

[REDACTED],
STUDENT

v.
MONTGOMERY COUNTY
PUBLIC SCHOOLS

BEFORE DENISE O. SHAFFER,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-MONT-OT-23-11172

DECISION

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STATEMENT OF THE CASE

On April 26, 2023, [REDACTED] and [REDACTED] (Parents), through counsel, filed a Due Process Complaint (Complaint) on behalf of [REDACTED] (Student) with the Office of Administrative Hearings (OAH), requesting a hearing to review the identification, evaluation, or placement of the Student by the Montgomery County Public Schools (MCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017);¹ 34 C.F.R. § 300.511(a) (2021);² Md. Code Ann., Educ. § 8-413(d)(1) (2022);³ Code of Maryland Regulations (COMAR) 13A.05.01.15C(1).

On June 7, 2023, I conducted a remote pre-hearing conference (Conference) using the Webex videoconferencing platform. Paula Rosenstock, Esquire, participated on behalf of the

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

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

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

Student and his Parents; the Student's father was present. Craig S. Meuser, Esquire, participated on behalf of the MCPS. The first dates available for all parties for the hearing on the merits were July 12, 13, 14, 17, 31, August 1, and 2, 2023.⁴ The first three days were held as scheduled. Over the weekend before Monday, July 31, 2023, counsel for the Parents had an emergency requiring the remaining four days to be rescheduled.⁵ I held a scheduling conference on July 31, 2023. Michael Eig, Esquire, stood in for Ms. Rosenstock. The final three days of the hearing were held on the next three dates the parties had available: September 7, 8, and 11, 2023. Ms. Rosenstock, Esquire, represented the Parents. Craig S. Meuser, Esquire, represented the MCPS.

Under the applicable law, a decision in this case normally would be due by July 10, 2023, forty-five days after the conclusion of the resolution period. 34 C.F.R. §§ 300.510(b)(2), (c), 300.515(a); Educ. § 8-413(h); COMAR 13A.05.01.15C(14). However, based on the schedule of the Parents, counsel for the parties, my schedule, and the initial pre-hearing conference, the Parents requested that I find good cause to extend the timeline due to the scheduling conflicts. *Id.* § 300.515(c). The MCPS did not object to this request. Based on the scheduling conflicts noted above and on the record at the pre-hearing conference, I found good cause to extend the regulatory timeframe as requested by the parties. *Id.* At the July 31, 2023, scheduling conference, counsel for the Parents again requested an extension of the time frames due to counsel's unanticipated emergency. At that time, I inquired about each potential date in August and early September, and the first available dates for all parties were September 7, 8, and 11, 2023. After receiving documentation of the emergency, I found good cause for the extension and rescheduled

⁴For various reasons, including a planned two week visit from the student in late June/early July, the Parents were not available to begin the hearing before July 11, 2023. Counsel for the Parents was not available the week of June 19, 2023. Counsel and witnesses for MCPS was not available in the last two weeks of June due to planned vacation at the end of the school year. Counsel for the Parents was not available July 18 - 31, 2023, due to other due process hearings.

⁵ Counsel's emergency was health related and the details are not relevant here.

the hearing. The parties further requested that I issue a decision within 30 days of the completion of the hearing or by October 11, 2023.

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

ISSUES

1. Did the MCPS fail to offer the Student a free appropriate public education (FAPE) by failing to propose an appropriate Individualized Education Program (IEP) for the 2022-2023 school year?
2. Did the MCPS fail to offer the Student a FAPE for the 2022-2023 school year by failing to propose an appropriate placement for the Student?⁶
3. If so, is [REDACTED] an appropriate placement?

SUMMARY OF THE EVIDENCE

An exhibit list is attached as Appendix A

Testimony

[REDACTED], the Student's father, testified, and the Parents presented the following additional witnesses: [REDACTED] (MD), accepted as an expert in child and adolescent psychiatry; [REDACTED], accepted as an expert in mental health counseling; [REDACTED] (Ed.D), accepted as an expert in special education; and [REDACTED] (Ph.D.), accepted as an expert in clinical psychology.

⁶ Included in this issue is the assertion that the MCPS has failed to make an admissions determination through the [REDACTED] ([REDACTED]).

The MCPS presented the following witnesses: [REDACTED], accepted as an expert in school psychology; [REDACTED], accepted as an expert in special education, [REDACTED], accepted as an expert in school counseling and mental health counseling, [REDACTED], accepted as an expert in special education, [REDACTED], accepted as an expert in special education, [REDACTED], accepted as an expert in special education; [REDACTED], accepted as an expert in special education and the Central IEP process.

FINDINGS OF FACT

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

1. The Student is fourteen years old, is in the ninth grade, and attends [REDACTED] [REDACTED] ([REDACTED]), a therapeutic boarding school in [REDACTED].

Background⁷

2. From January 2018 through his placement at [REDACTED] in January 2023, the Student engaged in mental health treatment and medication management with Dr. [REDACTED]. The main concerns over those five years were attentiveness, anxiety, and depression, and the Student was treated for Generalized Anxiety Disorder, Major Depressive Disorder, severe, recurrent, and without psychotic features, and executive function deficits. (T. [REDACTED], p. 221-222, P. 46)⁸

3. MCPS first developed an IEP for the Student in third grade. The Student's disability was identified as "other health impaired," and the focus of the services was executive

⁷The MCPS objected to some of the background evidence on the basis that the due process complaint addressed a single school year – 2022-2023. I overruled that objection for the same reason that I set out some of that background here. The Student's history and the family's partnership with the MCPS leading up to the 2022-2023 school year provide important context. That context informs my credibility decisions and allows for fully informed inferences from the evidence related to the 2022-2023 school year.

⁸ Because of the gap in the hearing dates, I had transcripts for the first four days of the hearing but not the final three. For the witnesses who testified on the final three days, the transcript reference is based on the audio recording rather than a particular page in the record.

functioning, attention, written expression, and social/emotional functioning. (MCPS 2: 6, T. [REDACTED], p. 682)

4. In December of 2017, the Student's third-grade year, he was experiencing low mood and thoughts of suicide. (T. [REDACTED], p. 224, T. [REDACTED], p. 333) The Student was hospitalized in November of his fourth-grade year at [REDACTED] for inpatient psychiatric treatment and medication management because of suicidal ideation (T. [REDACTED], p. 338-339, P. 19:6) After staying at [REDACTED] for over a week, the Student stepped down to [REDACTED]'s [REDACTED] ([REDACTED]). (P. 19:6) The Student also received outpatient therapy from various providers.

5. From third grade through the start of the pandemic school closures at the end of fifth grade, the Student struggled with low mood and anxiety at school and home. He had conflicts at home with his brother and mother. (T. [REDACTED], p. 228)

6. The 2020-2021 school year was the Student's sixth grade year. He was enrolled at [REDACTED] Middle School ([REDACTED]) but attended virtually all year due to the pandemic school closures.

7. The Student had fewer symptoms as well as fewer stressors during his sixth-grade year when he attended school virtually, and he "looked stable and well." (T. [REDACTED], p. 229, T. [REDACTED], p. 344) In consultation with the Student and his Parents, his treatment team decreased some of his medications and reduced the frequency of his therapy sessions. (T. [REDACTED], p. 230-231)

8. The 2021-2022 school year was the Student's seventh-grade year. He attended [REDACTED] in person. It was a difficult transition to in-person learning in a middle school

environment. The Student perceived conflict and rejection by peers and teachers and began to express reluctance to attend school. (T. ██████, p. 232, P. 46)

9. On two occasions, November 11 and 15, 2021, the Student left ██████ without permission in a “state of agitation.” (MCPS Ex. 7) For the first incident, the Student left school grounds, and his father located him in a park nearby. (T. ██████, p. 350) For the second incident, the Student’s mother was present to pick him up. When he saw his mother talking to Mr. ██████, the ██████ school counselor, he attempted to get her keys. The Student was angry when she did not give them to him, and he walked off. He left with his mother. (*Id.*, T. ██████)

10. On November 19, 2021, ██████ held a parent conference to “review [the Student’s] mental health history, his current needs, create a plan for [the Student’s] safety and well-being, and plan next steps to support [the Student] going forward. (MCPS. 7) At that meeting, the Parents stated that the Student was “weaponizing” suicidal language and threats to elope from campus. (*Id.*, T. ██████, p. 351-352)

11. At that conference, the Parents identified Mr. ██████, a school security guard, as a trusted person for the Student. After that, the Student had a “flash pass,” which allowed him to take a break from class and seek out Mr. ██████ or go to the counseling office. (T. ██████, p. 353, MCPS 7, P. 6:1) The staff at ██████ also agreed to notify the Parents if the Student left school and that a staff member would follow him to ensure his safety. (P. 6:1)

12. The Student did not use the pass to stay out of class for hours. (T. ██████) The Student did not leave ██████ without permission after November 15, 2022. (T. ██████)

13. The Parents had an increasingly difficult time convincing the Student to go to school in November and December of 2021. (T. ██████, p. 356-357) The Parents also became concerned that the Student was overusing his flash pass to avoid certain classes and that he was

not being redirected back to class by Mr. [REDACTED]. (T. [REDACTED], p. 257, P. 6) The Parents communicated that concern to [REDACTED] in February 2022.

14. Beginning Monday, February 14, 2022, the Student refused to go to school. The Parents, working with Dr. [REDACTED], were trying to make home a less attractive alternative to school. On February 16, 2022, they also asked to switch the Student to a different math class, hoping to mitigate that stressor for the Student. (T. [REDACTED], p. 360, P. 6:3) On Friday, February 18, 2022, the Student returned to school.

15. The following Monday was a holiday. The Student became alarmingly dysregulated. He locked himself in his room, expressing thoughts of suicide. He hid all of the landline and cell phones except for his father's and also hid the car keys. He took a screwdriver from the home and left on a Razor scooter. Concerned for his safety, the Parents called the police, who located him nearby and surrounded him. The Student refused to listen to the officers, so he was tackled, and the police retrieved the screwdriver. The Student was unable to calm down and cooperate, so he was transported to [REDACTED] in [REDACTED] in a [REDACTED]. (T. [REDACTED], p. 363-364) The Student continued verbalizing that he wanted to die and had to be restrained in the emergency department. (T. [REDACTED], p. 366) The Parents did not share the details of this incident with the MCPS at that time.⁹

16. The Student was first hospitalized for inpatient psychiatric care through the emergency department at [REDACTED], where he stayed for five days before being transferred to [REDACTED], where he stayed for approximately seven days. (T. [REDACTED], p. 236-237, T. [REDACTED], p. 367, P. 46)

⁹ Some of the broader details were shared with Ms. [REDACTED] and the [REDACTED] team in the fall semester of the 2022-2023 school year, but the specific details were not shared until the hearing.

17. In March 2022, Mr. [REDACTED] conferred with the [REDACTED] [REDACTED] providers regarding the Student's transition back to [REDACTED]. In the last two weeks of March, the Student attended [REDACTED] for three half days while also participating in the [REDACTED] [REDACTED]. (P. 16: 11) The Parents planned to enroll the Student in the [REDACTED] [REDACTED] [REDACTED] ([REDACTED]) concurrent with his return to school, but the Student was not admitted to that program. (T. [REDACTED], p. 374) The Student joined a wait list for a second [REDACTED] through [REDACTED]. (*Id.*)

18. The Student returned to [REDACTED] in April of his seventh-grade year. A resource period was added to his schedule, but he continued to struggle with dysregulation. (T. [REDACTED], p. 370, 510, MCPS Ex. 8) He continued to resist going to school in the morning and used the flash pass to leave class when he was stressed or overwhelmed. (T. [REDACTED], p. 372)

19. The Student was preparing for his Bar Mitzvah, which occurred toward the end of April 2022. (T. [REDACTED], p. 511) He experienced anxiety as the Bar Mitzvah approached but had a successful and rewarding event. (*Id.*) The Student's medication was also being adjusted in April of 2022. (T. [REDACTED], p. 512)

20. On April 22, 2022, the Student picked his fingernails until they bled. He told Ms. [REDACTED], the seventh-grade special education teacher, that he was depressed and "wants pain." (P. 6:8) Other Students were concerned for him, and his Parents picked him up early that day. (T. [REDACTED], p. 374) That same day, the Parents told Ms. [REDACTED] that the Student was beginning a [REDACTED] on May 3, 2022. (P. 6:8) The Student attended the [REDACTED] [REDACTED] on March 3 and 4, 2022 (P. 26:11)

21. On May 6, 2022, the Parents informed the staff at [REDACTED] that the Student was returning to school because the [REDACTED] [REDACTED] was not the right fit. (P. 6:10, T. [REDACTED], p. 374-

