because from the outset the Sangers made it clear that they would not accept it."<sup>418</sup>

Here, the evidence does not support a finding that the Parents intended to return the Student to any MCPS school. The Parents failed to provide any documentation to MCPS related to the Student's hospitalizations and private placements between August 2021 and December 2022; some of the documentation ultimately admitted into evidence in this hearing was not disclosed to MCPS until after the Complaint was filed. In the Parents' communications with Mr.

---

<sup>411</sup> Tr., Vol. 5, pp. 920-22, 924-26, 969-70.

<sup>412</sup> Tr., Vol. 5, pp. 936, 972.

<sup>413</sup> See *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 247 (2009) (holding that "courts retain discretion to reduce the amount of a reimbursement award if the equities so warrant . . . .")

<sup>414</sup> 303 F.3d at 534.

<sup>415</sup> *Id.* at 535.

<sup>416</sup> 916 F. Supp. 518 (D. Md. 1996).

<sup>417</sup> Regional Institute for Children and Adolescents. See 916 F. Supp. at 521.

<sup>418</sup> *Id.* at 526.



██████ in October 2022 and January 2023, they asked him to find a young adult placement for the Student and requested that he intervene with staff at ██████ to facilitate the Student's award of a diploma from that placement. The Parents did not inform MCPS of these efforts during the 2022-2023 IEP meetings or advise MCPS that they were strongly considering placing the Student at ██████ upon her discharge from ██████. They did not inquire with anyone from MCPS about whether the Student could enroll in MCPS if she received a diploma from another educational institution. They did not advise MCPS that the Student had been awarded a diploma from ██████ in March 2023.

In testimony, the Student's mother asserted that the school team did not ask for information to conduct a resolution of her grades from the private placements to determine how many more credits the Student needed to graduate.<sup>419</sup> However, the school team members testified differently. Ms. ██████ testified that she had requested the transcripts from the Parents in preparation for the 2022-2023 IEP meetings, but that MCPS had not received them by the February 15, 2023 meeting.<sup>420</sup> She explained that one of the documents from ██████ included grades and teacher comments, but did not include dates of attendance; the school team members had questions about where the Student was with respect to credits and again requested the transcripts at the meeting.<sup>421</sup>

Mr. ██████ testified that the school team members could not get a clear understanding of the Student's credits at the time of the 2022-2023 IEP meetings.<sup>422</sup> He explained that this information can be important in determining the plan for a child; if the child needs just a couple of P.E. credits, that situation would be addressed differently from a child with a reading

---

<sup>419</sup> Tr., Vol. 2, p. 409; Tr., Vol. 3, p. 577.

<sup>420</sup> Tr., Vol. 6, pp. 1251, 1259-60.

<sup>421</sup> Tr., Vol. 6, pp. 1251-52, 1260.

<sup>422</sup> Tr., Vol. 4, p. 862.

comprehension deficit in need of English credits; Ms. [REDACTED] testified similarly.<sup>423</sup> Mr. [REDACTED] stated that the school team members asked the Parents for more information on this issue but did not receive it, which was of concern to the other team members and himself.<sup>424</sup>

Ms. [REDACTED] also recalled that the school team members had some transcripts from the Student's private placements at the 2022-2023 IEP meetings but testified that the information was insufficient to make a final evaluation of how many credits the Student needed to graduate.<sup>425</sup> She explained that the Parents did not inform the school team members that they were seeking to extend the Student's stay at [REDACTED] so that she could complete her credits and obtain her diploma and noted that the team would not have even discussed the credits if they knew that information at the time of the meeting.<sup>426</sup> She testified that a student who has obtained a diploma elsewhere cannot enroll in MCPS and be awarded another diploma; such a student would not be permitted to enroll in MCPS.<sup>427</sup>

While I certainly understand the Parents' perspective that attendance at [REDACTED] could be difficult for the Student or trigger her based on her past experiences, I am not persuaded that the placement in the [REDACTED] program [REDACTED] in the 2022-2023 IEP failed to offer the Student a FAPE. Based on the lack of evidence by the Parents and upon consideration of the persuasive explanations offered by MCPS' witnesses, I conclude that the Parents have not met their burden to demonstrate that [REDACTED] was not an appropriate placement for the Student as set forth in the IEP.<sup>428</sup>

---

<sup>423</sup> Tr., Vol. 4, pp. 862-84; Tr., Vol. 6, p. 1253.

