

██████████,  
STUDENT

v.

MONTGOMERY COUNTY  
PUBLIC SCHOOLS

BEFORE DANIEL ANDREWS,  
AN ADMINISTRATIVE LAW JUDGE  
OF THE MARYLAND OFFICE  
OF ADMINISTRATIVE HEARINGS  
OAH No.: MSDE-MONT-OT-23-11691

### DECISION

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### STATEMENT OF THE CASE

On May 2, 2023, ██████████<sup>1</sup> and ██████████ (Parents or Parent),<sup>2</sup> through counsel, filed a Due Process Complaint (Complaint) on behalf of ██████████ (Student) with the Office of Administrative Hearings (OAH), requesting a due process 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).<sup>3</sup>

On June 5, 2023, I conducted a remote pre-hearing conference (Conference) using the Webex videoconferencing platform. Michael J. Eig, Esquire, participated on behalf of the Student and Parents. Stacy R. Swain, Esquire, participated on behalf of the MCPS.

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<sup>1</sup> During the hearing, Ms. ██████████ requested that she be referred to as ██████████ or Ms. ██████████.

<sup>2</sup> Both of the Parents are mentioned throughout the evidence presented in this case. For ease of reference, unless contextually necessary, I may reference an individual parent as “Mr. or Mrs. ██████████.” Otherwise, I will refer to either parent as “Parent.”

<sup>3</sup> 20 United States Code Annotated (U.S.C.A.) § 1415(f)(1)(A) (2017); 34 Code of Federal Regulations (C.F.R.) § 300.511(a) (2022); Md Code Ann., Educ. § 8-413(d)(1) (Supp. 2023). Unless otherwise noted, all citations herein to the U.S.C.A. are to the 2017 bound volume. Unless otherwise noted, all citations herein to the C.F.R. are to the 2022 bound volume. Unless otherwise noted, all citations herein to the Education Article are to the 2023 Supplement.

During the Conference, the attorneys for each party consulted with their respective schedules to determine the most reasonable date this matter could be scheduled for a hearing. In June, both attorneys had previously scheduled hearings. In July and August, both attorneys had previously scheduled hearings or vacations and I had a previously scheduled hearing conflict that could not be reassigned or rescheduled. In the last week of August and the first week of September, the MCPS had issues with witness availability due to the start of the new school year and a national holiday. Based on the scheduling issues for the parties and myself, the earliest available date to hold a hearing and do so on consecutive days was Monday, September 18, 2023. It was agreed to schedule the hearing for Monday, September 18, 2023 and continue on consecutive dates through Thursday, September 21, 2023.

Under the applicable law, a decision in this case would be due forty-five days after the conclusion of the resolution period.<sup>4</sup> The Complaint was filed on May 2, 2023. A resolution meeting was conducted on May 11, 2023.<sup>5</sup> No agreement was reached by the parties, but the parties did not notify the OAH in writing that no agreement was possible.<sup>6</sup> Neither party request requested an opportunity to resolve the Complaint through mediation.<sup>7</sup> Without a request for mediation and with no agreement in writing from the parties to indicate that no resolution was possible, the resolution period expired on June 1, 2023.

The timeframe for conducting a hearing and issuing a decision in this matter ended on Friday July 14, 2023, which is approximately forty-five days from the expiration of the resolution period.<sup>8</sup>

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

<sup>5</sup> 34 C.F.R. § 300.510(a).

<sup>6</sup> *Id.* § 300.510(c)(2). On May 12, 2023, through a Due Process – Resolution Meeting – Tracking Form, the MCPS notified the OAH that a resolution meeting was held but no agreement was reached.

<sup>7</sup> *See id.* § 300.506.

<sup>8</sup> *Id.* § 300.515(a). The actual forty-five-day timeline ended on Sunday, July 16, 2023. In Maryland, when the due process timeline ends on a weekend day or holiday, the timeline will conclude on the regular workday that precedes the weekend day or holiday.

Considering that the parties required time to prepare and exchange documents in conformity with the five-day disclosure rule, and for all the scheduling reasons explained above, the parties requested to extend the timeline to allow the case to be heard on the scheduled dates.<sup>9</sup> “A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.”<sup>10</sup> Accordingly, I found good cause to extend the regulatory timeframe as requested by the parties.<sup>11</sup>

On September 14, 2023, the Student and Parents, through their attorney, Michael J. Eig, Esquire, requested to postpone the due process hearing scheduled to begin on September 18, 2023. The Parents explained that a necessary witness, [REDACTED], Founder and Chief Operating Officer of [REDACTED] ([REDACTED]), was unavailable for the scheduled hearing date and requested additional time to resolve the issue.<sup>12</sup> Additionally, for health issues, Mr. Eig was advised to “take a break” in his hearing schedule.<sup>13</sup> The MCPS did not oppose the postponement request. After considering the request, I found good cause and granted the postponement.<sup>14</sup>

On September 15, 2023, the parties participated in a telephone conference. The Student and Parents were represented by Paula Rosenstock, Esquire, and the MCPS was represented by Ms. Swain. Based on the need to reschedule new hearings dates, Mr. Eig’s health issues, and both parties’ hearing schedules, which contained conflicts because of other previously scheduled matters, the parties requested an extension of the applicable due process timeline, which I found

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<sup>9</sup> *Id.* § 300.515(c).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> The Student has been unilaterally placed at [REDACTED], a private [REDACTED] school, for the ninth and tenth grade school years. The Student’s placement at [REDACTED] is one of the issues to be resolved by the due process hearing.

<sup>13</sup> The postponement request explained that Mr. Eig had been in back-to-back hearings for several weeks and was advised to take a break in his schedule. Because the postponement request was unopposed by the MCPS, I found it unnecessary further inquire into the health issues. I am very familiar with Mr. Eig and do not question the seriousness of his request to postpone a hearing, especially for health issues.

<sup>14</sup> See COMAR 28.02.01.16.

good cause to extend.<sup>15</sup> The parties agreed to reschedule the due process hearing for five consecutive days beginning Monday, November 27 through Friday, December 1, 2023, with each day beginning at 9:30 a.m., and that the hearing would be conducted remotely via Webex.

The parties further requested that I issue a decision within 30 days of the completion of the hearing, which is Friday, December 29, 2023.<sup>16</sup> If the hearing concludes on a different date other than December 1, 2023, the decision due date will be adjusted accordingly.

On Monday, November 27, 2023, a due process hearing was convened as scheduled, via Webex, and continued on consecutive days through Friday, December 1, 2023. Mr. Eig represented the Student and Parents. Ms. Swain represented the MCPS.

Procedure is governed by the contested case provisions of the Administrative Procedure Act; the Education Article; the Maryland State Department of Education (MSDE) procedural regulations; and the Rules of Procedure of the OAH.<sup>17</sup>

### **ISSUES**

1. For ninth grade (2021-2022 school year (SY)), did the MCPS fail to offer the Student a Free Appropriate Public Education (FAPE), through a proposed individualized education program (IEP) and a proposed least restrictive environment (LRE) at [REDACTED] High School ([REDACTED] HS), which adequately addressed the Student's unique academic, speech/language, social/emotional, and behavioral needs?

2. For tenth grade (2022-2023 SY), did the MCPS offer the Student a FAPE, through a proposed IEP and a proposed LRE of [REDACTED] HS, which adequately addressed the Student's unique academic, speech/language, social/emotional, and behavioral needs?

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<sup>15</sup> See 34 C.F.R. § 300.515.

<sup>16</sup> Thirty days from Friday, December 1, 2023 falls on Sunday, December 31, 2023. In Maryland, when the decision due date falls on a weekend day or holiday, the decision will be due on the regular workday that precedes the weekend day or holiday.

<sup>17</sup> Educ. § 8-413(e)(1); Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp 2023); COMAR 13A.05.01.15C; COMAR 28.02.01.

3. If not, was [REDACTED] the appropriate educational placement for the Student for the 2021-2022 and 2022-2023 SYs?

4. If so, are the Parents entitled to reimbursement for tuition and related costs for the Parents' unilateral placement of the Student at [REDACTED] for the 2021-2022 and 2022-2023 SYs?

5. If the MCPS failed to provide a FAPE to the Student for the 2021-2022 and 2022-2023 SYs, is a prospective placement at [REDACTED] for the 2023-2024 SY appropriate?

### **SUMMARY OF THE EVIDENCE**

An exhibit list is attached to this Decision as an Appendix.

#### **Testimony**

Ms. [REDACTED] testified on behalf of the Student, and presented the testimony of the following witnesses:

- 1) [REDACTED], Educational Consultant, accepted as an expert in Special Education.
- 2) [REDACTED], Founder and Chief Operating Officer of [REDACTED], accepted as an expert in [REDACTED] education.
- 3) [REDACTED], former ninth grade teacher and Program Director at [REDACTED].