375). On May 7, 2022, the Parents applied to [REDACTED], [REDACTED], [REDACTED], [REDACTED] ([REDACTED]), a residential mental health treatment facility. (P. 8)

22. The Student was absent for 65.5 days of the seventh-grade year for “illness or medical appointments.” The Student refused to go to school on one day in December and several days in January and early February. (P 8:1) The Student was out of school for approximately twelve days in mid-February and early March due to the stays at [REDACTED] and the [REDACTED]. The Student was out of school on medical leave for twenty-nine days at the end of his seventh-grade year, from May 9, 2022 through the end of the school year on June 17, 2022. (P. 6:9, MCPS 11: 8-10) He missed another day and a half for other reasons and was absent for a portion of his instructional time for four and a half days. (MCPS. 11)

23. On May 19, 2022, Dr. [REDACTED] submitted a request for [REDACTED] [REDACTED] ([REDACTED]), certifying that the Student was unable to attend school due to his mental health condition. (P. 7:4) The Parents also requested that he be admitted to the [REDACTED]. Neither option was available because it was close to the end of the academic year. (T. [REDACTED], p. 376-377, P. 6:13) Mr. [REDACTED] notified the Parents that the Student could access his assignments through Canvas, MCPS’s Learning Management System. (P. 6:13) The Student received no grade for the final quarter of seventh grade for all of his courses except for Spanish. (P 6: 24) He received a passing full year grade for all his courses except Spanish 2B and was promoted to eighth grade. (*Id.*)

24. Beginning on May 31, 2022, through August 4, 2022, the Student was engaged in mental health treatment through [REDACTED]. (P. 19:6) [REDACTED] provides psychiatric treatment, including medication management, individual therapy, and family therapy in a structured, therapeutic environment (known as milieu therapy). (T. [REDACTED], p. 242)

25. [REDACTED] builds in a two-and-a-half-hour block each day for academic work. (T. [REDACTED], p. 378) The Parents requested that the MCPS provide academic content for that period so that he did not fall behind. (P. 6:13) The MCPS worked to ensure that the Student's assignments remained accessible on Canvas, but not all assignments were accessible. (P. 6:15-28) In late June, the Student was feeling a lot of pressure about the Canvas assignments, so the [REDACTED] team, with the Parents, agreed that the Student should focus on seventh-grade math skills for the remainder of his stay at [REDACTED] (P. 6: 21) The Student completed the available seventh-grade assignments while at [REDACTED] so that he could move onto eighth grade. (P. 6: 21, 27)

26. The Student did well at [REDACTED]. He attended all aspects of the program, including the academic sessions. (T. [REDACTED], p. 244) He benefited from the tight structure and consistent expectations. (T. [REDACTED], p. 245) In the discharge report, the treatment team recommended that the Student stay for the full ninety days that [REDACTED] offered, but the Parents did not accept that recommendation, and the Student left after sixty-six days. (P. 13, 46) The Parents did not share the [REDACTED] discharge report with the MCPS in the summer of 2022. (T. [REDACTED], p. 493) [REDACTED] also made a clinical recommendation that the Student continue his mental health treatment in a residential facility. (P. 13) This was not an educational recommendation. (T. [REDACTED], T. [REDACTED])

27. On July 14, 2022, [REDACTED], Psy.D, a [REDACTED] Licensed Psychologist with [REDACTED], conducted a developmental evaluation of the Student. (MCPS 29) Among other things, Dr. [REDACTED] diagnosed post-traumatic stress disorder (developmental trauma disorder) based on the Student's report of trauma from his interactions

with his brother. (T. ██████, p. 310, MCPS 29:13) The Parents did not share this evaluation with the MCPS in the summer of 2022. (T. ██████, p. 492)

28. At the time of the evaluation in July of 2022, on the Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V), the Student scored in the 99% for verbal comprehension, indicating that he had exceptionally well-developed verbal skills. The Student had average verbal and visual working memory and processing speed. (T. ██████, p. 674, MCPS 29: 34) The Student had relative strengths in math, average skills in reading and math, and did not show significant academic deficit in any skills.¹⁰ (T. ██████, p. 666-7, T. ██████, MCPS 29: 40)

29. At the time of the evaluation in July of 2022, Dr. ██████ opined that the appropriate educational environment for the Student included a “small and nurturing environment where he can receive therapeutic services in addition to education.” (MCPS 29: 50)

The 2022-2023 School Year

30. In early July, the Parents contacted ██████ to inquire about options for the Student to return to MCPS, including the ██████. Ms. ██████ advised that placement at ██████ was an IEP team decision and arranged for a meeting with the Student’s mother and staff from the ██████ to explain those services. (P. 11: 5) That meeting occurred virtually on July 6, 2022 (P. 11: 1) The ██████ (██████) program was also discussed during that meeting. (T. ██████, p. 401) The Student’s mother informed ██████ staff that the Student remained in the residential placement in ██████ and that she did not think the ██████ was a good fit. (*Id.*; T. ██████)

31. Although on July 5, 2022, the Parents anticipated that the Student would return home from ██████’s ██████ Program on August 15, 2022, the Parents did not share this

¹⁰ Dr. ██████’s summary of the scores did not specify which tool she used for the academic functioning assessment. (MCPS 29: 38-40) Ms. ██████ testified that Dr. ██████ used the Woodcock-Johnson Test of Achievement, fourth edition. Dr. ██████ also referred to that assessment on page one of her report. (MCPS 29: 32)

date with the MCPS. (T. ██████, p. 529, P. 11) The Parents did tell the MCPS they hoped, when he returned, that he would participate in a ██████, then an ██████, then “the appropriate school setting.” (P. 11: 6-7)

32. The Parents were also investigating private day schools and therapeutic boarding schools in July of 2022 based on recommendations from ██████ and Dr. ██████. (T. ██████, p. 435-436) On July 14, 2022, the Parents contacted ██████ to advise that they were exploring both private and MCPS school options for the Student as well as having an updated evaluation through the residential treatment program in ██████. (MCPS 13, T. ██████).

33. The Parents applied to ██████ (██████) on or around July 18, 2022. (MCPS 15, T. ██████, p. 532) ██████ is a private day school with a low student-to-teacher ratio that serves students with various academic, social, and emotional needs. (T. ██████, p. 663) ██████ is not a special education school; it does not offer therapeutic services, and it does not serve students with significant behavioral challenges. (T. ██████, p. 178-179, T. ██████, p. 550; T. ██████)

34. MCPS did not initiate an IEP meeting in the summer of 2022.

35. On August 18, 2022, the Parent notified MCPS that the Student had returned home and they were withdrawing the Student from MCPS. They also thanked Ms. ██████ and Mr. ██████ for their “incredible support this past year.” (MCPS 16: 2, T. ██████ p. 531) Before receiving this email, ██████ staff did not know that the Student had returned home from ██████. (T. ██████)

36. From August 8 through August 26, 2022, the Student was engaged in mental health treatment at the ██████ (██████ ██████), a partial

hospitalization program five days a week. (*Id.*, MCPS. 16-2) The [REDACTED] [REDACTED] provided psychiatric care, counseling services, and family therapy. (T. [REDACTED], p. 402)

37. From August 29 through September 22, 2022, the Student was engaged in mental health treatment at [REDACTED], an intensive outpatient program ([REDACTED] [REDACTED]), three days a week. (*Id.*)

38. The Parents did not share with MCPS the reports generated by the [REDACTED] [REDACTED] or [REDACTED] before November 2022. (T. [REDACTED], p. 493)

39. In late August and early September of 2022, for his eighth-grade year, the Student attended [REDACTED] in the morning and continued to attend the [REDACTED] [REDACTED] in the afternoon. (T. [REDACTED], p. 49)

40. In September of 2022, the Student began therapy sessions with [REDACTED], a licensed clinical professional counselor. (P. 19) The Parents advised Ms. [REDACTED] of the Student's appropriate behaviors, including "usually" initiating greetings with others, allowing peers to join him for activities, responding to invitations from peers to join activities, responding to questions, and compromising during disagreements. At that time, the Student "seldom" engaged in socially inappropriate behaviors. (T. [REDACTED], p. 496, P. 19: 10)

41. The Student's weekly therapy with Ms. [REDACTED] coincided with his enrollment at [REDACTED] in August of 2022. The Student had made substantial progress at [REDACTED] and with [REDACTED] [REDACTED] and [REDACTED]. He had good insight and was "willing to tackle the hard things in life and commit to recovery." (MCPS. Ex. 18: 2-4, T. [REDACTED], p. 289, 291, T. [REDACTED], p. 543). His Parents and treatment team pursued the relationship with Ms. [REDACTED] as a less intensive, or a step-down, level of care. (*Id.*, T. [REDACTED], p. 48). Initially, the Student was receptive to therapy with Ms. [REDACTED]. (T. [REDACTED], p. 52) He displayed symptoms of depression and anxiety but was

functional with “significant insight” into how his emotions impacted his mood and behavior. (T. [REDACTED], p. 53)

42. The Student, his brother, and the Parents began family therapy with [REDACTED] in September of 2022. (T. [REDACTED], p. 412)

43. The Student took culinary arts, good eats experience, middle school math, movement and mindfulness, and yearbook/creative writing. Although [REDACTED] does not grade, the Student was engaged in his academic classes at [REDACTED] and making progress. (P. 15: 19-20, P. 22; T. [REDACTED], p. 556) The Student’s literacy and fluency skills were at an eighth-grade level. (P. 20:2) He struggled with progress in math due to gaps in his learning and an unwillingness to accept feedback. (P. 24:4)

44. The Student was not happy about his enrollment at [REDACTED]. He believed the students there were not like him, and he wanted to return to [REDACTED]. (T. [REDACTED], p. 55, T. [REDACTED], p. 406). He was defiant and argumentative with the teachers and staff. He engaged in malicious verbal behavior toward his peers and referred to them by derogatory names, including “weird” and “retard.” (T. [REDACTED], p. 56, T. [REDACTED], p. 412)

45. The Student had “stretches of good days” at [REDACTED], interrupted by days where he was very dysregulated and defiant. (T. [REDACTED], p. 61; MCPS 20: 17-18) The Student did not leave [REDACTED] without permission during his time there. (T. [REDACTED], p. 175) The Student was absent from [REDACTED] on six occasions – three excused and three unexcused. The Student was “tardy” either for the school day or for a particular class on eighteen occasions at [REDACTED]. (P. 16:1, T. [REDACTED], p. 407)

46. On Friday, November 4, 2022, the Student yelled the words “arson” and “mass murder” in his advisory classroom and the hallway at [REDACTED]. He also loudly addressed other

students in the hallway saying, “commit arson and mass murder.” He repeatedly wrote the word “ARSON” on a piece of paper until it was full. He was argumentative, refused to acknowledge that his words were inappropriate, refused to leave the Head of School’s office when asked to do so, and yelled “arson” again on his way out. He was sent home. (MCPS. 26:2)

47. On November 5, 2022, the Student wrote an apology email to the Head of [REDACTED], and the Parents emailed it to her on November 6, 2022. (MCPS 20: 20)

48. On November 7, 2022, after the Student stated that he was unwilling to participate in a behavioral intervention plan at [REDACTED], the Parents and [REDACTED] came to a mutual agreement to disenroll the Student immediately. (P. 19:25, T. [REDACTED], p. 417-418)

49. The Student’s mental health deteriorated quickly after the sudden disenrollment from [REDACTED]. He stopped engaging in productive therapy sessions. He became hostile and argumentative and had impaired judgment and insight. (T. [REDACTED], p. 62, T. [REDACTED], p. 253, P. 25:1, 46) On two occasions after his disenrollment from [REDACTED], the Student left his therapy session with Dr. [REDACTED] in a state of agitation. One time, he hid in the building for several hours, and another time, he left the building, and he was out in the [REDACTED] area. He did not respond to phone calls or text messages. (T. [REDACTED], p. 253-254)

50. From August 18, 2022, the date of his withdrawal from MCPS, through November 7, 2022, MCPS did not receive any updates or reports related to the Student. (T. [REDACTED])

51. On November 7, 2022, the Parents contacted the registrar, Ms. [REDACTED], and Mr. [REDACTED] at [REDACTED] to inform them that the Student would be immediately re-enrolling with MCPS. (P. 19:27-28). The Student’s seventh-grade IEP at [REDACTED] began on October 14, 2021, and “expired” on October 13, 2022. (T. [REDACTED]) MCPS offered to continue the services on the

previous IEP until a new one was in place. (T. [REDACTED]) The Parents rejected this option, and the Student stayed home. (MCPS 22: 2)