<sup>424</sup> Tr., Vol. 4, pp. 863-65.

<sup>425</sup> Tr., Vol. 5, p. 1010.

<sup>426</sup> Tr., Vol. 5, p. 1011.

<sup>427</sup> Tr., Vol. 5, p. 1011.

<sup>428</sup> See, e.g., *Rowley*, 458 U.S. at 201 (footnote omitted); *Endrew F.*, 137 S.Ct. at 998-99; see also 20 U.S.C.A. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2).

### III. Summary

I have concluded in this case, for the reasons set forth above, that the IEPs offered by MCPS for the 2021-2022 and 2022-2023 school years provided the Student a FAPE and that MCPS was not obligated to reevaluate the Student and develop an IEP for her between October 29, 2021 and December 7, 2022. The analysis of whether a parent's private placement choice is proper is required only if the IEP proposed by the local education agency results in the denial of a FAPE.<sup>429</sup> Therefore, under *Carter* and *Burlington*, the issue of whether the Student's placement at [REDACTED] and [REDACTED] is proper is not required to be addressed further in this decision. As MCPS did not deny the Student a FAPE for the 2021-2022 and 2022-2023 school years, the Parents' claim for reimbursement of tuition, costs, and expenses associated with the Student's unilateral placement at [REDACTED] and [REDACTED], their request for placement of the Student at an MCPS school for purposes of participating in a modified online high school program or reimbursement for similar courses at another institution, addition of those courses to the Student's transcript, the award of diploma to the Student from [REDACTED] High School, and guidance services to the Student to support her transition to college, are denied.

### CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the October 17, 2021 letter to MCPS from the Parents' counsel did not constitute proper notice of their challenge to the 2021-2022 IEP and request for reimbursement.<sup>430</sup>

I further conclude as a matter of law that the Parents unilaterally withdrew the Student from MCPS on October 29, 2021, thereby terminating the MCPS's obligation reevaluate the Student and develop the IEP for the 2021-2022 school year.<sup>431</sup>

---

<sup>429</sup> *Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993); *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985).

<sup>430</sup> 34 C.F.R. § 300.148 (2021).

<sup>431</sup> 20 U.S.C.A. § 1412(a)(10); *MM ex rel. DM v. Sch. Dist. Of Greenville Co.*, 303 F.3d 523 (4<sup>th</sup> Cir. 2002); *District*

I further conclude as a matter of law that the IEP and placement proposed by MCPS for the 2022-2023 school year was timely and reasonably calculated to offer the Student a FAPE in the least restrictive environment.<sup>432</sup>

I further conclude as a matter of law that the Parents failed to establish that they are entitled to reimbursement for tuition and related expenses at [REDACTED] and/or [REDACTED].<sup>433</sup>

I further conclude as a matter of law that the Parents failed to establish that they are entitled to placement of the Student at an MCPS school for purposes of participating in a modified online high school program or reimbursement for similar courses at another institution, addition of those courses to the Student's transcript, the award of diploma to the Student from [REDACTED] High School, and guidance services to the Student to support her transition to college.<sup>434</sup>

### **ORDER**

I **ORDER** that the Parents' request for reimbursement for tuition and related expenses at [REDACTED] and/or [REDACTED], placement of the Student at an MCPS school for purposes of participating in a modified online high school program or reimbursement for similar courses at another institution, addition of those courses to

---

*of Columbia v. Vinyard*, 971 F. Supp.2d 103 (D.D.C. 2010); *Letter to Wayne*, 119 LRP 4247 (OSEP, January 29, 2019).

<sup>432</sup> 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).

<sup>433</sup> 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).