The MCPS presented the following witnesses:

- 1) [REDACTED], Special Education Math Teacher and Resource Lead, [REDACTED] Middle School ([REDACTED] MS), accepted as an expert in Special Education.
- 2) [REDACTED], Assistant Principal, [REDACTED] MS, accepted as an expert in Public School Administration.
- 3) [REDACTED], Resource Teacher, [REDACTED] MS, accepted as an expert in Special Education.
- 4) [REDACTED], Special Education Resource Teacher, [REDACTED] HS, accepted as an expert in Special Education.
- 5) [REDACTED], School Psychologist, [REDACTED] HS, accepted as an expert in School Psychology.

## **FINDINGS OF FACT**

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

### ***Background – Generally***<sup>18</sup>

1. Since the third grade, the Student has been eligible for special education as a student with a learning disability in reading and writing. She accessed her education through an IEP.

2. In 2019, during sixth grade, an Independent Educational Evaluation (IEE)<sup>19</sup> was conducted which diagnosed the Student as having a specific learning disability in reading (dyslexia), written language (dysgraphia) and mathematics (dyscalculia).<sup>20</sup>

3. During the IEE, the Student showed clinically significant results in the areas of attention, hyperactivity, and learning problems. The Parent reported average results for the Student in the areas of emotional distress, upsetting thoughts, worrying, social problems, defiant/aggressive behaviors, hyperactivity, perfectionistic and compulsive behavior, and physical symptoms.<sup>21</sup>

4. Based on the IEE, recommendations for the Student included 1 to 1 (1:1) instruction in reading, writing, and that the Student should be pulled out of the general instruction class to receive 1:1 instruction.<sup>22</sup>

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<sup>18</sup> The MCPS objected to some of the background evidence on the basis that the due process complaint only addressed the Student's ninth and tenth grade SYs. I overruled that objection for the same reason that I set out some of that background here. The Student's history, including educational history with the MCPS leading up to the disputed school years, provides important context to understand the disputed IEPs and the provision of a FAPE for those school years.

<sup>19</sup> The IEE was conducted by [REDACTED], Psy.D.

<sup>20</sup> P. Ex. 2.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

5. On January 22, 2020, during the Student's seventh grade SY, the MCPS convened an annual IEP meeting to review or revise the Student's IEP.<sup>23</sup>

6. During this meeting, the Parent indicated that a more intensive program in a smaller environment throughout the school day would be more appropriate for the Student.<sup>24</sup>

7. On February 13, 2020, during the Student's seventh grade SY, [REDACTED], an Educational Consultant for the Student's family, conducted an observation of the Student at [REDACTED] MS. On this date, Ms. [REDACTED] observed the Student's science class, which was a general education class, supported by special education instructors (co-taught).<sup>25</sup>

8. The instructors included one general education teacher, and one special education teacher. The class had approximately 25 students.<sup>26</sup>

9. During this observation, the Student had difficulty doing required tasks, requiring teacher check-ins and peer support. The Student engaged in off task behaviors. The Student's case manager noted that the Student's behavior was typical, and that the Student's anxiety can be debilitating.<sup>27</sup>

10. On March 2, 2020, Ms. [REDACTED] observed the Student's math class, which was a self-contained class, outside the general education classroom. On the day of observation, the Student's math class was supported by one teacher and had three students. After the observation, the math teacher explained that when the Student is off task, it is hard to get her back on task.<sup>28</sup>

11. Shortly after this observation, in March 2020, the COVID-19 pandemic led to the closure of the State, including the MCPS until on or about May 15, 2020. However, in April

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<sup>23</sup> P. Ex. 2A.

<sup>24</sup> *Id.*

<sup>25</sup> P. Ex. 3.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

2020, the MCPS began to implement a virtual on-line learning plan for the remainder of the school year.<sup>29</sup>

12. Based on her observations, Ms. ██████ concluded that in both the general education (co-taught) class and the self-contained class, the Student demonstrated signs of anxiety and required adult assistance to understand information and tasks and to redirect her attention to tasks.<sup>30</sup>

13. Ms. ██████ recommended that the Student's IEP should reflect the impact anxiety has on her during school as well as provide specialized instruction for this weakness. Ms. ██████ also recommended that the Student required specialized instruction both inside and outside of the classroom to address this weakness.<sup>31</sup>

14. Ms. ██████ recommended a small class size for the Student in all classes.<sup>32</sup>

#### ***Background – Eighth Grade (2020-2021)***

15. For eighth grade, the Student attended ██████ MS; however, because of the COVID-19 pandemic, the MCPS conducted all of its classes virtually via an on-line learning program.

16. On February 3, 2021, the MCPS convened an IEP Meeting.<sup>33</sup>

17. The Student's IEP determined that she was eligible for special education based on a primary disability of a specific learning disability in math, reading, and writing.<sup>34</sup>

18. The IEP identified that the academic areas affected by her disability included math calculation, reading comprehension, reading fluency, and written language mechanics. The IEP also identified that the Student's behavior was affected by anxiety. The IEP updated the Student's present levels of academic achievement and functional performance, development of

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<sup>29</sup> <https://ww2.montgomeryschoolsmd.org/departments/publicinfo/community/school-year-2019-2020/coronavirus-update-20200418.html> (last visited December 2, 2023).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> MCPS Ex. 3.

<sup>34</sup> MCPS Ex. 1.



appropriate goals, and supplementary aids and supports in the academic areas affected by her disabilities.<sup>35</sup>

19. The IEP established the level of services the Student would receive. From February 3, 2021 through June 16, 2021, the Student would receive special education services as follows:

- a. inside a general education classroom, co-taught by a special education teacher or an instructional assistant, for 11 hours and 15 minutes per week; and
- b. outside a general education classroom, in a self-contained classroom, from a special education teacher or an instructional assistant, for 11 hours and 15 minutes per week.<sup>36</sup>

20. On May 14, 2021, the Student was admitted to [REDACTED], Partial Hospitalization Program (PHP), for psychiatric evaluation and treatment because of symptoms including depressed mood, suicidal thoughts, anxiety, panic attacks, and loss of interest and motivation. The Student was discharged from [REDACTED] on June 8, 2021, with a diagnosis of Major Depressive Disorder.<sup>37</sup>

21. During the Student's PHP, the Student remained on task, completed assignments, followed directions, communicated clearly, used time wisely, worked well with others, was motivated, attempted to complete assignments, did not have impaired concentration, was not distracting to others, was not easily frustrated, and was not impulsive.<sup>38</sup>

22. Upon discharge, the following educational recommendations were made:

- a. Follow up with Student after transitioning back to school;
- b. Check in with the Student;
- c. Create a safety plan with the Student;
- d. Discuss triggers and coping strategies;
- e. Provide flash pass for Student to visit support staff, as needed;

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> P. Exs. 6 and 7.

<sup>38</sup> MCPS Ex. 17.

- f. Pre-arranged or frequent breaks, as needed;
- g. Reduction of coursework or assignments;
- h. Dismiss makeup assignments;
- i. Extended time on tests; and
- j. Extended time for assignments.<sup>39</sup>

***Nineth Grade (2021-2022)***

23. On June 9, 2021, the MCPS convened an IEP Meeting to review and revise the Student's February 3, 2021 IEP.<sup>40</sup>

24. During the meeting, the MCPS proposed ninth grade services for the Student which included a general education classroom and instruction by a general education teacher and an instructional assistant (co-taught classroom), for Algebra, Biology, and United States History classes.<sup>41</sup>

25. Additionally, the MCPS proposed that in a self-contained classroom, outside of general education, instructed by a special education teacher and instructional assistant, the Student would attend English and Resource classes.<sup>42</sup>

26. The MCPS also proposed that outside of general education, the Student would receive counseling services to include one weekly twenty-minute session from a school counselor or social worker.<sup>43</sup>

27. At the IEP Meeting, the Parent expressed concern regarding the Student's transition to ██████████ HS and felt that the Student required a smaller learning environment.<sup>44</sup>

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<sup>39</sup> *Id.*

<sup>40</sup> MCPS Ex. 4.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

28. The MCPS IEP team agreed to hold a re-evaluation planning meeting in the fall of 2021, once the Student returned to in-person learning and the team is able to collect data on her progress.<sup>45</sup>

29. On June 14, 2021, the MCPS issued the Student's amended IEP.<sup>46</sup>

30. The amended IEP continued to find the Student eligible for special education based on a primary disability of a specific learning disability in math, reading, and writing.<sup>47</sup>

31. The amended IEP continued to identify the academic areas affected by the Student's disability, including math calculation, reading comprehension, reading fluence, and written language mechanic. The IEP also identified that the Student's behavior was affected by anxiety.<sup>48</sup>

32. The Student's amended IEP identified present levels of academic achievement and functional performance (PLAFP) in reading fluency, reading comprehension, written language mechanics, math calculation, and behavior-anxiety.<sup>49</sup>

33. The Student's PLAFP related to behavior and anxiety was determined based on MCPS teacher reports, staff observations, and classroom performance.<sup>50</sup>