52. On November 7, 2022, MCPS requested reports from [REDACTED] as well as discharge paperwork from [REDACTED] and the [REDACTED] [REDACTED] and [REDACTED] (P. 21:7) On November 8, 2022, the Parents provided some of the requested materials to MCPS. (P. 21: 6) On November 13, 2022, MCPS received the release forms from the Parents to seek the Student's records from [REDACTED] and other programs. (MCPS 21: 7, T. [REDACTED])

53. The Student began receiving [REDACTED] as Dr. [REDACTED] certified that he was unable to attend school at that time due to his mental health, including symptoms of “low mood, anxiety, and mood instability.” (P. 24:4, T. [REDACTED], p. 73). The Student’s engagement with the [REDACTED] services was inconsistent, sometimes because of scheduling conflicts and sometimes because he refused to engage. (P. 21:20, 22-3; T. [REDACTED], p. 140) He was not able to access the MCPS curriculum and required high levels of social, emotional, and therapeutic intervention in the home. (P. 24:4)

54. The Student’s behavior at home deteriorated. He locked himself in his room, played video games excessively, and sometimes left home late at night to buy energy drinks at a local store. (T. [REDACTED] p. 445, 566) The Student’s grandmother and father developed a schedule of school work using [REDACTED], an online program, but the Student refused to engage in that academic work. (*Id.*)

55. As of November 13, 2022, the Parents’ “main goal” was to enroll the Student in a therapeutic boarding school. (MCPS 40:3, T. [REDACTED], p. 100) The Parents hired Dr. [REDACTED], an educational consultant on November 11, 2022, for help with “IEP support and guidance on residential placement.” (T. [REDACTED], p. 135, 137, 193) By November 20, 2023, the Parents had

narrowed their search of therapeutic boarding schools to two, including [REDACTED]. (MCPS 41:3, T. [REDACTED], p. 568)

56. On November 29, 2022, MCPS convened an IEP meeting. The Parents provided information related to the Student's treatment and schooling since leaving [REDACTED] the previous spring. (T. [REDACTED] p. 433) Those reports included the intake form for Ms. [REDACTED], the discharge from [REDACTED], materials from the [REDACTED] [REDACTED] and [REDACTED], an Orton Gillingham assessment, documents from [REDACTED], and the developmental evaluation from Dr. [REDACTED]. (P. 21: 6, T. [REDACTED], p. 568, T. [REDACTED], p. 660)

57. The November 29, 2022, IEP team adjusted the Student's IEP to reflect the [REDACTED] services. It also determined that the MCPS needed additional information from [REDACTED] and that it should re-evaluate the Student to obtain present levels of behavioral and emotional functioning and consider a different identification for special education eligibility. (MCPS. 31-1, T. [REDACTED], p. 685)

58. Initially, the Parents shared an abbreviated, twelve page version of Dr. [REDACTED]'s developmental evaluation with MCPS. (MCPS 29: 4-15, T. [REDACTED], p. 539). The abridged version omitted detailed paragraphs summarizing the Student's emotional and behavioral functioning, his engagement with academics, and some recommendations. (MCPS 29, T. [REDACTED], p. 541). Noticing the lack of support for the report for the conclusions, Ms. [REDACTED] "questioned [the Parents] about the first report not providing enough detail to substantiate the findings." (T. [REDACTED], p. 541, T. [REDACTED], p. 666) The Parents then provided MCPS with a 16-page evaluation. (MCPS 29:16-31, T. [REDACTED], p. 541, T. [REDACTED], p. 667).¹¹

¹¹ The Parents did not provide MCPS or Ms. [REDACTED] with Dr. [REDACTED]'s 20-page report, which included a personality functioning assessment and non-academic recommendations. (MCPS 29: 32-51, T. [REDACTED], p. 668) That report was disclosed during the discovery phase of the due process hearing.

59. Ms. [REDACTED] reviewed the documents provided by the Parents and spoke to [REDACTED], the Student, the Parents, and Ms. [REDACTED]. (T. [REDACTED], p. 684). She was not able to speak to Dr. [REDACTED] until after she finished her report on or before December 8, 2023. (T. [REDACTED], p. 690)

60. During Ms. [REDACTED]'s conversation with Ms. [REDACTED], Ms. [REDACTED] offered her opinion that the Student needed a "therapeutic school with full time therapy." (MCPS 33-4, T. [REDACTED], p. 688)

61. The teacher reports from [REDACTED] showed consistent concerns with the Student's emotional distress and negative thinking patterns. (T. [REDACTED], p. 694-5, MCPS 33:6) His academic skills were intact, although the Student had gaps in his math skills. (*Id.*, P. 20) There were no concerns about the Student eloping from [REDACTED]. (T. [REDACTED], p. 762)

62. On December 20, 2022, MCPS convened a second IEP meeting.¹² At that meeting, the team determined that the Student could best be served under the disability code of "emotional disability" rather than other health impaired. (MCPS 36) In doing so, the team noted that the Student's emotional condition impacted his ability to participate in the classroom, engage in learning, be available for instruction, and have an appropriate level of social functioning. (MCPS 36:2) The serious incidents at school, staff reports, and his attendance provided evidence of those conclusions. (*Id.*)

63. The IEP team also updated the Student's present levels of performance and developed goals and objectives. All team members agreed with these changes and additions to the IEP. (MCPS 36, 37, 38, T. [REDACTED], p. 441, T. [REDACTED], p. 712, T. [REDACTED], T. [REDACTED], T. [REDACTED]) After discussing and rejecting [REDACTED] ([REDACTED]), [REDACTED], and

¹² Ms. [REDACTED]'s report along with a draft IEP was sent to the Parents on December 14, 2022. (MCPS 35-3)

██████████, the team recommended a fully self-contained day program¹³ with counseling twice weekly for thirty minutes as a related service for the Student. (MCPS 38). Concluding that the IEP could not be implemented in a comprehensive MCPS setting, the team referred the placement to a Central IEP team. (*Id.*)

64. The IEP included an interim plan for the Student to continue ██████████ while he was unable to go to school and to access services through ██████████ while waiting for the Central IEP meeting. (MCPS 38: 36-39, T. ██████████)

65. The Parents shared with the team that the Student’s needs could only be met in a therapeutic boarding school. They stated they were concerned about whether they could safely and reliably get the Student to a day program. (T. ██████████, p. 441-442) The Parents informed the IEP team that, effective January 9, 2023, they were placing the Student at ██████████ and requested placement and funding from MCPS. (MCPS 38-3, T. ██████████)

66. MCPS convened a Central IEP meeting on February 14, 2023. The Central IEP team proposed a public separate day school to implement the December 20, 2022, IEP and referred the family to the ██████████ (██████████). (MCPS 48) The supplementary aids, services, program modifications, and supports, as well as the goals in the February 14, 2023 IEP are virtually the same as those in the December 20, 2022 IEP, except the Central IEP team proposed removing the general educator because ██████████ classes are taught by special educators.

67. The Central IEP included an interim plan for the Student to “receive services at ██████████” through ██████████ while waiting for the Central IEP process. (MCPS 48) The February 14,

¹³ A fully self-contained day means that 100% of the school day was in special education with no access to the general education setting. (T. ██████████, p. 717)

2023 IEP noted that Dr. [REDACTED]' certification for [REDACTED] expired on January 16, 2023. (MCPS 49: 41)

68. The Parents objected to the referral and requested placement at [REDACTED].

69. Staff from [REDACTED] attended the meeting, including [REDACTED], the Student's therapist, and [REDACTED]. (MCPS 49) As the Student had only been at [REDACTED] for a few weeks, Ms. [REDACTED] and Mr. [REDACTED] could only offer general descriptions of the program rather than specific details of the Student's engagement.

[REDACTED]

70. [REDACTED] is a public separate therapeutic school based on a partnership between the Maryland State Department of Education (MSDE) and the [REDACTED] ([REDACTED]). MCPS cannot place a Student at [REDACTED]. Once the educational team, through the Central IEP, makes a referral, the [REDACTED] clinical team must assess whether the Student will be accepted. (T. [REDACTED], T. [REDACTED])

71. [REDACTED] serves students with emotional disabilities, autism, and other health impairments, who do not have significant academic deficits. (T. [REDACTED])

72. Rather than providing counseling, [REDACTED] integrates therapy into the school setting. (T. [REDACTED], p. 721, T. [REDACTED], T. [REDACTED]) [REDACTED] provides mental health treatment through individual, group, family and expressive (art, music, movement) therapy. (T. [REDACTED]) [REDACTED] uses the MCPS curriculum delivered in small classes by special educators. (T. [REDACTED], T. [REDACTED]) There are no general education students. [REDACTED] has a "tight" structure and fewer transitions. (T. [REDACTED], T. [REDACTED])

73. [REDACTED] has the capacity and resources to implement the agreed-upon goals and objectives set out in the December 20, 2022 IEP. (T. [REDACTED], p. 720, T. [REDACTED]. T. [REDACTED], T. [REDACTED])

74. [REDACTED] has the ability to develop safety plans and support for Students who leave campus without permission. (T. [REDACTED]) Typically the team at [REDACTED] will employ a functional behavioral assessment to understand the reasons that cause a student to engage in school avoidance and work on the “root” cause of the behavior. (T. [REDACTED]) School avoidance or refusal is not an uncommon challenge for students at [REDACTED]. (*Id.*)

75. [REDACTED] has a day program and a residential program. Placement in either program is a decision made by the clinical team at [REDACTED]. Students in the day program have access, through a helpline, to an on-call therapist when school is not in session. (T. [REDACTED], T. [REDACTED])

76. Mr. [REDACTED] explained all aspects of the [REDACTED] program at the February 14, 2023 Central IEP meeting including, the day and residential program, the clinical evaluation unit, the components of therapy and the referral and admissions process (T. [REDACTED]) He also explained that if the clinical team at [REDACTED] did not accept the Student, the Central IEP team would reconvene to explore the next steps. (*Id.*)

77. The clinical team at [REDACTED] does not accept every referral from MCPS. Students with low academic or cognitive skills, or substance abuse may not be accepted. Students whose parents do not agree with the clinical team’s medication management may not be accepted. Students who refuse to attend or participate in the interview may not be accepted. (T. [REDACTED])

78. The Parents received the referral on February 21, 2023¹⁴ and completed the application for [REDACTED] on March 1, 2023. (MCPS 53) On March 7, 2023, the Parents participated in an intake interview and tour with Dr. [REDACTED]. (T. [REDACTED] p. 456, P. 37)

79. The Student did not participate in an interview at [REDACTED] because the clinical team at [REDACTED] advised the Parents that interviewing at another school would be “highly detrimental” to his nascent progress acclimating to [REDACTED] and to his overall mental health. (P. 32) Dr. [REDACTED], Director of Admissions and Clinical Supervision at [REDACTED], wrote a letter expressing that concern. (P. 32) The letter addressed the Student’s recent transition to [REDACTED], his difficulty in accepting the structure and conforming to the expectations, including threats of suicide, and provocative interactions with peers and adults. The Parents shared that letter with [REDACTED] before their March 7, 2023, interview and tour at [REDACTED]. (T. [REDACTED], p. 469)

80. [REDACTED] did not accept or reject the Student because he did not attend the interview.

81. On March 31, 2023, MCPS sent a notice from [REDACTED] and a letter from MCPS stating that the screening process was “incomplete” because [REDACTED] informed [REDACTED] that participation in the interview would be detrimental to the Student’s mental health. In the letter, MCPS encouraged the Parents to “fully participate in the process.” (P. 35)

82. The Parents, through counsel, responded to the letter on April 10, 2023, attaching the letter from [REDACTED] and requesting a meeting to discuss the next steps. (P. 36, 37)

83. MCPS did not reconvene a Central IEP team meeting.

¹⁴ Although the letter is dated February 15, 2023, it was not emailed to the Parents until February 21, 2023. (MCPS 50, 51)

██████████

84. ██████████ is a therapeutic boarding school for up to forty boys aged ten through sixteen. (T. ██████████, p. 782) It is located in a rural area in central ██████████. (T. ██████████, p. 448) The annual tuition is \$115,000.00. (MCPS 41:13) The average class size is three to six students. The students have five core academic classes as well as individual and group therapy. (T. ██████████, p. 781-2) It provides a neutral, highly structured setting, with clear expectations and rules. (T. ██████████, p. 785) ██████████ has a special educator and three clinicians on staff. (T. ██████████, p. 792) There is a child psychiatrist who comes to campus once a week and who provides medical management. (T. ██████████, p. 809)

85. The Parents and ██████████ entered into a Placement Agreement on December 13, 2022.

86. ██████████ has a year-round calendar with four two-week breaks, one each quarter. (T. ██████████, p. 472) When the Student comes home for a break, the Student, the Parents, and the clinical team at ██████████ negotiate an extensive behavioral contract governing the Student's behavior at home. (P. 30:11-12, T. ██████████, p. 475-6)

87. ██████████ has a six-week summer session in addition to the two-week break in the summer. The summer session has a reduced academic component, and the students engage in off-campus enrichment activities. (T. ██████████)

88. The Student did not want to go to ██████████. His Parents worked with Dr. ██████████ to help the Student transition, but the Student remained upset and agitated during the trip. (T. ██████████, p. 449) His Parents gave him a mild sedative for the last part of the trip to get him to ██████████. (T. ██████████, p. 450)

89. The Student had a rough transition to [REDACTED]. He refused to leave his room except for meals for the first week. (T. [REDACTED], p. 471, T. [REDACTED], p. 792-3) There has been a gradual but steady improvement in most areas, including school refusal and engagement with his academic classes. (T. [REDACTED], p. 472, T. [REDACTED], p. 793, 800, P. 31, 32, 33, 38, 39)

90. [REDACTED] has a universal behavioral modification rating system that groups students into one of four groups weekly. The most compliant students are in group one, and the least compliant in group four. (T. [REDACTED], p. 560, T. [REDACTED], p. 806-7) The Student is usually in group two or three.