<sup>434</sup> 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).

the Student's transcript, the award of diploma to the Student from [REDACTED] High School, and guidance services to the Student to support her transition to college is **DENIED**.

October 26, 2023  
Date Decision Mailed

Kristin E. Blumer  
Administrative Law Judge

KEB/at  
#206983

### **REVIEW RIGHTS**

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

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

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

**Copies Mailed To:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

██████████,

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE KRISTIN E. BLUMER,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-MONT-OT-23-11058

**FILE EXHIBITS LIST**

I admitted the following exhibits offered by the Parents, unless otherwise noted:<sup>1</sup>

- P. 1: Due Process Complaint, April 24, 2023
- P. 2: Suicide Note, undated
- P. 3: MCPS IEP, June 7, 2021
- P. 3A: MCPS IEP Meeting Notes, August 12, 2021
- P. 3B: Email to various MCPS staff from Parents, August 22, 2021
- P. 4: Letter to Whom It May Concern from ██████████, M.D., August 10, 2021
- P. 5: Emails between MCPS staff and Parents, September 3, 2021; letter to Parents from ██████████, Ed. D., September 7, 2021; emails between MCPS staff and Parents, various dates
- P. 6: Psychiatric Evaluation, ██████████ PHP, September 15, 2021
- P. 7: Emails between various MCPS staff, Parents, and Parents' prior counsel, various dates
- P. 8: Psychosocial Assessment Form, ██████████, October 15, 2021
- P. 9: Letter to Dr. ██████████ from Parents' prior counsel, October 17, 2021
- P. 10: Emails between educational consultants and Parents, various dates
- P. 11: ██████████ Partial Hospitalization Program (PHP), Treatment Team Notes, September 21, 2021 to October 12, 2021

---

<sup>1</sup> Any exhibits that were marked for identification but not admitted were retained for the record and are in a separate file marked "not admitted." COMAR 28.02.01.22C.

- P. 12: ██████████ PHP, Discharge Summary, October 22, 2021
- P. 12A: ██████████, Discharge Summary and Transition of Care, October 29, 2021
- P. 13: MCPS IEP Progress Report, June 16, 2021 and November 3, 2021
- P. 14: Emails between various MCPS staff and Parents, various dates
- P. 15: MCPS Prior Written Notice (PWN), November 22, 2021
- P. 16: Psychological Evaluation, December 20, 2021
- P. 17: Emails to Parents from Dr. ██████████, December 10, 2021; Letter to Dr. ██████████ from Parents' prior counsel, December 11, 2021
- P. 18: Emails between Dr. ██████████, Parents, and Parents' prior counsel, various dates
- P. 19: ██████████, Treatment Plan Summary, December 10, 2021
- P. 20: ██████████, Discharge Summary, January 26, 2022
- P. 21: ██████████ / ██████████ / ██████████, Transcript, February 3, 2022
- P. 22: ██████████ Discharge Summary Report, March 19, 2022
- P. 23: ██████████, Treatment Plan Summary, March 28, 2022
- P. 24: ██████████, Transcript, April 12, 2022
- P. 25: ██████████, Discharge Summary, April 21, 2022
- P. 26: Letter to Stacy Reid Swain, Esq. from Jani S. Tillery, Esq., December 7, 2022
- P. 27: MCPS Emotional Disability/Multidisciplinary Evaluation Form, January 30, 2023; MCPS Specific Learning Disability Team Report, January 30, 2023
- P. 28: MCPS IEP, February 15, 2023
- P. 29: MCPS PWN, February 15, 2023
- P. 30: Letter to Whom It May Concern from ██████████, M.D. and ██████████ ██████████, CMHC, ██████████, February 21, 2023
- P. 31: ██████████, Treatment Plan Reviews, various dates



- P. 32: [REDACTED], Transcript, February 23, 2023
- P. 33: [REDACTED], Report Card, various dates
- P. 34: *not admitted*
- P. 35: *not admitted*
- P. 36: Resume, [REDACTED], Ed. D., undated
- P. 37: Resume, [REDACTED], Psy. D., undated
- P. 38: Resume, [REDACTED], LCSW-C, undated
- P. 39: *not admitted*