34. Based on teacher reports, the Student continued to have difficulty speaking out during classes and staying on task in a virtual setting. Teachers noticed that the Student presented with a lower independent work ethic and more of a desire by the Student to just get an answer instead of completing work herself.<sup>51</sup>

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<sup>45</sup> *Id.*

<sup>46</sup> MCPS Ex. 1.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> The amended IEP described the Student's PLAFP, goals and objectives, supplementary aids, services, program modifications and supports, and level of special education services which would be implemented during eighth grade from February 3, 2021 through June 16, 2021. *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

35. As to the Student's PLAFP, the Parent reported that during the COVID-19 SY closures the Student's anxiety increased, and, by the spring, the Student had shut down from learning. The Parent further reported that because of virtual learning, the Student was unable to bond with eighth grade teachers and reported that no one liked her, that teachers believed she is not capable of learning, and she asked for the home schooling to be continued.<sup>52</sup>

36. The amended IEP provided supplementary aids, services, program modifications and supports, which the Student would receive daily or as needed, in all classes including:

- a. Visual aids and eliminating memorization requirements to help reduce anxiety;
- b. Limiting the amount to be copied from the board, to reduce anxiety and increase ability to attend instruction;
- c. Repetition of instruction to ensure directions are heard and understood;
- d. Use of manipulatives to facilitate understanding of math concepts;
- e. Provide copy of student and teacher notes to facilitate focus and comprehension;
- f. Monitor independent work to ensure comprehension and enable redirection;
- g. Frequent and or immediate feedback to ensure Student is proceeding correctly with assignments;
- h. Check for understanding to ensure comprehension and facilitate Student inquiries;
- i. Extended time for writing, whenever Student has an assignment longer than one paragraph;
- j. Chunking of text, as needed, to facilitate comprehension and help manage anxiety;
- k. Breakdown of assignments into smaller units to facilitate understanding and allow for teacher check-in for completion before proceeding;
- l. Limit reading amount to ensure comprehension and manage anxiety;
- m. Discuss and promote appropriate strategies for anxiety management with direct instruction on a regular basis inside and outside the classroom to support implementation of strategies for anxiety management;
- n. Use positive concrete reinforcement to encourage best performance a reduce anxiety;
- o. Counselor check-ins as needed to help with anxiety management;
- p. Flash pass to trusted adult as needed to help with anxiety management;
- q. Social engineer work groups as needed to ensure supportive work environment and student contribution to the group;

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<sup>52</sup> *Id.*

- r. Monitor use of agenda book and or progress report to ensure homework is recorded and assignments are completed on time;
- s. Encourage the student to ask assistance when needed to reduce anxiety and prevent student shutdown; and
- t. Preferential seating near the point of instruction and away from distractions.<sup>53</sup>

37. The amended IEP established goals and objectives for the Student to achieve in reading comprehension, written language mechanics, math calculation, and behavior-anxiety.<sup>54</sup>

38. From August 30, 2021 through February 2, 2022, the amended IEP established that the Student would receive special education services:

- a. inside a general education classroom, co-taught by a special education teacher or an instructional assistant, for 11 hours and 15 minutes per week;
- b. outside a general education classroom, in a self-contained classroom, from a special education teacher or an instructional assistant, for 7 hours and 30 minutes per week; and
- c. outside of general education, a related service of counseling, from a school counselor or a school psychologist for 20 minutes per week.<sup>55</sup>

39. The total time inside a general education classroom, co-taught by a general education teacher and a special education teacher or assistant, for Algebra, Biology, and United States History classes was 11 hours and 15 minutes per week.<sup>56</sup>

40. The total time outside a general education, in a self-contained special education classroom for English and Resource classes was 7 hours and 30 minutes per week. However, when including the related service of counseling, the total time outside general education was 7 hours and 50 minutes per week.<sup>57</sup>

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

41. Based on the amended IEP, the MCPS proposed that the Student's IEP could be implemented in the LRE at ██████ HS, which is the Student's residential school.<sup>58</sup>

42. On August 4, 2021, the Parent notified the MCPS that an appropriate special education program had not been identified or offered for the Student for the ninth grade SY, despite the Parents' best effort to procure such a program and placement.<sup>59</sup>

43. The Parent notified the MCPS that the Student would attend ██████ for the 2021-2022 SY and requested that MCPS fund the Student's education at ██████.<sup>60</sup>

44. On August 9, 2021, the MCPS responded by asserting that it offered and made available a FAPE in the LRE at the June 9, 2021 IEP meeting.<sup>61</sup>

45. The Parent enrolled the Student at ██████, which is school providing a ██████ education. A ██████ education is designed to understand a student's developmental strengths and weaknesses and builds an educational plan around the student's strengths.

46. Teachers at ██████ are not certified by the MSDE to teach in Maryland and are not specifically trained in special education.

47. For a student at ██████, who has an IEP developed by a public school system, ██████ does not implement the IEP but will design an Educational Plan for the student, which may use some of the support and accommodations described in the IEP.

48. ██████ is a college preparatory school and had 25 students attending ninth through twelfth grade when the Student entered ninth grade. A typical class size is 7 or 8 students, with one teacher. ██████ has only two classrooms. The annual tuition at ██████ is \$37,000.00.

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<sup>58</sup> *Id.*

<sup>59</sup> P. Ex. 9.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

49. Because of the school size and structure, the Student's ninth grade teacher was able to spend as much as 5 to 6 hours a day with the Student.

50. When the Student began attending [REDACTED], her anxiety continued to be a major challenge. [REDACTED] staff and teachers continually monitored the Student's anxiety behaviors to modify the Student's work without overwhelming the Student and to sustain her academic progress.

51. To address anxiety, the Student had access to a counselor and the teacher provided 1:1 support for executive functioning issues as well as frequent check-ins.

52. The Student's ninth grade teacher would regularly meet with the Student in the morning before school started, during lunch time, and after school to discuss any issues the Student was having with school or assignments and based on these discussions was able to support the Student with her anxiety.

53. During the ninth grade, in December 2021, the Student entered the PHP for a period of time to address her anxiety and then returned to school in January. Upon her return, the Student made significant progress at [REDACTED].

54. In the ninth grade at [REDACTED], the Student's courses included Algebra 1, Biology, U.S. History and Civics, English, Physical Education, Health, Art, and Leadership. The Student earned As and Bs throughout ninth grade.<sup>62</sup>

55. Teachers at [REDACTED] describe the Student as very happy and with a positive attitude, making significant improvements in all areas of learning and participates in class.

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<sup>62</sup> P. Ex. 16.

***Tenth Grade (2022-2023)***

56. On July 20, 2022, in preparation for the Student's tenth grade SY, the MCPS convened an IEP meeting to review and revise the Student's IEP.<sup>63</sup>

57. During this meeting, the IEP team, including the Parent, agreed that there was inadequate information to write an IEP. At the time, the Student had been at [REDACTED] for the past SY and the most recent assessments were completed in 2019.<sup>64</sup>

58. As a result, the IEP team agreed to complete updated assessments, including a speech-language assessment, and to convene another IEP meeting to consider all assessments.<sup>65</sup>

59. On August 4, 2022, the Parent notified the MCPS that the Student would attend [REDACTED] for the 2022-2023 tenth grade school year and requested that the MCPS fund the Student's education at [REDACTED].<sup>66</sup>

60. In response, the MCPS explained that it offered and made available to the Student a FAPE, in the LRE. As result, the MCPS declined to place and fund the Student's education at [REDACTED].<sup>67</sup>

61. On August 23, 2022, [REDACTED], a certified speech language pathologist, conducted a Speech Language Assessment of the Student.<sup>68</sup>

62. On the assessment, the Student showed areas of strength in social communication and pragmatic language. The Student had weaknesses in areas of oral expression, specifically in regard to grammar, including proper use of conjunctions and punctuation in spoken language.

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<sup>63</sup> MCPS Ex. 5.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> P. Ex. 24.

<sup>67</sup> *Id.*

<sup>68</sup> MCPS Ex. 9.



Due to these weaknesses, the Student's educational performance was impacted in the area of expressive language.<sup>69</sup>

63. Throughout the assessment, the Student was observed to have intermittent difficulty focusing and she benefitted from being given extra time to respond and rest breaks between test sections. The Student required frequent repetition of instructions. During testing, distractions were kept to a minimum, however, occasional breaks in testing were provided due to loud noises coming from the hallway.<sup>70</sup>

64. On September 8 and September 28, 2022, an Educational Assessment of the Student was conducted.<sup>71</sup>

65. The September 8, 2022 session was conducted at [REDACTED] HS. The September 28, 2022 session conducted at [REDACTED].