91. The Student's primary therapist at [REDACTED] is [REDACTED], and he has daily interactions with her as well as weekly group sessions. (T. [REDACTED], p. 795-6). [REDACTED] is working on addressing the Student's emotional regulation as the predominant issue. (T. [REDACTED], p. 798) As of April 2022, he had "settled into the routine and structure," attends groups and was "more confident in himself and needed less validation than in the beginning." (P. 38)

92. At [REDACTED], the Student works on many of the social skills goals identified in the December 20, 2022 IEP while in the classroom, in his therapeutic sessions and in peer interactions outside of the classroom. (T. [REDACTED], p. 823-8)

93. The Student has progressed in those areas as well as academic areas. (T. [REDACTED], p. 828-9; P. 31, 32, 33, 38, 39) In the final marking period for the 2022-2023 school year, he received an A in English Literature and History, an A- in Environmental Science, and a B+ in Pre-Algebra. He earned mostly 1s (excellent) or 2s (good) for his "conduct/behavior/effort" in the classroom. He had only two 3s (average) and no 4s (needs improvement). (P. 38)

DISCUSSION¹⁵

Legal Framework

The burden of proof and deference

The standard of proof in this case is a preponderance of the evidence and is borne by the Parents as the party seeking relief.¹⁶ 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 disabled child.”¹⁷ Yet, this respect and deference is not limitless.¹⁸ 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.”¹⁹ “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”²⁰ and “would render meaningless the entire process of administrative review.”²¹

FAPE under the IDEA

The identification, evaluation, and placement of students in special education are governed by the IDEA.²² The IDEA requires “that all children with disabilities have available to

¹⁵ 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”).

¹⁶ *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005); COMAR 28.02.01.21K(1).

¹⁷ *Andrew F. v. Douglas Cnty. Sch. Dist.* 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.’”).

¹⁸ *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.”).

¹⁹ *Id.*; *see also Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1476 (9th Cir. 1993)

²⁰ *Id.*

²¹ *Sch. Bd. of Prince William Cty., Va. v. Malone*, 762 F.2d 1210, 1217 (4th Cir. 1985) (citation omitted).

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

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.”²³ To be eligible for special education and related services under the IDEA, a student must meet the definition of a “child with a disability” as set forth in section 1401(3) of the U.S.C. and the applicable federal regulations.

The Supreme Court addressed the FAPE requirement in *Board of Education of the Hendrick Hudson Central School District v. Rowley*,²⁴ holding that a FAPE is satisfied if a school district provides “specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.”²⁵ The Court identified a two-part inquiry to analyze whether a local education agency satisfied its obligation to provide a 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 educational benefit.²⁶

In 2017, the Supreme Court revisited the meaning of a FAPE, holding that for an educational agency to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a student to make progress appropriate in light of the student’s circumstances.²⁷ 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.”²⁸

²³ 20 U.S.C. § 1400(d)(1)(A); *see also* Educ. § 8-403.

²⁴ 458 U.S. 176 (1982).

²⁵ *Rowley*, 458 U.S. at 201 (footnote omitted).

²⁶ *Id.* at 206-07.

²⁷ *Andrew F.*, 137 S. Ct. 988.

²⁸ *Andrew F.*, 136 S. Ct. at 1001.

The “reasonably calculated” qualification recognizes that crafting an appropriate education program 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.²⁹ Directly adopting language from *Rowley*, and expressly stating that it was not making any “attempt to elaborate on what ‘appropriate’ progress will look like from case to case,” the *Andrew F.* court instructs that the “absence of a bright-line rule . . . should not be mistaken for ‘an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.’”³⁰ At the same time, the *Andrew F.* court wrote that in determining the extent to which deference should be accorded to educational programming decisions made by public school authorities, “[a] reviewing court may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.”³¹

Regarding procedural violations, the IDEA³² 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.

²⁹ *Id.*, at 999

³⁰ *Id.* (quoting *Rowley*, 458 U.S. at 206).

³¹ *Id.* at 1002; see also *R.F. by and through E.F. v. Cecil County Pub. Sch.*, 919 F.3d 237 (4th Cir. 2019).

³² 20 U.S.C.A. Section 1415(f)(3)(E)(ii).

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*,³³ 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.³⁴

The IEP

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

- (i) the strengths of the child;
- (ii) the concerns of the Parents for enhancing the education of their child;
- (iii) the results of the initial evaluation or most recent evaluation of the child; and
- (iv) the academic, developmental, and functional needs of the child.³⁵

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

³³ 303 F.3d. 523 (4th Cir. 2002).

³⁴ *MM v. Greenville*, 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 (4th Cir. 2018).

³⁵ 20 U.S.C. § 1414(d)(3)(A).

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.³⁶

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)"³⁷ 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.³⁸ 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.³⁹ 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."⁴⁰

To comply with the IDEA, an IEP must, among other things, allow a disabled child to advance toward measurable annual academic and functional goals that meet the needs resulting from the child's disability or disabilities, by providing appropriate special education and related services, supplementary aids, program modifications, supports, and accommodations.⁴¹ It is not enough to develop an IEP that meets these standards, the public school also has an obligation to

³⁶ 20 U.S.C. § 1414(d)(1)(A)(i)(I)-(V); COMAR 13A.05.01.09A.

³⁷ 34 C.F.R. § 300.320(a)(1)(i).

³⁸ *Id.* § 300.324(a)(2)(i).

³⁹ *Id.* § 300.324(b)(1).

⁴⁰ *MM v. Greenville*, 303 F.3d at 536.

⁴¹ 20 U.S.C. § 1414(d)(1)(A)(i)(II), (IV), (VI).

implement the IEP “as soon as possible after the meeting where the IEP is developed or revised.”⁴²

LRE

In addition to the IDEA’s requirement that a disabled child receive educational benefit, the child must be placed in the “least restrictive environment” to achieve a FAPE, meaning that, ordinarily, disabled and non-disabled students should, when feasible, be educated in the same classroom.⁴³ Indeed, mainstreaming children with disabilities with non-disabled peers is generally preferred, if the disabled student can achieve educational benefit in the mainstreamed program.⁴⁴ At a minimum, the statute calls for school systems to place children in the “least restrictive environment” consistent with their educational needs.⁴⁵ Placing disabled children into regular school programs may not be appropriate for every disabled child, and removal of a child from a regular educational environment may be necessary when the nature or severity of a child’s disability is such that education in a regular classroom cannot be achieved.

Because including children with disabilities in regular school programs may not be appropriate for every child with a disability, the IDEA requires public agencies like the MCPS to offer a continuum of alternative placements that meet the needs of children with disabilities.⁴⁶ The continuum must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, and make provision for supplementary services to be provided in conjunction with regular class placement.⁴⁷

⁴² COMAR 13A.05.01.09D(3).

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

⁴⁴ *DeVries v. Fairfax Cnty. Sch. Bd.*, 882 F.2d 876, 878-79 (4th Cir. 1989).

⁴⁵ 20 U.S.C. § 1412(a)(5)(A).

⁴⁶ 34 C.F.R. § 300.115.

⁴⁷ *Id.* § 300.115(b); COMAR 13A.05.01.10B(1).

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.⁴⁸ In such a case, a FAPE might require placement of a child in a nonpublic school setting that the child's public school district would fully fund.

Residential Placement

Residential placement is governed by section 300.104 of Chapter 34 of the Code of Federal Regulations, which states that “[i]f placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.” The determination as to whether a student needs services beyond the regular school day to receive any educational benefit is dependent on the particular facts of a case.⁴⁹

A residential program is one of the most restrictive placements on the continuum. Thus, the standard for a residential placement is exacting. In *Burke County Board of Educ. v. Denton*,⁵⁰ the Court explained that “[i]f the educational benefits which can be provided through residential care are essential for the child to make *any* educational progress at all, then residential care is required under the EHA [the precursor to the IDEA].” Thus, if services provided in a residential facility are necessary for a student to make educational progress, then residential placement is required to provide the student with a FAPE; however, residential placement is not warranted when the residential placement merely “enhances an *otherwise sufficient* day program.”⁵¹ Even though mental health issues can interfere with academic progress, the IDEA does not make public school systems responsible for residential placements that primarily address mental health

⁴⁸ COMAR 13A.05.01.10A(2).

⁴⁹ *Burke County Board of Educ. v. Denton*, 895 F.2d 973, 980 (4th Cir. 1990).

⁵⁰ 895 F.2d 973, 980 (4th Cir. 1990)

⁵¹ *Id.*, at 980, quoting *Abrahamson v. Hershman*, 701 F.2d 223, 227 (3rd Cir. 1983) (emphasis in original); see also *Shaw v. West*, 364 Fed. App'x 47 (4th Cir. 2010).

issues.⁵² If the placement of a student in a residential facility is for emotional and psychiatric problems that are not so intertwined with the learning process as to be inseparable, such a residential placement is not necessary for the student to receive a FAPE.⁵³ Moreover, a school system must ensure that the student's placement is "as close as possible to the child's home." 34 C.F.R. § 300.116(b)(3).

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 that the unilateral private placement provided an appropriate education.⁵⁴ The issue of reimbursement for unilateral placement was expanded in *Florence County School District Four v. Carter*,⁵⁵ where the 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.⁵⁶

Like an IEP, a parental placement is appropriate if it is "reasonably calculated to enable the child to receive educational benefits."⁵⁷ Evidence of actual progress is important but not dispositive in determining the appropriateness of the placement.⁵⁸ The private education services

⁵² *A.H. v. Arlington Sch. Bd.*, 2021 WL 1269896 (E.D. Va. 2021) (citations omitted).

⁵³ *Denton*, 895 F.2d at 980.

⁵⁴ *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985) (emphasis in original).

⁵⁵ 510 U.S. 7 (1993).

⁵⁶ *Carter*, 510 U.S. at 12-13.

⁵⁷ *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009)

⁵⁸ *Id.* at 326-327.

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.⁵⁹

Equitable Relief

Equitable considerations are relevant in fashioning relief, and the tribunal enjoys broad discretion in fashioning such relief.⁶⁰ 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.⁶¹ Total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable.⁶²

Position of the Parties

The Parents' assertion that the IEP failed to offer the Student a FAPE for the 2022-2023 school year relies on three premises: (1) the Student requires placement in a residential setting for his education; (2) the MCPS failed to convene an IEP in the summer of 2022; and (3) the MCPS failed to recommend a placement for the Student for the 2022-2023 school year. The Parents assert that [REDACTED] is an appropriate placement and that they are entitled to reimbursement for tuition and prospective placement at [REDACTED].

MCPS argues that the Student does not require residential placement and that the February 14, 2023, IEP was reasonably calculated to allow him to make progress in the least restrictive setting. It asserts that it was not obligated to convene an IEP team in the summer of 2022 because it was not aware of the Student's status until the day it was notified that the Student was withdrawn. It asserts that it fulfilled its obligation to the Student in February of 2023

⁵⁹ *Id.* at 369-370.

⁶⁰ *Burlington*, 471 U.S. 359 at 374, 369.

⁶¹ *Carter*, 510 U.S. at 16.

⁶² *Id.*

when it referred the family to [REDACTED]. MCPS states that in order to move past [REDACTED] in the continuum of services, the Student must participate in an interview with [REDACTED] and [REDACTED] must decide to accept or reject the Student. Since the Student was not available for an interview, MCPS asserts that its obligation to the Student stalled and it had no further responsibility under the IDEA. In the alternative, MCPS argues that if there is a FAPE violation, [REDACTED] is not an appropriate placement and that the equities do not support reimbursement.