I admitted the following exhibits offered by MCPS, unless otherwise noted:

- MCPS 1: Psychological Consultation, evaluation date May 7, 2018
- MCPS 2: *not admitted*
- MCPS 3: MCPS IEP, June 2, 2020, including progress report, April 16, 2021
- MCPS 4: *not admitted*
- MCPS 5: *not admitted*
- MCPS 6: MCPS IEP, June 7, 2021
- MCPS 7: MCPS PWN, June 7, 2021
- MCPS 8: MCPS 2020-2021 School Year Grade Report, June 23, 2021
- MCPS 9: Emails between [REDACTED] and Parents, various dates; Notice of IEP Team Meeting, dated July 28, 2021
- MCPS 10: MCPS PWN, August 12, 2021
- MCPS 11: Emails between MCPS staff, Parents, and Dr. [REDACTED], various dates
- MCPS 12: [REDACTED], Patient Discharge Information and Return to School/Work, August 27, 2021
- MCPS 13: Letter to Parents from Dr. [REDACTED], September 7, 2021; emails between MCPS staff and Parents, various dates
- MCPS 14: [REDACTED], Authorization to Use, Disclose, and/or Receive Protected Health Information, signed September 15, 2021

- MCPS 15: MCPS PWN, October 1, 2021
- MCPS 16: *not admitted*
- MCPS 17: Emails between Parents and educational consultants, various dates
- MCPS 18: Emails between Parents and MCPS staff, various dates
- MCPS 19: ██████████, Discharge Report, October 29, 2021
- MCPS 20: MCPS PWN, November 22, 2021
- MCPS 21: ██████████, Treatment Plan Summary, December 10, 2021
- MCPS 22: Email to Parents from Dr. ██████, December 10, 2021
- MCPS 23: ██████████, The Student Pathway, undated
- MCPS 24: ██████████, Discharge Summary, January 26, 2022
- MCPS 25: ██████████, Discharge Summary Report, March 19, 2022
- MCPS 26: Emails between Parents, educational consultants, and private placement staff, various dates
- MCPS 27: ██████████, Discharge Summary, April 21, 2022
- MCPS 28: ██████████, Treatment Plan, May 9, 2022
- MCPS 29: ██████████ Division of Health Service Regulation, Notice of Deficiencies, ██████████, June 6, 2022
- MCPS 30: Emails between Parents, educational consultants, and private placement staff, various dates
- MCPS 31: ██████████, Treatment Plan, January 18, 2023
- MCPS 32: MCPS Emotional Disability/Multidisciplinary Evaluation Form, January 30, 2023
- MCPS 33: MCPS IEP, February 15, 2023
- MCPS 34: MCPS PWN, February 15, 2023
- MCPS 35: Level One Member Insurance Appeal, October 21, 2022; Level Two Member Insurance Appeal, February 14, 2023
- MCPS 36: Emails between Parents and ██████████, Ed. D., various dates

- MCPS 37: MCPS Response to Complaint, May 9, 2023
- MCPS 38: *not admitted*
- MCPS 39: ██████████, Treatment Plan Reviews, various dates
- MCPS 40: ██████████, Discharge Summary, March 6, 2023
- MCPS 41: *not admitted*
- MCPS 42: *not admitted*
- MCPS 43: *not admitted*
- MCPS 44: JAMA Pediatrics, Global Prevalence of Depressive and Anxiety Symptoms in Children and Adolescents During COVID-19, November 2021
- MCPS 45: Centers for Disease Control and Prevention, Youth Risk Behavior Survey, 2011-2021
- MCPS 46: Resume, ██████████, undated
- MCPS 47: Resume, ██████████, Ed. D., undated
- MCPS 48: Resume, ██████████, undated
- MCPS 49: Resume, ██████████, Ph. D., undated
- MCPS 50: Resume, ██████████, undated
- MCPS 51: Resume, ██████████, undated
- MCPS 52: Resume, ██████████, undated