66. At the time of assessment, the Student was in the tenth grade at [REDACTED].<sup>72</sup>

67. Ms. [REDACTED] considered specific teacher notes, along with grades for the current term, which were included in the report.<sup>73</sup>

68. In the area of reading, the Student demonstrated understanding of basic phoneme-grapheme relationships but required extra time to sound out words that she did not know. The Student was not confident in her reading abilities which impacted her fluency. The Student demonstrated average comprehension, but comprehension could be impacted by fluency. Ms. [REDACTED] explained that if the Student is sounding out words, her brain may have a harder time comprehending what she is reading.<sup>74</sup>

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<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> [REDACTED], Special Education Resource Teacher, conducted the assessment and issued a report on November 1, 2022. *See* MCPS Ex. 8.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

69. In mathematics, the Student's broad math score was in the low range and demonstrated an average ability to solve word problems but also demonstrated difficulty with higher-level calculations and if timed.<sup>75</sup>

70. The Student's overall written expression abilities were in the average range. Writing is a relative strength for the Student when she can write at her own pace and in her own style.<sup>76</sup>

71. Based on the Educational Assessment, the following was recommended:
- a. Engage in oral reading 10-15 minutes daily to increase reading Abilities;
  - b. When possible, instructional materials should be aligned to Student's individual reading level;
  - c. Instruction and practice with comprehension strategies;
  - d. Teach self-monitoring techniques;
  - e. Access to organization tools such as chunking texts;
  - f. Access to spell-check devices;
  - g. Access to graphic organizers;
  - h. Access to work banks or content specific vocabulary words for longer writing assignments;
  - i. Proofreading checklists and or rubrics;
  - j. Extra time spent on editing skills;
  - k. Access to a calculator;
  - l. Use of fact charts or formula sheets;
  - m. Extra scratch paper;
  - n. Reminders or prompts to double-check work before turning it in;
  - o. Preferential seating; and
  - p. Extended time.<sup>77</sup>

72. On October 11, 2022, a Psychological Evaluation of the Student was conducted.<sup>78</sup>

The evaluation was conducted at [REDACTED].<sup>79</sup>

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<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> MCPS Ex. 8.

<sup>78</sup> [REDACTED], Ph.D., a certified school psychologist, conducted the evaluation at [REDACTED] and issued a report on November 3, 2022. See MCPS Ex. 7.

<sup>79</sup> *Id.*

73. The evaluation found that the Student continues to demonstrate issues with attention difficulties and anxiety, which impact her executive functioning including areas of working memory and task completion.<sup>80</sup>

74. Based on the Psychological Evaluation, it was recommended that the Student receive accommodations or program modification to address anxiety, working memory, and task completion.<sup>81</sup>

75. On November 10, 2022, the MCPS convened an IEP Meeting.<sup>82</sup>

76. During the IEP Meeting, the MCPS proposed changing the Student's learning disability code from Specific Learning Disability to Multiple Disabilities, to include a Specific Learning Disability and Other Health Impairment.<sup>83</sup> The Other Health Impairment related to diagnoses of Attention Deficit Hyperactivity Disorder (ADHD) and Anxiety.

77. The MCPS also proposed special education services through four "supported" classes, which would be co-taught instruction in the general education classroom for core academics; one class outside general education for a Resource class; and counseling services for one 20-minute session per week.<sup>84</sup>

78. The MCPS also proposed that the Student will attend [REDACTED] HS, in the [REDACTED] ([REDACTED]) program.<sup>85</sup>

79. The Parent disagreed with placement at [REDACTED] HS [REDACTED] program. The Parent explained that the Student required a lot more support, that the Student would be completely

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<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> MCPS Ex. 6.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

overwhelmed by being in a general education setting, and that the Student required a full-time individualized program.<sup>86</sup>

80. In response, the MCPS continued to find that the Student would be supported at [REDACTED] HS, within the [REDACTED] program, and disagreed with making a referral to the CIEP team.<sup>87</sup>

81. On November 10, 2022, the MCPS issued the Student's IEP.<sup>88</sup>

82. The Student's IEP contained PLAFP in reading fluency, reading comprehension, math calculation, math problem solving, written language mechanics, speech and language expressive language, behavior - self management and anxiety.<sup>89</sup>

83. The Student's IEP contained the following supplementary aids, services, program modifications, and supports:

- a. Prompting to double check work before turning in;
- b. Use of work bank to reinforce vocabulary and extended time when writing;
- c. Checklists or rubrics;
- d. Repeating or paraphrasing directions to ensure understanding;
- e. Short and simple oral direction to increase understanding;
- f. Movement breaks to increase attention or focus and to decrease anxiety;
- g. Access to audio books or text;
- h. Visual aids to eliminate memorization requirements and reduce anxiety;
- i. Limit amount to be copied from board to reduce anxiety and increase ability to attend instruction;
- j. Repetition of directions to ensure heard and understood;
- k. Use of manipulatives to facilitate math concepts;
- l. Provide copy of teacher and student notes to facilitate focus and understanding;
- m. Monitor of independent work to ensure comprehension and enable redirection;
- n. Frequent and or immediate feedback;
- o. Check for understanding;
- p. 100 percent extended time for writing assignments (longer than one paragraph);
- q. Chunking of text to facility comprehension and help manage anxiety;
- r. Breakdown of assignments in smaller units to facilitate understand and allow for teacher check-ins;

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<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> MCPS Ex. 2.

<sup>89</sup> *Id.*

- s. Limit amount of reading to ensure comprehension and reduce anxiety;
  - t. Discuss and promote appropriate strategies for anxiety management;
  - u. Use of concrete positive reinforcers;
  - v. Counselor check-ins (as needed) to help with anxiety management;
  - w. Flash pass to trusted adult to help with anxiety management (as needed);
  - x. Socially engineered work groups to ensure supportive work environment (as needed);
  - y. Monitor use of agenda book and or progress report to ensure homework is recorded and assignments are completed on time;
  - z. Encourage Student to asked for assistance when needed to reduced anxiety and student “shutdown”; and
  - aa. Preferential seating.<sup>90</sup>
84. The Student’s IEP contained goals and objectives for reading comprehension,

math calculation, written language mechanics, speech and language expressive language, math problem solving, behavior-anxiety, and behavior-self management.<sup>91</sup>

85. The IEP proposed the educational services the Student will receive. From November 10, 2022 through November 9, 2023, the Student would receive special education services:

- a. inside a general education classroom, taught by a gernal education teacher, co-taught by a special education teacher or an instructional assistant, for 15 hours per week;
- b. outside a general education classroom, in a self-contained classroom, taught by a special education teacher or an instructional assistant, for 3 hours 45 minutes per week;
- c. outside a general education classroom, a related service of counseling, from a school counselor or a school psycholgist, for 20 minutes per week; and
- d. outside a general education classroom, a related service of speech language therapy, from a speech language therapist, for 45 minutes a session, twice per month.<sup>92</sup>

86. The total time inside a general education classroom, co-taught by a general education teacher and a special education teacher or assistant was 15 hours per week.<sup>93</sup>

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<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

87. The total time outside general education, in a self-contained classroom for Resource instruction or for the related service of counseling was 4 hours and 5 minutes per week. The additional related service of speech language therapy increased the time outside of general education to 4 hours and 27.5 minutes per week.<sup>94</sup>

88. After determining the Student's level of special education services that the Student required inside and outside of general education, including related services, the MCPS determined that the Student's residential school, [REDACTED] HS, can provide all the services required to provide a FAPE in a LRE.<sup>95</sup>

## **DISCUSSION**<sup>96</sup>

### **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.<sup>97</sup> 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.”<sup>98</sup> Yet, this respect and deference is not limitless.<sup>99</sup>

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<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> My findings, analysis, and legal conclusions are based upon consideration of all of the parties' arguments and the credible evidence of record. All testimonial and documentary evidence was considered and given the weight it was due, regardless of whether it has been recited, cited, referenced, or expressly set forth in the Decision. *See, e.g., Mid-Atl. Power Supply Ass'n v. Md. Pub. Serv. Comm'n*, 143 Md. App. 419, 442 (2002) (emphasizing that “[t]he Commission was free to accept or reject any witness's testimony” and “the mere failure of the Commission to mention a witness's testimony” does not mean that the Commission “did not consider that witness's testimony”).

<sup>97</sup> *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005); COMAR 28.02.01.21K(1).

<sup>98</sup> *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.’”).

<sup>99</sup> *See Cnty. Sch. Bd. of Henrico Cnty. v. Z.P.*, 399 F.3d 298, 307 (4th Cir. 2005) (“Nor does the required deference to the opinions of the professional educators somehow relieve the [judge] of the obligation to determine as a factual matter whether a given IEP is appropriate.”).

Therefore, “the fact-finder is not required to conclude that an IEP is appropriate simply because a teacher or other professional testifies that the IEP is appropriate.”<sup>100</sup> “Indeed, if the views of school personnel regarding an appropriate educational placement for a disabled child were conclusive, then administrative hearings conducted by an impartial decisionmaker would be unnecessary”<sup>101</sup> and “would render meaningless the entire process of administrative review.”<sup>102</sup>

### FAPE under the IDEA

The identification, evaluation, and placement of students in special education are governed by the IDEA.<sup>103</sup> The IDEA requires “that all children with disabilities have available to them a [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living.”<sup>104</sup> 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*,<sup>105</sup> 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.”<sup>106</sup> 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,<sup>107</sup> and

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<sup>100</sup> *Id.*; see also *Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1476 (9th Cir. 1993).