Analysis

- I. The IEP proposed by MCPS for the 2022-2023 school year was reasonably calculated to enable the Student to make appropriate progress in light of the Student's circumstances.

The parties do not dispute that the February 14, 2023 IEP set out present levels of performance, and measurable academic and functional goals that met the Student's needs and provided appropriate special education and related services, supplementary aids, program modifications, supports, and accommodations. MCPS witnesses testified that the Student did not need a residential placement to meet these goals. The Parents' witnesses testified that he did. I am persuaded that the Student does not need residential placement to make appropriate progress. In reaching this conclusion, I have determined that the Student's school avoidance does not require residential placement and that the Parents' experts recommended residential placement based on his mental health, rather than educational needs.

Ms. [REDACTED] testified that the Student needed residential placement and wrote a letter to that effect to MCPS. (P. 25) I did not place any weight on Ms. [REDACTED]'s opinion for several reasons. On November 8, 2022, she told the Parents that since she had not worked with the Student in the capacity of a school counselor, "I can't really give recommendations on school placement or services," and on December 6 or 7, 2022, she informed Ms. [REDACTED] that the

Student needed a “therapeutic school with full-time therapy.” She did not assert that the school needed to be residential. Yet, after consulting with the Parents and their advocates,⁶³ on December 20, 2022, Ms. [REDACTED] wrote a letter detailing the Student’s therapeutic progress and recommending placement at a therapeutic boarding school. (P. 19-29 & 25, MCPS. 33-4 & 40-1, T. [REDACTED], p. 96-97, 100). This mercurial approach to her opinion significantly undercuts its persuasiveness. Moreover, Ms. [REDACTED] was accepted as an expert in mental health counseling, not special education; she is a therapist, not an educator.

Dr. [REDACTED], Director of Admissions and Clinical Supervision at [REDACTED], also testified that the Student required a residential school. As I will explain below, I am persuaded by Dr. [REDACTED]’s testimony about the progress the Student made at [REDACTED], I was not persuaded by his opinion regarding the Student’s need for residential placement to make educational progress. This opinion was not the focus of Dr. [REDACTED]’s testimony, and since he made the decision to admit the Student and the Student is doing well, it is understandable that he would have this opinion. This fortunate outcome does not make his opinion on whether the residential placement was necessary for the Student to access the academic curriculum, receive educational benefit, or make progress, compelling, however.

Dr. [REDACTED]’s opinion that the Student required a residential placement was also unpersuasive. Dr. [REDACTED] was hired by the Parents for “help with IEP support and guidance on residential placement.” (T. [REDACTED], 135) She did not work with the Student directly but reviewed his records. Dr. [REDACTED] testified that she believed a day program was insufficient based on the Student’s prior hospitalization, threats of self-harm, elopement from [REDACTED] in the seventh grade, and school avoidance. She acknowledged, however, that the Student left [REDACTED] twice in seventh grade and that he did not leave [REDACTED] again once a plan was put in place to

⁶³ Ms. [REDACTED] sought this input so that her letter would “pack the appropriate punch.” (MCPS 40-5)

address this behavior. She noted that he engaged in risky behaviors at home, including leaving the house late at night to go to the local convenience store for energy drinks. Her characterization of these behaviors as self-harming was not supported by the facts in the record. Dr. [REDACTED] expressed the opinion that being farther from his family would minimize the Student's ability to avoid school. She referred to the Student and the family's need for a "therapeutic separation." No other expert in special education or mental health counseling was familiar with the term "therapeutic separation," and I do not find her opinion on this need to be persuasive.

Dr. [REDACTED] was accepted as an expert in child and adolescent psychiatry. She worked closely with the Student and his family for five years. She knows the Student well and offered compelling and persuasive testimony about his challenges, strengths and needs. Dr. [REDACTED] was very concerned about the Student's increasingly unsafe and dysregulated behavior after he abruptly left [REDACTED] in November of 2022. She described his refusal to engage with her in therapy sessions and two occasions where he left her office unaccompanied and without permission in a highly agitated state. She opined that the Student requires a very tight structure in school to be successful. She noted that the Student had been disruptive, explosive, and disrespectful at [REDACTED], but was still able to do the academic work. She corroborated the Parents' description of the Student's refusal to attend school and the extensive efforts they made to get him to attend. On two occasions, once in April of 2022 and again in November of 2022, Dr. [REDACTED] advised MCPS that the Student's mental health prevented him from attending school and requested the school provide [REDACTED]. She testified that she resisted this recommendation as enrolling in [REDACTED] would only entrench the Student's school refusal.

Dr. [REDACTED] supported the Parents' decision to enroll the Student in the [REDACTED] residential treatment program and also supported their decision to bring him home early. She

began discussing therapeutic boarding schools with the Parents in the Spring of 2022 because she believed that the Student needed a residential placement for his mental health treatment and also needed to be in school. She opined that the family had exhausted all other treatment environments. Her objections to a therapeutic day program were that it would not be safe for the Student to transition from home to school each day and that his behavior was too risky for his Parents to manage successfully.

Yet, these school avoidance challenges were not extreme and could have been addressed in a therapeutic day school. In addition, I find that the Parents' witnesses based their recommendations for residential placement primarily on the safety and mental health needs of the Student, not his educational needs.

Dr. [REDACTED]' testimony makes evident that her reasons for recommending a residential therapeutic school were largely centered around the Student's mental health needs and helping the Parents to find some support for the challenging behaviors impacting their family's home life. She said did not elaborate about why a therapeutic residential school was necessary for the Student's *educational* needs, other than pointing out his reluctance to go to school and his separation from school for mental health stabilization. Her explanation focused primarily on the Student's need for immersive mental health therapy.

I find insufficient evidence that there were school refusal or avoidance concerns that would have made a therapeutic residential placement necessary for the Student to access learning. The Student left [REDACTED] twice in seventh grade. There was no evidence that he eloped from [REDACTED]. While I do not doubt that the Parents had significant challenges convincing the student to attend school on some days, they were successful in getting him to school, and while there, he engaged with his academic work. The record establishes that most of the Student's

absences were for mental health stabilization, as documented by Dr. [REDACTED], requests for [REDACTED], not because he successfully avoided going to school.

I did not find the fact that the Student eloped from Dr. [REDACTED]'s office and began resisting therapy with Ms. [REDACTED] and Dr. [REDACTED] determinative on this point. Dr. [REDACTED] has an unattended waiting room; it is not a structured, therapeutic school setting. The Student's resistance to therapy sessions, while indicative of his dysregulation, does not lead me to conclude that he would also resist educational instruction in a therapeutic day school. Finally, the Student's refusal to engage with the [REDACTED] or [REDACTED] instruction while home in November and December of 2022, also does not compel the conclusion that he would not be able to access the curriculum in a therapeutic day school. He was at home with no structure. Dr. [REDACTED] explained that the Student had a difficult time with the transitions and that his abrupt disenrollment from [REDACTED] had a significant negative impact on his self-concept and mental health.

MCPS witnesses each concluded that the Student needed a fully self-contained program with therapeutic services embedded within it. None of MCPS' witnesses agreed that the Student required a residential placement in order to access the curriculum and receive educational benefit. Each testified that [REDACTED] or another therapeutic day program could and would address the school avoidance challenges and that [REDACTED]'s therapists, special educators, and behavioral specialists can and regularly do, implement behavioral contracts to address school refusal. Each testified that the Student did not require a therapeutic milieu twenty-four hours a day in order to make educational progress. I credit MCPS' witnesses on this point.

The testimony of Ms. [REDACTED] and Mr. [REDACTED] were particularly persuasive. Ms. [REDACTED] evaluated the Student. She noted that the Dr. [REDACTED] evaluation showed that the Student did not

have academic deficits. She explained that Dr. ██████ did not recommend a residential school placement, but rather, a small and nurturing school where he can “receive therapeutic services.” (MCPS 29:50) Ms. ██████ agreed with that assessment after conducting her own independent review of all of the Student’s recent records. Her report is comprehensive, detailed and supported by the records she relied upon. While Ms. ██████ moved quickly, she was thorough in her approach, reaching out to the family when the Dr. ██████ report appeared to be missing important information. She explained that the ██████ recommendation for a residential facility was for a mental health treatment facility, not a therapeutic boarding school and explained the difference.

Mr. ██████ had extensive experience on the Central IEP team. He noted that this team receives approximately 1,000 referrals a year and has approximately 600 students in a variety of placements outside of a comprehensive school setting. He has served that team for decades. Mr. ██████'s perspective on the scope and complexity of the various challenges faced by students whose IEPs require restrictive placement was detailed and helpful to me as the trier of fact. He offered an opinion that the Student’s school avoidance behaviors could be addressed in a therapeutic day school, stating, “that’s what they do.” He noted that the school avoidance behaviors established in the record were not extreme and that ██████, like any therapeutic day school, has experience working through this issue. He also testified that school avoidance is not uncommon for students referred to that level of service.

The IDEA compels an IEP team to make a recommendation in conformity with the least restrictive environment provisions of the regulations.⁶⁴ Ms. ██████ and Mr. ██████’s respective

⁶⁴ COMAR 13A.05.01.10C; 20 U.S.C. § 1412(a)(5); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117.

testimony established that the team did just that when it recommended that the IEP be implemented in a public therapeutic day school.⁶⁵

In addition to the law cited above, the Parents rely on *Board of Educ. of Montgomery County, MD v. S.G.*⁶⁶ and *S.C. v. Weast*⁶⁷ to illustrate the relevance of a Student's school refusal and to argue that when a student requires a therapeutic milieu twenty-four hours a day in order to attend school and make educational progress, then a residential placement is necessary. MCPS relies on *Board of Educ. of Montgomery County, MD v. Brett Y.*,⁶⁸ and *Shaw v. Weast*,⁶⁹ to support their argument that residential placement is not required on these facts.⁷⁰

In *S.G.*, the student's behavior began to change during her 5th grade year, when she stole money, wrote disturbing, suicidal ideas, and had difficulties staying organized and completing assignments at school. *Id.* at 331. The following year, the student's behavior worsened - she began to wet her pants and had to wear diapers, made violent and hyper-sexual writings, told her mother that she was hearing voices instructing her to harm herself, and struggled with memory and motivation. *Id.* After the student cut her legs and put pins in her ears - and told her mother she had heard voices instructing her to stab herself - she was hospitalized at five different institutions over a period of almost two months. *Id.* at 331-332. The student missed twenty-two days of school in January and February 2004 during these hospitalizations. *Id.* at 332.

S.G. returned to school with a plan in place - she would have her assignment notebook monitored, be given class notes, increased time for homework and tests, an adjusted workload, and a "flash pass" so that she could leave class whenever she heard voices and wanted to go to

⁶⁵ *Burke County Board of Educ. v. Denton*, 895 F.2d 973, 980 (4th Cir. 1990)

⁶⁶ 364 Fed.Appx. 47, (4th Cir. 2010)

⁶⁷ Civil Action No. JAM-11-124 (Dist. Md., August 26, 2011) (unpublished). This is the District Court opinion that led to the Fourth Circuit's decision in *Shaw v. Weast*, cited by MCPS below.

⁶⁸ 155 F.3d 557 (4th Cir. 1998) (unpublished)

⁶⁹ 364 F.Appx 47 (4th Cir. 2010) (unpublished)

⁷⁰ Each party prepared a table of authorities with citations to many cases from various jurisdictions.

the health room. *Id.* The school did not convene an IEP meeting and did not identify the Student as a child in need of special education.

The student used the flash pass to leave school on eight days before she was hospitalized again between May 12 and June 14. *Id.* After the May hospitalization, the student's parents requested that the school complete a special education screening. *Id.* The school determined that the student had a disability of emotional disturbance, she had been diagnosed with schizophrenia, but that she did not suffer an adverse educational impact because of the disability. *Id.* at 332-333.

The ALJ concluded that the school system had committed a substantive violation of the IDEA by failing to identify the student as eligible for special education services during her sixth-grade year and ordered the school system to fund the student's attendance at a therapeutic school. *Id.* at 333. The Fourth Circuit affirmed the ALJ's decision, rejecting the school system's contention that the student's absence from school was a result of a medical condition and could not be addressed by special education, stating that the "evidence demonstrates that the public middle school environment aggravated S.G.'s symptoms and contributed to her hearing voices, zoning out, wanting to hurt herself, leaving class by using the flash pass, and being absent from school." *Id.* at 334-335.

Unlike the Student in *S.G.*, the Student in *Shaw v. Weast*, had an IEP in place and was receiving services in a therapeutic day school when her mental health deteriorated. The court determined that a student was receiving educational benefit under the IDEA in the private day school and did not require a residential placement. The student in *Shaw* had several disabilities including emotional disturbance, hearing impairment, speech, and language impairment, and learning disabilities. The student was also diagnosed with bipolar disorder, clinical depression, and post-traumatic stress disorder. The child had been hospitalized for psychiatric treatment on

several occasions due to suicidal ideation, suicide attempts, and self-mutilating behavior. The court noted that the student's educational progress was slowed during her psychiatric episodes, but that her education progressed when her mental health issues were stabilized. The court found that the private separate day school continued to offer the services and resources necessary to implement the child's IEP and that she was receiving educational benefit there. The request for residential placement was primarily to address the child's safety needs arising from her mental health issues and not her educational needs. The court found that the day school could adequately address the child's educational needs separately from the emotional and mental needs that required treatment in a residential placement.

In *Brett Y.*, the Court reversed an ALJ decision granting funding for residential placement of a teenager with ADHD, oppositional defiant disorder, and anxiety disorder. Brett struggled with school attendance, but higher levels of special education services improved his attendance gradually. When he attended school, Brett performed well academically. At the end of the 1996 school year, Brett stopped attending school. He stayed up all night and all day and refused to leave his home. He was evaluated for mental health stabilization at Sheppard Pratt and referred to a day treatment center; he refused to go. After reconvening an IEP meeting, the Central IEP team⁷¹ referred him to RICA, but his parents enrolled him at a private school for residential treatment. The court found that the child's emotional needs were segregable from his educational needs. It stated that "much of the testimony regarding Brett's need for a residential placement focused upon his hostile and oppositional behavior at home and his parents' inability to get him to attend school."⁷²

⁷¹ In 1996, the Central IEP team was called the Central Admission, Review and Dismissal Committee, or CARD.

⁷² *Brett Y.*, 155 F.3d 557 (Slip opinion at p. 13).

The Student's situation is more analogous to *Brett Y. and Shaw* than *S.G.* in that he was identified as a child in need of special education services and offered special education services designed to address his mental health needs. In addition, he was able to perform well academically when he attended school and his attendance issues were primarily for mental health stabilization rather than as a result of successful school avoidance. To be sure, the Student's attendance is impacted by his mental health issues and he needs therapeutic support to address this challenge. However, when his mental health issues are stabilized, the Student was able to make progress at [REDACTED] and at [REDACTED]. A therapeutic day program, like [REDACTED], has the resources available to address the Student's educational needs and his IEP is appropriate and provides special education and related services to address the student's disabilities. Like the Student in this case, neither Brett nor Shaw had goals in the IEP that required support beyond the school day. Like in the cited cases, the Student was enrolled by his Parents in a therapeutic boarding school primarily to ensure his safety and to address his problematic home behaviors. While these reasons are certainly understandable, the Parents have failed to prove that the Student requires a residential placement to meet his educational needs and that his medical, social, or emotional problems are inextricably intertwined with the learning process.⁷³

II. Alleged Procedural Violations

- a. MCPS timely complied with the IEP process in the summer of 2022 and between December 20, 2022 and February 14, 2023

The Parents assert that MCPS had an obligation in the summer of 2022 to convene an IEP team meeting to address the Student's evolving needs. MCPS disagrees, noting that it does not have an obligation to develop or revise an IEP when Parents withdraw a child from the public school without asserting a FAPE violation. As set out in the finding of facts above, MCPS was

⁷³ *Burke County Bd. of Educ. v. Denton*, 895 F.2d 973, 980 (4th Cir. 1990); *see also Kruelle v. New Castle County School Dist.* 642 F.2d 687, 692 (3rd Cir. 1981); *Abrahamson v. Hershman*, 701 F.2d 223, 227 (1st Cir. 1983).

aware that the Student's mental health needs were evolving in the spring of 2022 when he eventually left [REDACTED] for a residential treatment program. MCPS also knew that the Parents were investigating private schools as well as options in the MCPS for when the Student returned. There is no requirement that the Parents notify MCPS that the Student will be returning in order for the MCPS school team to convene an IEP meeting. Yet, there was a substantial amount of information related to the Student's progress over the summer that was unknown to MCPS. The Parents had not shared reports from [REDACTED] or the [REDACTED] [REDACTED] or [REDACTED]. Although they had received a comprehensive evaluation from Dr. [REDACTED], they did not share that information with MCPS. MCPS found out that the Student was home from [REDACTED] and ready to resume his education in the same communication where the Parents withdrew the Student from MCPS.

With the benefit of hindsight, given the Student's sudden and disastrous disenrollment from [REDACTED], it is easy to assert that MCPS should have convened an IEP meeting, and it would have been a better practice for them to have done so. Yet, the record makes clear that the Parents were grateful to the team at [REDACTED] for their support and were committed to having the Student attend [REDACTED]. The exhibits reflect many emails expressing that sentiment and Dr. [REDACTED] and the Student's father testified that they were working closely to find the Student a small, nurturing private school setting.

The Parents did not assert in the summer of 2022 that MCPS failed to provide a FAPE for the upcoming school year. While it is the case that Parents have two years to pursue an IDEA claim, I do not credit the Student's father's testimony that the Parents felt that they had no choice but to look for a private school based on MCPS' inaction. The exhibits, including the [REDACTED] application, the intake forms from Ms. [REDACTED]'s practice, the Student's mother's emails with the [REDACTED] team, and Dr. [REDACTED]' testimony about the family's considerations in the summer of

2022 conflict with this testimony. The Parents withdrew the Student from MCPS because they wanted him to attend [REDACTED]. They were hopeful about his substantial progress over the summer and committed to his success at [REDACTED]. I conclude that the Parents' decision on August 18, 2022, to withdraw the Student relieved MCPS of its obligation to develop an IEP at that time.⁷⁴

The Parents also suggest that the IEP process was unreasonably delayed in the winter of 2023 because the Central IEP team did not convene until February 14, 2023. Mr. [REDACTED] testified that the goal of the Central IEP team is to convene within 30 days of receiving the referral, but that it is not always successful. The Student's father testified that the [REDACTED] team moved "heaven and earth" to develop a comprehensive IEP that met the Student's needs. Indeed, the [REDACTED] team did so very quickly and ensured that its work was completed well before the time allotted to it to develop the IEP and before the winter break made it difficult for the school-based team to gather and confer. In looking at the time frame between November 7, 2022, when the Parents first notified MCPS that the Student was enrolling and began to provide information about his treatment, and February 14, 2023, when the IEP was finalized and the referral was made, I conclude that the MCPS IEP process worked smoothly and expeditiously. There was no delay in the development of the Student's IEP.⁷⁵

- b. MCPS did violate the IDEA by failing to convene an IEP team in April of 2023

The parties disagreed about the impact of the inability of the Student to participate in the [REDACTED] interview on the IEP process. MCPS asserts that an interview is required by regulation as a necessary step in the screening process and that the Student's non-participation in the interview

⁷⁴20 U.S.C. §1412(a)(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 FAPE dispute, the LEA does not have to develop an IEP).

⁷⁵ 34 C.F.R. § 300.324

relieved MCPS of its obligation to continue to meet and to implement the IEP. The Parents argue that an interview is not required by law and that MCPS' inaction after the [REDACTED] referral led to a FAPE violation. The regulations regarding the [REDACTED] admissions process state:

A. Each [REDACTED] shall maintain an admission team which consists of a physician, mental health and educational professionals and other persons, as appropriate. The [REDACTED] admission team shall determine whether the applicant meets the admission standards set forth in Regulation .05 of this chapter, within 10 working days of receipt of the completed application.

B. The applicant and referring agency or mental health professional shall be notified by the [REDACTED] admission team as to whether the applicant meets the admission criteria.

C. If the admission team determines that the admission criteria are met, a pre-admission interview shall be scheduled by the [REDACTED] at the earliest convenient date for all parties involved.⁷⁶

I found the testimony of Mr. [REDACTED] informative on the question of the Central IEP's team interaction with the [REDACTED] admission process. Mr. [REDACTED] testified as an expert in the Central IEP process. He also works closely with [REDACTED] and has been part of teams that have referred many Students to [REDACTED] over several decades. It is clear from both the language of the regulations and Mr. [REDACTED]'s testimony that an interview of a student is required for a student *to be admitted to* [REDACTED]. Nothing in the regulations, however, state that an interview is required for a student *to be rejected by* [REDACTED].

In fact, Mr. [REDACTED] set out a list of reasons that have resulted in a student being rejected after the [REDACTED] team determined that the admissions criteria had been met and offered an interview. The [REDACTED] clinical team can and has rejected a student if the Parents are unwilling to make the [REDACTED] therapist their child's primary mental health provider. The [REDACTED] clinical team can and has rejected a student if the Parents are unwilling to abide by the clinical team's recommendations on medication. The [REDACTED] clinical team can and has rejected a student if the Student will not or cannot participate in the interview. Mr. [REDACTED] described a scenario where

⁷⁶ COMAR [REDACTED]

Parents bring their child to the █████ campus for the interview, but the child refuses to leave the car and participate. He stated that in that instance, █████ would reject the student as “non-compliant with the interview.” (T. █████) When █████ rejects a student for these or other reasons, Mr. █████ testified that the Central IEP team is obligated to reconvene to consider the next steps, including any recommendations of █████’s clinical team, any other new information, and possibly, to refer the rejected student to the next least restrictive placement, private therapeutic day schools. (T. █████)

Yet, MCPS asserts a blanket proposition that failure to participate in the █████ interview, no matter what the reason, results in a stalemate. That is, MCPS cannot move forward with more restrictive referrals whenever █████ communicates that its admissions process is incomplete.⁷⁷ One of the guiding principles of the IDEA is individualization.⁷⁸ I do not agree with MCPS that it had no ability to move forward and no obligation to the Student unless and until he was able to participate in the █████ interview.⁷⁹ That position is inconsistent with Mr. █████’s testimony that non-compliance with the interview may be the reason for a rejection from █████.

I note that it is MCPS, not the █████’s clinical team at █████, that has an obligation to implement the Student’s IEP. While the MSDE and the █████ have a partnership that cedes the ultimate admission decision to the █████ clinical providers, █████ remains a public option. I find on these facts, that MCPS was aware of the Student’s recent and serious mental health challenges, was aware that Dr. █████ had certified that he was unable to attend school due to his mental health, was aware that the clinical team at the Student’s residential placement had written a letter asserting that an interview would “be detrimental to his

⁷⁷ MCPS cites a recent OAH decision for this proposition. MSDE-MONT-OT-22-29029 (2023) OAH decisions are not binding and each ALJ is obligated to decide the issues on the record produced in the case.

⁷⁸ *Andrew F.*, 137 S. Ct. 988.

⁷⁹ *Cf.* COMAR 13A.05.01.09D(3) (a school also has an obligation to implement the IEP “as soon as possible after the meeting where the IEP is developed or revised.”)

mental health,” due to his recent enrollment and “nascent” adjustment, and was aware that the Parents had completed the application and attended the interview.

In addition, when MCPS sent the form letter to the Parents urging them to cooperate with the process, the Parents responded and asserted that they had cooperated as fully as they could under the circumstances. The Parents asked MCPS to convene a meeting to discuss next steps. MCPS did not respond. Finally, MCPS knew that the [REDACTED]-based interim services proposed by the February 14, 2023, IEP, either [REDACTED] or [REDACTED], while the Central IEP worked through the process, did not address the Student’s needs for comprehensive mental health treatment.

On these particular facts, MCPS had the obligation to reconvene the Central IEP meeting – it could have inquired about the reasons why the interview could not convene and proactively engage with [REDACTED] and the Parents to attempt to resolve the impasse. MCPS could have reviewed the letter and discussed its implications with the clinical experts at [REDACTED] and its own experts during such a meeting. The Student’s therapist at [REDACTED] could have been invited to a meeting to address the issue of when the Student may be available and whether the “nascent” challenging adjustment period had abated.

This conclusion does not, as MCPS argued, automatically hand Parents veto power over an IEP team placement decision. Rather, it requires that MCPS assess the individual circumstances that led to the student’s non-participation in the interview and make a case-by-case determination concerning the next steps. While MCPS cites *A.W. v. Fairfax*,⁸⁰ for this proposition, *A.W.* involved a student with an IEP being removed temporarily from a placement due to discipline.⁸¹ The facts of the *A.W.* case do not speak to this issue.

⁸⁰ 372 F.3d 674 (4th Cir. 2004)

⁸¹ MCPS quotes footnote 10 of the decision, which states: “although AW's parents indicated their dissatisfaction with AW's April IEP by declining to sign it, the right conferred by the IDEA on parents to participate in the formulation of their child's IEP does not constitute a veto power over the IEP team's decisions.”