<sup>101</sup> *Id.*

<sup>102</sup> *Sch. Bd. of Prince William Cnty., Va. v. Malone*, 762 F.2d 1210, 1217 (4th Cir. 1985) (citation omitted).

<sup>103</sup> 20 U.S.C. §§ 1400-1482; 34 C.F.R. pt. 300; Educ. §§ 8-401 through 8-417; COMAR 13A.05.01.

<sup>104</sup> 20 U.S.C. § 1400(d)(1)(A); see also Educ. § 8-403.

<sup>105</sup> 458 U.S. 176 (1982).

<sup>106</sup> *Rowley*, 458 U.S. at 201 (footnote omitted).

<sup>107</sup> Through the Complaint, the Parents did not allege any due process procedural violations. During the due process hearing, the Parents only argued that the IEPs as proposed for the Student’s ninth and tenth grade school years did not provide the Student with a FAPE. For this reason, this Decision does not address any procedural violations.

second, whether the IEP, as developed through the required procedures, is reasonably calculated to enable the child to receive educational benefit.<sup>108</sup>

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.<sup>109</sup> Consideration of the student's particular circumstances is key to this analysis; the Court emphasized in *Endrew F.* that the "adequacy of a given IEP turns on the unique circumstances of the child for whom it was created."<sup>110</sup>

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.<sup>111</sup> Directly adopting language from *Rowley*, and expressly stating that it was not making any "attempt to elaborate on what 'appropriate' progress will look like from case to case," the *Endrew F.* court instructs that the "absence of a bright-line rule . . . should not be mistaken for 'an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.'"<sup>112</sup> At the same time, the *Endrew 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

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<sup>108</sup> *Id.* at 206-07.

<sup>109</sup> *Endrew F.*, 137 S. Ct. 988.

<sup>110</sup> *Endrew F.*, 136 S. Ct. at 1001.

<sup>111</sup> *Id.* at 999.

<sup>112</sup> *Id.* (quoting *Rowley*, 458 U.S. at 206).



decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.”<sup>113</sup>

### 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 consider:

- (i) the strengths of the child;
- (ii) the concerns of the Parents for enhancing the education of their child;
- (iii) the results of the initial evaluation or most recent evaluation of the child; and
- (iv) the academic, developmental, and functional needs of the child.<sup>114</sup>

Among other things, the IEP describes a student’s current educational performance, explains how the student’s disability affects a student’s involvement and progress in the general curriculum, sets forth annual goals and short-term objectives for improvements in that performance, describes the specifically designed instruction and services that will assist the student in meeting those objectives, describes program modifications and supports for school personnel that will be provided for the student to advance appropriately toward attaining the annual goals, and indicates the extent to which the child will be able to participate in regular educational programs.<sup>115</sup>

IEP teams must consider the student’s evolving needs when developing their educational programs. The student’s IEP must include “[a] statement of the child’s present levels of academic achievement and functional performance, including . . . [h]ow the child’s disability affects the child’s involvement and progress in the general education curriculum (i.e., the same curriculum as for non-disabled children) . . .”<sup>116</sup> If a child’s behavior impedes his or her

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<sup>113</sup> *Id.* at 1002; *see also R.F. by and through E.F. v. Cecil Cnty. Pub. Sch.*, 919 F.3d 237 (4th Cir. 2019).

<sup>114</sup> 20 U.S.C. § 1414(d)(3)(A).

<sup>115</sup> 20 U.S.C. § 1414(d)(1)(A)(i)(I)-(V); COMAR 13A.05.01.09A.

<sup>116</sup> 34 C.F.R. § 300.320(a)(1)(i).

learning or that of others, the IEP team must consider, if appropriate, the use of positive behavioral interventions, strategies and supports to address that behavior.<sup>117</sup> A public agency is responsible for ensuring that the IEP is reviewed at least annually to determine whether the annual goals for the child are being achieved and to consider whether the IEP needs revision.<sup>118</sup> However, a “school district is only required to continue developing IEPs for a disabled child no longer attending its schools when a prior year’s IEP for the child is under administrative or judicial review.”<sup>119</sup>

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.<sup>120</sup> It is not enough to develop an IEP that meets these standards, the public school also has an obligation to implement the IEP “as soon as possible after the meeting where the IEP is developed or revised.”<sup>121</sup>

## 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.<sup>122</sup> Indeed, mainstreaming children with disabilities with non-disabled peers is generally preferred, if the disabled student can achieve educational benefit in the mainstreamed

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<sup>117</sup> *Id.* § 300.324(a)(2)(i).

<sup>118</sup> *Id.* § 300.324(b)(1).

<sup>119</sup> *MM v. Sch. Dist. of Greenville Cnty.*, 303 F.3d 523, 536 (2002).

<sup>120</sup> 20 U.S.C. § 1414(d)(1)(A)(i)(II), (IV), (VI).

<sup>121</sup> COMAR 13A.05.01.09D(3).

<sup>122</sup> 20 U.S.C. § 1412(a)(5); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117.

program.<sup>123</sup> At a minimum, the statute calls for school systems to place children in the “least restrictive environment” consistent with their educational needs.<sup>124</sup> Placing disabled children into regular school programs may not be appropriate for every disabled child, and removal of a child from a regular educational environment may be necessary when the nature or severity of a child’s disability is such that education in a regular classroom cannot be achieved.

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.<sup>125</sup> 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.<sup>126</sup>

Removal of a child from a regular educational environment may be necessary when the nature or severity of a child’s disability is such that education in a regular classroom cannot be achieved.<sup>127</sup> 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.

### 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.<sup>128</sup> The issue of reimbursement for unilateral placement was

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<sup>123</sup> *DeVries v. Fairfax Cnty. Sch. Bd.*, 882 F.2d 876, 878-79 (4th Cir. 1989).

<sup>124</sup> 20 U.S.C. § 1412(a)(5)(A).

<sup>125</sup> 34 C.F.R. § 300.115.

<sup>126</sup> *Id.* § 300.115(b); COMAR 13A.05.01.10B(1).

<sup>127</sup> COMAR 13A.05.01.10A(2).

<sup>128</sup> *Sch. Comm. of Burlington v. Dep’t of Educ.*, 471 U.S. 359, 370 (1985) (emphasis in original).

expanded in *Florence County School District Four v. Carter*,<sup>129</sup> 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.<sup>130</sup>

Like an IEP, a parental placement is appropriate if it is "reasonably calculated to enable the child to receive educational benefits."<sup>131</sup> Evidence of actual progress is important but not dispositive in determining the appropriateness of the placement.<sup>132</sup> The private education services need not be provided in the least restrictive environment, but the tribunal may consider the restrictive nature of a placement in determining whether the placement was appropriate.<sup>133</sup>

#### Equitable Relief

Equitable considerations are relevant in fashioning relief, and the tribunal enjoys broad discretion in fashioning such relief.<sup>134</sup> Administrative hearing officers or courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required.<sup>135</sup> Total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable.<sup>136</sup>

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<sup>129</sup> *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993).

<sup>130</sup> *Carter*, 510 U.S. at 12-13.

<sup>131</sup> *M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009).

<sup>132</sup> *Id.* at 326-327.

<sup>133</sup> *Id.* at 369-370.

<sup>134</sup> *Burlington*, 471 U.S. at 374, 369.

<sup>135</sup> *Carter*, 510 U.S. at 16.

<sup>136</sup> *Id.*

## **The Parent's Case**

The Parent contends that the MCPS failed to provide the Student with FAPE for the ninth and tenth grades, either through an appropriately designed IEP or through an appropriate educational placement to implement the IEP. The Parent also argues that the placement at [REDACTED] is an appropriate placement for those two school years. For these reasons, the Parent asserts that the MCPS is required to provide tuition reimbursement for those school years.

### **[REDACTED] - Educational Consultant**

To establish the inappropriateness of each proposed IEP and placement at [REDACTED] HS, the Parent presented the testimony of [REDACTED], an Educational Consultant. Since 2008, Ms. [REDACTED] has provided special education consultation services to families with students who have special education needs. In this capacity she has experience in administering and analyzing educational evaluations using standardized, informal, and curriculum-based assessments. She has experience conducting school observations. Ms. [REDACTED] has experience working with IEP teams to evaluate and provide recommendations for student needs, development of goals, accommodations, services, and placements.

Since 2008, Ms. [REDACTED] has taught master's level courses related to special education and learning disabilities at [REDACTED]. Ms. [REDACTED] also taught in the [REDACTED] public school system as a resource special education teacher or as a general education teacher from 2000 to 2003.

Ms. [REDACTED] obtained a Master of Education degree in Educational Administration from the [REDACTED] and a Master of Arts degree in Special Education, with a focus in Learning Disabilities, from [REDACTED]. She obtained a Bachelor of Arts degree in Elementary Education, Special Education from [REDACTED].

In prior special education hearings, Ms. [REDACTED] has been accepted as an expert in special education. Without objection by the MCPS, and based on education and work experiences, Ms. [REDACTED] was accepted as an expert in special education in this proceeding.

Providing background regarding the Student, Ms. [REDACTED] explained that since 2000, the Student's seventh grade school year, Ms. [REDACTED] has been working with the Student and her family. Ms. [REDACTED] testified that, when the Student was in seventh grade, she conducted an Educational Evaluation of the Student, which included a review of Student's educational records, and two school observations. The observations occurred in February and March 2020.<sup>137</sup> On May 18, 2020, Ms. [REDACTED] issued a report which discussed the Student's strengths and weaknesses impacting her education and included several recommendations.

Based on this evaluation, Ms. [REDACTED] explained that the Student has a weakness related to anxiety and depression, and weaknesses with motivation and interest. In addition, the Student was having panic attacks and suicidal thoughts. Furthermore, the Student had weaknesses in academic areas of reading, decoding, reading fluency, and math problem solving. The Student also had weakness in the area of written expression and attention, and executive functioning. Based on her evaluation, Ms. [REDACTED] recommended small class sizes for the Student. However, Ms. [REDACTED] agreed that she did not recommend a specific class size or any particular school building size.

Ms. [REDACTED] explained that in 2019-2020, the Student's seventh grade SY, the Student's IEP provided that she would receive special education services, inside a general education classroom for 7 hours and 30 minutes per week and outside of the general education classroom for 11 hours and 15 minutes each week.

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<sup>137</sup> See P. Ex. 3.

She added that for the rest of the time in school, the Student would be in a general education setting without any special education services. Ms. [REDACTED] explained that a typical school week would be 32 hours each week.

During an IEP Meeting held in June 2020, Ms. [REDACTED] testified that she participated in an IEP meeting to develop the Student's eighth grade IEP. During this meeting Ms. [REDACTED] took contemporaneous notes of issues discussed during the meeting.<sup>138</sup> Ms. [REDACTED] explained that the MCPS did not change the Student's IEP from the previous SY. The Student was at [REDACTED] MS, but the SY was going to be a virtual SY because of the COVID-19 pandemic.

Ms. [REDACTED] testified that in May through early June 2021, the Student was hospitalized, in a PHP, due to having suicidal thoughts, and anxiety breakdown, and refusing to participate in school.<sup>139</sup> Ms. [REDACTED] testified that she was familiar with the PHP records and recommendations. She agreed that the PHP did not make recommendations regarding class size for the Student.

Ms. [REDACTED] testified that the next involvement that she had with Student and her family was during the 2021-2022 SY, when the Student was in the ninth grade at [REDACTED]. Ms. [REDACTED] explained that the Parent placed the Student at [REDACTED] because of her hospitalization in May 2021, and because during eighth grade the Student was shutting down and had increased anxiety and depression. She said the Parent was not in agreement with the MCPS and the proposed high school placement at [REDACTED] HS, including the types of classes the Student would have in high school, which included a combination of self-contained classrooms and inclusion or co-taught general education classrooms. Ms. [REDACTED] also explained that during the Student's ninth grade SY, the MCPS proposed to add counseling to the Student's IEP, which would be outside the general education setting for 20 minutes per week.

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<sup>138</sup> See P. Ex. 4.

<sup>139</sup> See P. Exs. 6 and 7.

Ms. [REDACTED] opined that the 2021-2022 IEP was not appropriate for the Student.<sup>140</sup> Ms. [REDACTED] explained that at the time, the Student's academic weaknesses were impacting her ability to access the curriculum and the classes were too big for the Student. She added that the Student's anxiety was debilitating, she was not able to stay in class or participate in classroom activities, and her executive functioning was impacted. Ms. [REDACTED] explained that the proposed IEP discussed implementing some strategies related to her anxiety, but the Student was not at the point where she could listen to or apply those strategies. Ms. [REDACTED] testified that the Student would be unable to function in a large building or navigate to her classes, even with multiple adults providing support.

After the Student had been at [REDACTED] for ninth grade, Ms. [REDACTED] conducted a school observation of the Student at [REDACTED]. She explained that the purpose of the observation was to determine if that school setting was meeting the Student's needs and if she was making educational progress. The observation occurred on May 25, 2022 and involved Algebra and American History classes.<sup>141</sup> Ms. [REDACTED] observed that in the Algebra class the Student was completing tasks, paying attention to the lesson, and required some assistance from the teacher. In the History class, the teacher did some reading with the Student and helped the Student break down the assignment. Ms. [REDACTED] observed that the Student was receiving individualized, specialized supports including breaking down of assignments and check-ins by the teacher. She observed that students had the ability to choose where they wanted to sit and work, and that the environment was supportive and with reduced distractions. Ms. [REDACTED] agreed that the support the Student received at [REDACTED] could be implemented by teachers at [REDACTED] HS. However, Ms. [REDACTED] contended that the frequency and length of time for teacher check-ins or 1:1 support would be limited by the larger class size setting.

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<sup>140</sup> This IEP was developed during an IEP Meeting conducted on June 9, 2021. *See* P. Ex. 4.

<sup>141</sup> *See* P. Ex. 15.



Ms. [REDACTED] testified that, at [REDACTED], the school had several adults that the Student could go to for emotional support because it was a small school. The school staff knew the Student and her needs and observed the Student to monitor her physical symptoms of anxiety. Ms. [REDACTED] explained that, at [REDACTED], the Student had an accommodation plan to ensure academic success, which included a flash pass, decreased and modified workload, 1:1 assistance with task management and prioritization and reading assistance, extended time for all significant assignments, abbreviation of work by at least 25 percent, and use of text to speech technology when needed for more complex phrases and spelling.<sup>142</sup> For ninth grade, the Student was receiving significant amounts of 1:1 individualized supports and program modifications across all classes. Ms. [REDACTED] agreed that the supports the Student received at [REDACTED] could be included in an IEP.

Ms. [REDACTED] participated in an IEP Meeting on July 20, 2022 to develop the Student's IEP for tenth grade.<sup>143</sup> She testified that during this meeting, the IEP team discussed obtaining new evaluations for the Student. Also, during this meeting the MCPS continued to recommend that the Student's educational setting be at [REDACTED] HS [REDACTED] program, with a mix of general education inclusion classes and special education self-contained classes. Ms. [REDACTED] further explained that the Parent continued to believe that the recommendation was inappropriate for the Student because of her struggles with a large environment and the proposed IEP would have fewer small class settings that the last proposed IEP. However, an IEP was not developed at that time because of the need to complete the evaluations proposed during the meeting which included an educational evaluation, a psychological evaluation, and a speech language evaluation.

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<sup>142</sup> See P. Ex. 19.

<sup>143</sup> See P. Ex. 21.

Ms. [REDACTED] testified about the evaluations of the Student conducted by the MCPS. As to the Educational Evaluation, Ms. [REDACTED] said that this evaluation was pretty consistent with prior evaluations and showed that the Student continued to have academic weaknesses in reading, writing, and math.<sup>144</sup>

Ms. [REDACTED] discussed the Psychological Assessment conducted by the MCPS.<sup>145</sup> Ms. [REDACTED] explained that during this assessment, the Student was evaluated using a standardized test which assessed anxiety in children from 8 to 19 years old.<sup>146</sup> On this test, the Student had scores which were clinically significant for anxiety. Ms. [REDACTED] explained that even though the Student had been at [REDACTED] and was doing better, the finding of clinically significant anxiety only means that anxiety remained a concern for the Student. Ms. [REDACTED] said that the test result means that the Student continued to need individualized specialized programs during the day to address that need. Ms. [REDACTED] explained that the Psychological assessment made recommendations for the Student in the areas of anxiety, working memory, and task completion. She said that the recommendations to support the Student in these areas were consistent with the Student's needs over the past SYs.

Ms. [REDACTED] testified that the November 10, 2022 IEP<sup>147</sup> proposed less special education support for the Student by decreasing the service time in a self-contained special education classroom and removing English from a self-contained special education class setting. In ninth grade, Ms. [REDACTED] explained that the Student's IEP proposed 7 hours and 30 minutes of special education classes in a self-contained classroom. The tenth grade IEP proposed to reduce that time to 3 hours and 45 minutes.

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<sup>144</sup> See P. Ex. 27.

<sup>145</sup> See P. Ex. 28.

<sup>146</sup> The standardized test was the Multidimensional Anxiety Scale for Children, Second Edition.

<sup>147</sup> See P. Ex. 30.

Ms. [REDACTED] added that the IEP proposed an increase to Student's time in a general education class with co-taught special education services. Additionally, the Student's proposed IEP continued to have same level of school counseling, which was 20 minutes per week, but added speech and language services.