M.K. v. Starr,⁸² does address the potential veto effect of a Parent failing to cooperate with the IEP referral process. In *Starr*, the IEP team referred the parent to three non-public day schools where their child's IEP could be implemented. Importantly, the Student's then current IEP provided a FAPE, was being implemented in a comparable non-public day school, and the referral was not occasioned by a need for a more restrictive placement. Each school required an interview, and the parents were reluctant to allow their daughter to interview due to her anxiety. The parents asked Mr. [REDACTED]⁸³ if the private schools could observe their child instead of scheduling an interview, and he agreed that this "might be a good idea."⁸⁴ Mr. [REDACTED] encouraged her to inquire about making those arrangements with the private schools. Two of the private schools reached out to the parents to arrange an observation, but the parents did not respond or "rebuffed" the offer. The Court found that the parents "refused to cooperate in the referral process and therefore frustrated MCPS' placement efforts."⁸⁵ That failure to cooperate led the court to conclude that M.K.'s parents would not have accepted any placement proposed by MCPS and were exclusively interested in reimbursement for their unilateral placement.

The facts in this record demonstrate something in between the scenario described by Mr. [REDACTED], where Parents bring a reluctant child to [REDACTED], and the child refuses to get out of the car and attend the interview, and the scenario in *M.K.* where the parents completely fail to respond to repeated requests to schedule an interview or observation by a private school. Yet, in this case, it is clear that the Parents continued to pursue the public school options for their son. They did so while also remaining convinced that a residential school was necessary. The law regarding the

⁸² 185 F.Supp. 3d 679 (D. Md. 2016)

⁸³ This is the same Mr. [REDACTED] who testified in this case. In 2016, the Court referred to Mr. [REDACTED]'s extensive experience and expertise when evaluating his testimony.

⁸⁴ 185 F. Supp. 3d. at 686.

⁸⁵ *Id.*, at 697.

equities of reimbursement for unilateral placement requires this of Parents.⁸⁶ They must walk a tightrope between advocating for the more restrictive placement and being open to the options presented by the Central IEP team. The Parents, in this case, did just that. I credit the Student's father's testimony that they participated as fully as they could given their son's then-current mental health challenges. Moreover, the Parents had recently experienced the significant disruption and setback occasioned by their son's abrupt disenrollment from [REDACTED]. There was no guarantee that the Student would succeed and remain at [REDACTED]. The Parents were committed to considering the options proposed by MCPS, and this commitment is not automatically negated by their decision to pursue reimbursement for the residential setting they believed was necessary.

Thus, I conclude that MCPS should have convened a Central IEP meeting on or after April 1, 2023 and its failure to do so was a procedural violation.⁸⁷ I must then consider whether that violation led to a deprivation of educational benefit.⁸⁸ I find that it does. Because the interim services IEP did not address the Student's need for mental health services, it could not provide the Student with a FAPE. In addition, the February 14, 2023 IEP could not be implemented without the IEP team reconvening and considering the next steps. The Student was not and could not receive educational benefit from either IEP. In addition, while the Student's needs were being addressed at [REDACTED], that program could not provide FAPE because it was not free.⁸⁹

⁸⁶ *Florence County School District Four v. Carter*, 510 U.S. 7, 12-13 (1993).

⁸⁷ 20 U.S.C.A. Section 1415(f)(3)(E)(ii)

⁸⁸ 34 C.F.R. §300.513(a)(2)(ii); *MM ex rel. DM v. Sch. Dist. of Greenville Cnty.*, 303 F.3d at 533-34; *see also T.B. Jr. by and through T.B., Sr. v. Prince George's Cnty. Bd. of Educ.*, 897 F.3d 566, 573 (4th Cir. 2018).

⁸⁹ *See M.G. v. McKnight*, xx F. Supp.3d xxx, 2023 WL1070437 (D. Md. 2023) (The ALJ erred in determining that the delay in developing M.G.'s IEP did not deny him a FAPE. While it may be true that M.G. was provided with services that allowed him to access an appropriate education while at Grove School during the delay, the ALJ failed to recognize the deprivation of the "F" in FAPE. The education M.G. received was not free.").

III. ██████████ is an appropriate placement

Parents do not have the same obligation to place their child in the least restrictive setting and ██████████ is a very restrictive setting.⁹⁰ It serves only boys, in a narrow age range, in a residential setting. It also has special educators, certified subject matter teachers and intensive therapeutic services embedded in every aspect of the program. Dr. ██████████'s testimony was convincing on this point. The Student's needs could and have been met at ██████████. He is making progress in both academic and behavioral areas. The Student's father also offered compelling testimony about the emerging improvements over the Student's time at ██████████. Their testimony was consistent and supported by the ██████████ progress reports.

MCPS argued that ██████████ was not addressing the Student's behavioral needs based on the notes from an IEP meeting where a ██████████ employee, Mr. ██████████, allegedly made that statement and because the Student's progress is not tracked in any systematic, discoverable way. I am not persuaded that anyone from ██████████ made that statement. In fact, the statement is inconsistent with the reason ██████████ exists. As Dr. ██████████ explained, if the Student did not have emotional, social, and behavioral needs, he would not be attending ██████████. Nor am I convinced that ██████████'s method of tracking and delivering feedback leads to the conclusion that the placement is inappropriate. The Parents have weekly feedback discussions with their son's therapist. The students get daily reinforcing feedback on their behaviors. ██████████ sends comprehensive narrative reports about students' academic progress.

MCPS also argued that the Student's lack of progress indicated that ██████████ was not an appropriate placement. MCPS pointed to Dr. ██████████'s description of the Student's continued challenging behaviors around peer and teacher interactions, continued reluctance to attend school

⁹⁰ See *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009)

on some days and on-going, and sometimes lengthy periods of dysregulation. Each MCPS witness was asked on direct examination about Dr. ██████'s testimony concerning the Student's ongoing challenges and whether those challenges demonstrate that the interventions ██████ is using are ineffective. Each stated, either during direct or on cross-examination, that those instances could indicate that ██████'s interventions were not appropriate, but that they would need more information about the circumstances before being able to form an opinion. Finally, the fact that the Student continues to have challenging days or episodes of dysregulation is not indicative of a lack of progress or an improper placement. There is no requirement that a placement provide an instant "cure," or that progress must show an unbroken linear pattern and not be staggered. He is, after all, a teenager. Moreover, all of the IEP team members agreed that the Student needed significant support and services in a therapeutic setting in order to make educational progress. The credible testimony and the exhibits establish that he is receiving those supports and services and that ██████ is an appropriate placement that meets his educational and therapeutic needs and allows him to make educational progress.

IV. Remedy

The Parents request an Order requiring MCPS to provide tuition reimbursement for the tuition of the ██████ placement to date and for prospective placement at ██████ for the current school year. The Parents have established that MCPS failed to provide a FAPE after March 31, 2023, the day MCPS notified the Parents that because the Student's mental health prevented him from being interviewed by ██████, the process was stalled indefinitely. That violation continues to the present. Nevertheless, it can be cured by reconvening the Central IEP meeting for the team to consider the status of the ██████ process, determine whether the Student

is now available for an interview, review, if necessary, the Student’s current presentation and needs, and otherwise perform the mandated functions of an IEP team.

Courts have held that a “finding that the directives of IDEA would be best effectuated by ordering an IEP review and revision, rather than prospective placement in a private school” is not improper on its face.⁹¹ The *Adams* Court further explained:

Even when a Hearing Officer finds “an actionable violation of the IDEA,” courts have therefore upheld an HOD ordering the parties to “convene an . . . IEP meeting within ten days of [the decision]” so that prospective placement would “not be addressed by this Court, but instead, by the IEP team, as soon as practicable.” . . . Such relief comports with the collaborative, team-based process envisioned under IDEA as the best way of pursuing the “fact-intensive exercise” of “crafting an appropriate program of education” for students with disabilities.

Id. at 387.

Guided by this principle, in deference to the evolving nature of the Student’s needs, the educational expertise of the IEP team, and acknowledging the Parents’ failure to meet their burden of establishing that the Student required a residential placement, I find that it is appropriate to order the Central IEP team to convene by October 31, 2023, rather than to order prospective placement at [REDACTED].

On the issue of tuition reimbursement, the equities require a different approach. MCPS argues that the Parents had no intention of returning the Student to MCPS and that they were not sincere in their engagement with the Central IEP referral process. Indeed, there is evidence in the record that supports this conclusion, particularly the Parents’ statement that their “main goal” was to seek residential placement, and their decision to enroll the Student at [REDACTED] before

⁹¹ *Adams v. Dist. of Columbia*, 285 F. Supp. 3d 381, 393 (D.D.C. 2018) (“[T]his remedy was a reasonable reflection of the issues before the Hearing Officer and the administrative record. It appears, moreover, that such relief is not unusual in IDEA cases, including those in which the plaintiff requests private-school placement.”); *see also Pinto v. Dist. of Columbia*, 938 F. Supp. 2d 25, 28 (D.D.C. 2013) (noting that Hearing Officer determined that [school system] had developed an inappropriate IEP, but declined to grant placement at private school and instead ordered District to “convene a meeting to revise [the] IEP as appropriate within 30 days of a written request by Plaintiffs”).

the [REDACTED] IEP team was able to meet in December of 2022. On the other hand, there is evidence in the record that the Parents cooperated with the IEP process and were open to the recommendations of MCPS, and there is no evidence that they intended to reject any placement that was not [REDACTED].

As noted above, the mechanism for seeking reimbursement after a unilateral placement essentially requires Parents to simultaneously advocate for the unilateral placement while also cooperating with a process that has rejected that placement. This is challenging, and it is not surprising that Parents navigating that conundrum would make statements promoting the unilateral placement that, thereafter, could be interpreted to reflect their intention to keep their child in the unilateral placement and not what the school proposed. For that reason, I have placed greater weight on the Parents' actions rather than their words. Those actions demonstrate that the Parents cooperated with the Central IEP process. They filled out the [REDACTED] application, attended the [REDACTED] interview and tour, documented the mental health-based reason why their son could not participate in the interview, and followed up, correcting MCPS' assertion that they had failed to cooperate and asking MCPS for a meeting to discuss the next steps. Thus, this is not a situation where equity requires reimbursement to be denied or reduced based on the Parents lack of engagement or sincerity.

There are other equity considerations here. First, the FAPE violation did not begin on January 9, 2023, when the Student was enrolled. As discussed above, there was no delay in the IEP process. The [REDACTED] team moved with all deliberate speed to develop a comprehensive IEP and the Central IEP did not delay in making the referral to [REDACTED]. The Parents filed the [REDACTED] application on March 1, 2023, and MCPS communicated with the Parents within thirty days of that application. Therefore, I find that it would not be equitable to order reimbursement for

January, February, or March of 2023. Rather reimbursement should begin on April 1, 2023, the date the FAPE violation began.⁹²

In addition, Dr. [REDACTED] testified that [REDACTED]'s summer program consists of a two-week break followed by six weeks of summer session. In that summer session, the students have a reduced academic load and engage in various off-campus enrichment activities. I find that reimbursement for the months of July and August would not be equitable, because [REDACTED] is not providing the same level of educational programming that led me to conclude that the placement was appropriate.

Finally, given that my order that the Central IEP team convene on or before October 31, 2023, will place the parties in the position that they would have been in if the FAPE violation had not occurred, a reimbursement order after November 1, 2023 would not be equitable.

Consequently, I conclude that the Parents have established that they are entitled to reimbursement for tuition at [REDACTED] for the months of April, May, June, September, and October of 2023. [REDACTED] does not break down its tuition into monthly installments. The annual tuition is \$115,000.00, which amounts to \$9,583.00 per month.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that:

1. The MCPS' February 14, 2023 IEP provided the Student with a FAPE in the least restrictive environment based on the referral to [REDACTED]. *Board of Educ. of the Hendrick Hudson Central School Distr. v. Rowley*, 458 U.S. 176 (1982); *Andrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988 (2017); *Burke County Board of Educ. v. Denton*, 895 F.2d 973 (4th Cir. 1990).

⁹² *Carter*, 510 U.S. at 16.