Ms. [REDACTED] disagreed with the MCPS' proposed reduction of special education classes because the Student's needs continued to require a greater level of special education services. She added that the Student was doing better at [REDACTED] because of the specialized individualized supports she was receiving. Even without the improvement at [REDACTED], if the Student's educational and behavioral needs were still present, Ms. [REDACTED] questioned the appropriateness of reducing the special education support.

Ms. [REDACTED] testified that after the Student's tenth grade IEP was proposed, she observed the educational setting at [REDACTED] HS. On February 10, 2023, Ms. [REDACTED] observed the [REDACTED] HS with the Parent. Ms. [REDACTED], a Special Education Resource teacher at [REDACTED] HS, provided a tour of the school. After the observation, Ms. [REDACTED] issued a report describing the observations.<sup>148</sup>

Ms. [REDACTED] observed several difference classroom settings, including an inclusion general education class for ninth grade Algebra class, an inclusion general education class for tenth grade Geometry, and an inclusion general education class for tenth grade English, a self-contained special education Resource class for multiple grades, and a general education class for Philosophy, which also was for multiple grade levels.

In her report, Ms. [REDACTED] explained that the inclusion general education classes had 23 to 24 students receiving instruction from a general education teacher and either a special education teacher or a paraeducator. The self-contained special education class had 19 students,

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<sup>148</sup> See P. Ex. 33.

receiving instruction from a special education teacher and 2 paraeducators. The general education class had 25 students, with a general education teacher.

Based on the classes observed, Ms. [REDACTED] found that the inclusion general education class sizes were too large for the Student, due to her executive functioning deficits, which were impacted by the Student's anxiety. Ms. [REDACTED] testified that when the Student's anxiety increases, she will begin to shut down and will need to talk to an adult. If the Student has to leave class to seek adult assistance, the Student will miss instruction. Ms. [REDACTED] also explained that in this class setting, the instruction is paced at a level that would impact the Student's anxiety and executive functioning. Ms. [REDACTED] had the same opinions as to the inappropriateness of the class size for the self-contained special education classroom.

In her report, Ms. [REDACTED] explained that [REDACTED] HS has a student population of 2,000 students attending ninth through twelfth grade. Within the high school setting are five special education programs, including the [REDACTED] program. Ms. [REDACTED] opined that the high school building and population are too large for the Student to navigate, especially when the Student becomes overwhelmed or anxious and has to seek help from an adult to transition between classes or lunch. Ms. [REDACTED]'s opinion was based on several factors including the Student's experiences from seventh grade, reports by the Student and her Parents of anxiety when she is in public, the Student's reported anxiety when she participated in the recent educational evaluation at [REDACTED] HS, and her improved experience during the educational evaluation when a second session was conducted at [REDACTED].<sup>149</sup>

Ms. [REDACTED] explained that during lunch time, [REDACTED] HS students can go anywhere on the first or second floor of the building or outside. However, Ms. [REDACTED] opined that the Student required support during unstructured times like lunch to help manage anxiety and the

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<sup>149</sup> See P. Ex. 27 and MCPS Ex. 8.

Student's social and executive functioning skill deficits. Ms. [REDACTED] testified that the Student had difficulty with anxiety in all settings, and it did not matter if it was an English or Math class or lunch time.

### The Parent

The Parent testified that she has four children, including the Student and three siblings, two of whom attend [REDACTED] HS. The Parent said that [REDACTED] HS was a good school for the other three children, who do not have learning disabilities. The Parent explained that towards the end of second grade, she began to notice that the Student was having issues in school and after notifying the school, the Student was evaluated and identified as having a learning disability and requiring specialized education through an IEP, beginning in the third grade. The Parent explained during the seventh grade, the COVID-19 pandemic occurred, and Student began attending school remotely, which continued through the eighth grade.

While attending [REDACTED] MS, the Student began having issues with anxiety and her learning disabilities became more severe. Based on what the Student was reporting, the school was too big for the Student, and she was having issues with other students making fun of her being in a special education class. The Parent explained that for eighth grade, the Student did not want to attend school, did not want to turn her computer on, and was falling further and further behind. The Student's anxiety became more severe, and she did not want to do school anymore. The Parent testified that she attempted to make sure the Student attended school and was attentive during class but that it was difficult. The Parent explained that many times the Student would walk out of the room and say she could not handle it.

The Parent testified that she contacted [REDACTED], an educational consultant, to determine options to help the student academically. For this purpose, Ms. [REDACTED] conducted an educational evaluation of the Student.<sup>150</sup> Based on that evaluation and the recommendations, the Parent determined that the Student's anxiety would decrease with smaller classes. She added that the Student could not handle inclusion classes because those classes were too big and caused her anxiety to increase to a point where the Student could not function.

The Parent explained that the Student's anxiety got so bad the Student said that she did not want to live anymore and wanted to take pills or cut herself. As result, the Student was hospitalized twice during the eighth grade, in January and May 2021.<sup>151</sup> The Parent testified that the Student's hospitalization helped the Student learn skills to manage anxiety.

During an IEP meeting on June 9, 2021 to develop the Student's ninth grade IEP, the Parent discussed with the IEP team the Student's need for a smaller classroom setting. However, the IEP team continued to recommend that the Student spend approximate a third of the time in a general education inclusion class, about third of the time in a special education class, and about a third of the remaining time in a general education setting without supports.<sup>152</sup> The Parent found the proposed IEP for ninth grade inappropriate because the Student had so much anxiety and had fallen so far behind that that she needed small class instruction throughout the day, which the MCPS did not propose.

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<sup>150</sup> See P. Ex. 3.

<sup>151</sup> The May 2021 hospitalization is documented in P. Exs. 6 and 7, and MCPS Ex. 17. There is no exhibit related to the January 2021 hospitalization.

<sup>152</sup> The Parent's testimony mistakenly confused the Student's eighth grade IEP special education services with the proposed service time for ninth grade. See MCPS Ex. 1. The confusion may have occurred because the IEP developed contained education services for both eighth and ninth grade. At times this IEP was referred to as split-IEP.

From February 3 through June 16, 2021, the eighth grade IEP provided that the Student would attend an inclusion general education class, co-taught by special education educators, for 11 hours and 15 minutes each week. The Student would also attend a self-contained special education class for the same time period. As a result, the remaining school time would be in a general education setting without supports.

From August 30, 2021 through February 2, 2022, the amended ninth grade IEP maintained the same level of services for the inclusion general education class but reduced the self-contained special education class to 7 hours and 30 minutes per week. This proposed IEP also added a related service of counseling which would be provided outside of the general education setting for 20 minutes per week.

The Parent also explained that because of the Student's hospitalization<sup>153</sup> and the Student's request to not go back to school, she began to look at private schools. As result, the Parent located [REDACTED], which she explained was a good fit for the Student. She requested that the MCPS fund the Student's education at [REDACTED] in August 2021.<sup>154</sup>

At [REDACTED], the Student was offered small class instruction and support for her needs. However, the Parent also explained that the Student was still anxious about going to school at [REDACTED] and for this reason, the Parent requested that medication the Student was receiving for anxiety be increased. The Parent also testified that while attending [REDACTED], the Student began to experience increased anxiety at the end of December 2021, resulting in another period of hospitalization.<sup>155</sup> But this time, the Student was able to express her feelings and request to go the hospital. As a result, the Student returned to the hospital for about five to six weeks, during which time the Student learned more anxiety coping strategies.

The Parent said that upon returning to school at [REDACTED] and after completing the ninth grade, the Student was a different person and was happier. She was still anxious and still had some issues but was reporting she loved school, was able to talk with students and adults, sit in an office if she needed to, and was finally able to understand Math and English. After completing her tenth grade at [REDACTED], the Student continued to have a great year. The Student has become very self-driven, she wants to succeed and learn, and is motivated to attend college.

The Parent explained that the IEPs offered to the Student for ninth or tenth grade by the MCPS did not propose small class instruction throughout the school day. The Parent added that the program at [REDACTED] HS does not provide small class instruction throughout the school day.

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<sup>153</sup> The Student was hospitalized in the PHP beginning May 14 2021 and discharged on Jun 8, 2021. P. Exs. 6 and 7.

<sup>154</sup> See P. Ex. 9.

<sup>155</sup> Neither party admitted any documentary evidence regarding this hospitalization.

The Parent testified that when [REDACTED] HS was proposed, she had an opportunity to observe the classrooms with Ms. [REDACTED] in February 2023. The Parent took notes of her observations, which she sent in an email to Ms. [REDACTED].<sup>156</sup> The Parent found the class sizes were too big for the Student, students were not receiving adequate attention during class, and they appeared uninvolved in the lesson. Based on the Student's needs, the Parent believed that Student would not make any educational progress if she attended [REDACTED] HS as proposed by the IEPs.

The Parent explained that [REDACTED] MS had a student body of approximately 1,200 students. She acknowledged that the Student's anxiety started in the sixth grade and increased during eighth grade, which was attended virtually because of the COVID-19 pandemic. The Parent was happy with the Student's placement at [REDACTED] because of the small class sizes, which ranged from 3 to 7 students in all classes, and she wants the Student to graduate high school from [REDACTED].