2. The MCPS did not commit a procedural violation by failing to convene an IEP meeting in the summer of 2022. 20 U.S.C. §1412(a)(10); *Letter to Wayne*, 119 LRP 4247 (OSEP, January 29, 2019).
3. The MCPS did not commit a procedural violation by failing to convene a Central IEP meeting within 30 days of the [REDACTED] team's referral. COMAR 13A.05.01.09D(3)
4. The MCPS unduly delayed the implementation of the Student's IEP when it failed to reconvene a Central IEP meeting after March 31, 2023, resulting in a denial of a FAPE for the Student beginning April 1, 2023, through the present. COMAR 13A.05.01.09D(3).
5. The Parents' placement of the Student at [REDACTED] was appropriate. *Sch. Committee of the Town of Burlington, MA v. Dept. of Education*, 471 U.S. 359 (1985); *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315 (4th Cir. 2009) and *Carter v. Florence County Sch. Dist. Four*, 950 F.2d 156 (4th Cir. 1991), *aff'd*, 510 U.S. 7 (1993).
6. The Parents are entitled to reimbursement for their unilateral placement of the Student at [REDACTED] during the period of April 1, 2023 through June 30, 2023, and September 2023 through October 31, 2023. *Sch. Committee of the Town of Burlington, MA v. Dept. of Educ.*, 471 U.S. 359 (1985).
7. The Parents are not entitled to reimbursement for their unilateral placement of the Student at [REDACTED] during the period of January 9, 2023 through March 31, 2023 because there was no FAPE denial during that time. 20 U.S.C. §1412(a)(10); *Letter to Wayne*, 119 LRP 4247 (OSEP, January 29, 2019).
8. The Parents are not entitled to reimbursement for their unilateral placement of the Student at [REDACTED] during the period of July and August 2023, because [REDACTED]

█ does not provide a sufficient amount of educational programming in the summer months. *Carter v. Florence County Sch. Dist. Four*, 950 F.2d 156 (4th Cir. 1991), *aff'd*, 510 U.S. 7 (1993).

ORDER

I **ORDER** that:

1. The Montgomery County Public Schools shall convene a Central IEP team meeting on or before October 31, 2023;
2. The Montgomery County Public Schools shall reimburse the Parents for the costs associated with their placement of the Student at █ for the period of April 1, 2023, through June 30, 2023, and for September 1, 2023, through October 31, 2023, in the amount of \$47,915.00 (\$9,583.00 per month);
3. That the Parents' request for reimbursement for its unilateral placement at █ for January, February, and March of 2023 is **DENIED**;
4. That the Parents' request for prospective placement at █ is **DENIED**;
5. The Montgomery County Public Schools shall, within thirty days of the date of this decision, provide proof of compliance to the Chief of the Complaint Investigation and Due Process Branch, Division of Special Education and Early Intervention Services, the Maryland State Department of Education.

October 6, 2023
Date Decision Issued

Denise O. Shaffer
Administrative Law Judge

DOS/ja
#207374

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 grounds of indigence.

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

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

Copies Mailed and/or Emailed To:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

BEFORE DENISE O. SHAFFER,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-MONT-OT-23-11172

FILE EXHIBIT LIST – Appendix A

I admitted the following exhibits on behalf of the Parents:

- P. Ex. 1 - Request for Due Process, 4/26/23
- P. Ex. 2 - Psychological Evaluation by ██████████, 6/16/17, and Auditory Information Processing Assessment by ██████████
- P. Ex. 3 - MCPS Speech Language Assessment, 12/13/17
- P. Ex. 4 - MCPS Psychological Evaluation, 12/20/17
- P. Ex. 5 - MCPS approved IEP, 10/14/21
- P. Ex. 6 - Emails between Parents and MCPS, 11/19/21 to 6/29/22
- P. Ex. 7 - Emails between Parents and MCPS regarding ██████ application, including Dr. ██████' Psychological Verification Form, 5/19/22 to 5/27/22
- P. Ex. 8 - ██████ Intake Form and emails between Parents and staff, 5/7/22 to 8/5/22
- P. Ex. 9 - MCPS Authorization Form signed by Parents, 5/27/22
- P. Ex. 10 - MCPS Fourth Quarter Report Cards, June and July 2022
- P. Ex. 11 - Emails between Parents and MCPS, 7/6/22 to 8/18/22
- P. Ex. 12 - Developmental Evaluation by Dr. ██████████, 7/14/22
- P. Ex. 13 - Discharge Summary from ██████████, 8/4/22
- P. Ex. 14 - Clinical Treatment Plan at ██████████, 8/8/22
- P. Ex. 15 - Emails between Parents and the ██████████, 8/30/22 to 11/2/22
- P. Ex. 16 - ██████████ Progress Report and Discipline Detail Report, 8/29/22 to 11/4/22
- P. Ex. 17 - Vision Assessment Report, 8/26/22
- P. Ex. 18 - ██████████ Discharge Report and School Re-Entry Plan, 9/22/22
- P. Ex. 19 - Intake Form for the ██████████ and emails between Parents and ██████████, 9/26/22 to 11/15/22
- P. Ex. 20 - Dynamic Indicators of Basic Early Literacy Skills Assessment Report by ██████████, 9/22/22
- P. Ex. 21 - Emails between Parents and MCPS, including Psychologist Verification Form by Dr. ██████████ for ██████, 11/7/22 to 12/7/22
- P. Ex. 22 - ██████████ First Quarter Progress Report, November 2022
- P. Ex. 23 - ██████████ Secondary Teacher Reports for MCPS, November 2022

- P. Ex. 24 - MCPS Psychological Evaluation, 12/8/22
- P. Ex. 25 - Letter by [REDACTED], 12/20/22
- P. Ex. 26 - MCPS approved IEP, 12/20/22
- P. Ex. 27 - MCPS Prior Written Notice, 12/26/22
- P. Ex. 28 - Letter serving notice and MCPS response letter, 12/22/22 and 1/5/23
- P. Ex. 29 - A Parent's Guide to [REDACTED], December 2021
- P. Ex. 30 - Emails between Parents and [REDACTED] staff, 1/11/23 to 5/26/23
- P. Ex. 31 - [REDACTED] Second Quarter Clinician Progress Report, 2/3/23
- P. Ex. 32 - Letter by Dr. [REDACTED] regarding Student's transition to [REDACTED], February 2023
- P. Ex. 33 - [REDACTED] Third Midterm Academic Reports, 3/3/23
- P. Ex. 34 - [REDACTED] Policy Admissions Procedure, 2023
- P. Ex. 35 - Letter from [REDACTED] and [REDACTED] Notification, 3/31/23 and 3/20/23
- P. Ex. 36 - Letter to [REDACTED] from Paula A. Rosenstock, Esq., 4/10/23
- P. Ex. 37 - Letter to [REDACTED] from Parents, 4/10/23
- P. Ex. 38 - [REDACTED] School Third Quarter Clinician Progress Report, 4/21/23
- P. Ex. 39 - [REDACTED] School Fourth Midterm Academic Reports, 5/19/23
- P. Ex. 40 - Resume of Dr. [REDACTED]
- P. Ex. 41 - Resume of Dr. [REDACTED]
- P. Ex. 42 - Resume of [REDACTED]
- P. Ex. 43 - [REDACTED] Fourth Midterm Academic Reports, 6/23/23
- P. Ex. 44 - Resume of Dr. [REDACTED]
- P. Ex. 45 - [REDACTED] Third Quarter Clinician Progress Report, 6/23/23
- P. Ex. 46 - Letter by Dr. [REDACTED], 1/3/23
- P. Ex. 47 - Developmental Evaluation by Dr. [REDACTED], 7/14/22
- P. Ex. 48 - Email by parents regarding [REDACTED], 12/14/22.

I admitted the following exhibits on behalf of MCPS:

- MCPS Ex. 1 - IEP Meeting Teacher Reports, 10/14/20
- MCPS Ex. 2 - IEP, 10/14/20
- MCPS Ex. 3 - Report Card - 6th Grade, 6/23/21
- MCPS Ex. 4 - IEP Meeting Teacher Reports, 10/7/21
- MCPS Ex. 5 - Prior Written Notice, 10/14/21
- MCPS Ex. 6 - IEP, 10/14/21
- MCPS Ex. 7 - Summary of Parent Conference, 11/19/21
- MCPS Ex. 8 - [REDACTED], Parents/MCPS Email Messages re: Next Steps, 3/15/22 to 4/27/22
- MCPS Ex. 9 - Amended IEP, 3/16/22
- MCPS Ex. 10 - MCPS, [REDACTED] and Parents email Messages re: Completion of 7th Grade, 6/2022
- MCPS Ex. 11 - 2021-2022 School Year Attendance Reports, 6/18/22
- MCPS Ex. 12 - Parents email to [REDACTED] re: Return Home, 7/5/22
- MCPS Ex. 13 - Parents/MCPS email messages re: Private School Application, 7/2022
- MCPS Ex. 14 - Report Card - 7th Grade, 7/19/22
- MCPS Ex. 15 - Summer 2022 [REDACTED] Admissions Process
- MCPS Ex. 16 - Parents/MCPS email messages re: Withdrawal from MCPS, 8/18/22

- MCPS Ex. 17 - ██████████ - Clinical Treatment Plan, 8/27/22
- MCPS Ex. 18 - Parent ██████████ email messages, 8/2022 and 9/2022
- MCPS Ex. 19 - ██████████ Child Intake Form, 9/26/22
- MCPS Ex. 20 - ██████████ and Parents email Messages, 8/20/22 to 11/08/22
- MCPS Ex. 21 - Parents/MCPS email message re: Re-enrollment and Services, 11/7/22 to 11/14/22
- MCPS Ex. 22 - MCPS and Parents email messages Re: ██████████ and ██████████, 11/10 to 11/18/22
- MCPS Ex. 23 - ██████████ Application and Approval, 11/17/22 to 11/29/22
- MCPS Ex. 24 - Notice of IEP Meeting, 11/14/22
- MCPS Ex. 25 - 5 Day Notice - IEP Meeting Documentation, 11/22/22
- MCPS Ex. 26 - ██████████ Discipline-Behavior Report, 11/2022
- MCPS Ex. 27 - ██████████ Set Report Card, 11/2022
- MCPS Ex. 28 - Consent for Psychological Evaluation, 11/29/22
- MCPS Ex. 29 - ██████████ Evaluation Report, 3 versions, 11/20/22
- MCPS Ex. 30 - Consideration of External Evaluation Report, 11/29/22
- MCPS Ex. 31 - Prior Written Notice, 12/6/22
- MCPS Ex. 32 - Notice for 12/20/22 IEP Meeting, 12/6/22
- MCPS Ex. 33 - MCPS Psychological Evaluation Report, 12/8/22
- MCPS Ex. 34 - Transition Interview, 12/20/22
- MCPS Ex. 35 - Five Day Documentation for 12/20/22 IEP Meeting, 12/13/22
- MCPS Ex. 36 - ED Checklist Documentation, 12/20/22
- MCPS Ex. 37 - Prior Written Notice, 12/26/22
- MCPS Ex. 38 - IEP, 12/20/22
- MCPS Ex. 39 - Five Day Documentation After 12/20/22 IEP Meeting, 1/4/23
- MCPS Ex. 40 - Parents and Therapist email messages, 11/8/22 to 12/14/22
- MCPS Ex. 41 - Parent email messages regarding ██████████, 11/15/22-11/20/22
- MCPS Ex. 42 - Invoice and Application and Tuition Agreement, 12/13/2022
- MCPS Ex. 43 - Central IEP Referral, 12/27/22
- MCPS Ex. 44 - Notice of IEP Meeting, 1/9/23
- MCPS Ex. 45 - MCPS/Parents email messages re: Inviting Student to Meeting, 1/12/2023
- MCPS Ex. 46 - Not Offered - tab left empty in MCPS binder and Index
- MCPS Ex. 47 - ██████████ Pre-IEP Meeting Input emails, January 13, 2023
- MCPS Ex. 48 - Prior Written Notice, 2/14/23
- MCPS Ex. 49 - IEP, 2/14/23
- MCPS Ex. 50 - Letter re Public Separate Day Placement, 2/15/23
- MCPS Ex. 51 - Email message re: outcome of 2/14/23 IEP Meeting, 2/21/23
- MCPS Ex. 52 - Parents email message to ██████████, 2/21/23
- MCPS Ex. 53 - Application for ██████████, 3/1/23
- MCPS Ex. 54 - MCPS Response to Due Process Hearing Request, 5/24/23
- MCPS Ex. 55 - Correspondence re: Incomplete ██████████ Admission Process, 3/20/23 to 5/25/23
- MCPS Ex. 56 - Resume ██████████
- MCPS Ex. 57 - Resume ██████████
- MCPS Ex. 58 - Resume ██████████
- MCPS Ex. 59 - Resume ██████████

MCPS Ex. 60 - Resume [REDACTED]
MCPS Ex. 61 - Resume [REDACTED]
MCPS Ex. 62 - Resume [REDACTED]
MCPS Ex. 63 - Not Offered - Resume [REDACTED]
MCPS Ex. 64 - MCPS Special Education Website - Program Information