On cross-examination, the Parent testified that the Student was happier at [REDACTED] and the program at [REDACTED] was better at managing the Student's anxiety. However, the Parent agreed that even while attending [REDACTED], the Student required hospitalization because of anxiety. The Parent also agreed that the Student's proposed IEP provided accommodations to assist with anxiety, including movement breaks and leaving class with a flash pass.

[REDACTED] - [REDACTED] Ninth Grade Teacher

The Parent presented the testimony of [REDACTED], a former teacher for the Student at [REDACTED] during her ninth-grade year. The purpose of Mr. [REDACTED]'s testimony was to explain the appropriateness of the educational program for the Student and her progress.

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<sup>156</sup> See P. Ex. 32.



Mr. [REDACTED] was a teacher at [REDACTED] for six years, beginning in 2016 until the spring of 2022. Currently, Mr. [REDACTED] is a student at the [REDACTED] pursuing a master's degree in library and information science. Mr. [REDACTED] explained that when he taught at [REDACTED], he did not have a teaching license issued by the MSDE. Mr. [REDACTED] also explained that he was not trained in special education. Instead, Mr. [REDACTED] received training in [REDACTED] education from professionals in that area. After the training, Mr. [REDACTED] was originally a teacher for the lower first through third grades. After two years, Mr. [REDACTED] became a teacher in the high school and was the Social Studies teacher. Later, Mr. [REDACTED] became the Program Coordinator for [REDACTED], which is similar to being the Dean of Students in other schools.

Mr. [REDACTED] testified that he left [REDACTED] at the end of the 2021-2022 SY, which was the Student's ninth grade SY. Mr. [REDACTED] explained that [REDACTED] is a small school, with only two classrooms. During a typical school day, Mr. [REDACTED] explained that he would be in a room with the Student for 5 to 6 hours a day. He added that the Student was comfortable with talking with him.

Mr. [REDACTED] explained that Student was originally hesitant to come to school and was worried about the transition. She eventually came to school and generally had a positive experience once she got past the anxiety and difficulties caused by the transition to [REDACTED].

Mr. [REDACTED] explained that the Student had anxieties whenever she was asked to do independent work or to present or talk about work in front of peers. Mr. [REDACTED] testified that the Student's anxiety caused difficulty with organization and task management. He said that if an assignment was not broken down into steps, the Student would quickly become overwhelmed by the task. The Student has attention issues and, based on the length of the work, just thinking about how to break the work down into chunks is anxiety inducing for the Student.

To address these issues, Mr. [REDACTED] worked 1:1 with the Student, before school and before class to discuss what had to be done for class; at the second half of class, which was independent work time, he would address specific needs for assignments with the Student. At lunchtime, the Student requested meetings with teachers so she could develop a strategy for an assignment. Mr. [REDACTED] explained that the Student would meet with him at the end of the school day to talk about what happened during that day.

Mr. [REDACTED] explained that [REDACTED] has a grading system based on five school cycles. During the first two cycles, which is similar to the first semester for other schools, the Student was able to make academic and social progress but not as fast as was anticipated. Even so, the Student continued to require the same level of individual support for the remainder of the school year, to make as much progress as possible.

Mr. [REDACTED] explained that, in addition to Social Studies, the Student had other teachers for classes in English, Humanities, Math, Science, and Art. The Student had support from a school counselor and a Speech Language therapist.

Mr. [REDACTED] testified that, in ninth grade, after the winter break, the Student was returning to school after a period of hospitalization in a PHP. During cycle three of that school year, students participate in electives and core classes are interrupted for that cycle. Because the Student was returning to school from the PHP, the Student was provided with a reduced workload until she could work through the transition and be able to work at a normal pace again. After she was able to do so, during the fourth and fifth cycles of the school year, Mr. [REDACTED] explained that the Student made significant progress. He added that the Student's progress was because of the consistency of accommodations provided to the Student and coordinated support provided by the Student's school team.

Mr. [REDACTED] testified that during the ninth grade, the Student was able to make good grades, receiving As and Bs in her classes.<sup>157</sup> He explained that grades were based on a combination of student participation, completed assignments, and long-term assignments.

During his testimony, Mr. [REDACTED] agreed that [REDACTED] did not implement any IEP developed by the MCPS. Instead, [REDACTED] implemented an Accommodation Plan for the Student, which was based on recommendations from different professions and the IEP developed by the MCPS. Regarding the Student's anxiety, Mr. [REDACTED] testified that when the Student started at [REDACTED], she had anxiety at least 3 times a day or 15 times a week. He added that teachers would discuss those incidents of anxiety during weekly meetings and then [REDACTED] would discuss the strategies being used and make decisions on how to improve the Student's experience and decrease the incidents.

He also explained that when the Student went into the PHP, during the second school cycle, it was based on the school's counselor's recommendation. During the PHP, [REDACTED] provided the Student with optional work for the Student, but the Student could choose to complete the work. He added that when the Student returned to school, [REDACTED] implemented recommendations made by the PHP, which contributed to her ability make progress during the second semester of school.

[REDACTED] - Founder of [REDACTED]

The Parent also presented the testimony of [REDACTED], the Founder and Chairman of the Board at [REDACTED]. Mr. [REDACTED] provided a general explanation about a [REDACTED] education at [REDACTED] and the benefits of this school for the Student. For 35 years, Mr. [REDACTED] has been involved in the [REDACTED] school community as a teacher, administrator, teacher trainer, and leadership consultant.

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<sup>157</sup> See P. Ex. 16.

Mr. [REDACTED] explained that he founded [REDACTED] in 1988, and the lower school has been in existence since that time. He added that the high school program has existed for 8 years. Mr. [REDACTED] is not certified to teach by the MSDE.

Mr. [REDACTED] testified that a [REDACTED] education supports students in terms of their development and passion to reach their goals as successful students and people. He explained that the [REDACTED] program is designed to understand a student's developmental strengths and build an educational plan around those strengths. He said there is a curriculum, but the major emphasis is on individual need. [REDACTED] is a college preparatory school with a strong academic program, providing support for students who need extra help in their academic development as well as their overall well-being. Based on Mr. [REDACTED]'s experiences within the [REDACTED] community and the years of service operating a [REDACTED] school, over objection of the MCPS, I found Mr. [REDACTED] to be an expert in [REDACTED] education.

Mr. [REDACTED] explained that [REDACTED] is authorized by the MSDE as a private independent school and organized as a non-profit corporation. [REDACTED] is accredited by the [REDACTED] and Members of the National Association of Independent Schools. Teachers at [REDACTED] are not certified as public-school teachers because the teachers are not required to have that type of certification to teach in a private independent school. Mr. [REDACTED] agreed that [REDACTED] is not required to implement an IEP, but that [REDACTED] uses a student's IEP and modifies it into an Educational Plan. Mr. [REDACTED] explained that an IEP is a legal term and that the Educational Plan is an informal plan if the student has minimal needs or a formal plan for a student with more needs.

Mr. [REDACTED] testified that the Student began attending [REDACTED] for the 2021-2022 SY and was in the ninth grade. For grading purposes, the school year is divided into five cycles, with the first two cycles being a student's first semester of the school year.

██████████ currently has 25 students attending ninth through twelfth grade. When the Student began attending ██████████, the school population was approximately half the current size. Mr. ██████████ explained that students are required to take 4 years of Math, English, Creative Arts, World Languages, and Physical Education.

Mr. ██████████ explained that he first met the Student in the summer of 2021, when her family were applying for admission to the school. He said that the tuition rate for ██████████ is \$37,000.00 per year.

After the Student's admission to ██████████, the ninth-grade courses taken by the Student included Algebra I, Biology, U.S. History and Civics, English, Physical Education, Health, Art, and Leadership. Mr. ██████████ explained that the typical class size for the Student was 7 or 8 students, with one teacher. The typical school day began at 9 a.m. and concluded at 4 p.m. Mr. ██████████ explained that the school program is designed to maximize the amount of time a student receives 1:1 support from the classroom teacher, to help students with their assignments in real-time. Mr. ██████████ explained that a ██████████ teacher is trained to engage the student with a hands-on approach. The ██████████ approach is to have students demonstrate their learning not just on tests but through a presentation, for which a student is graded based on the content and delivery of the presentation.

When the Student was admitted to ██████████, her anxiety was well documented and continued to be a major challenge for the Student. Mr. ██████████ explained that the Student's anxiety had to be continually monitored so she could be given the right level of work and the right kind of work to sustain academic progress, without overwhelming the Student. To address the Student's anxiety, ██████████ relied on a school counselor and involvement by the Student, her family, doctors, and teachers to develop a comprehensive approach for the Student.

To address anxiety in the classroom, a teacher would modify the Student's workload, provide extra 1:1 support, and if a need arose, refer the Student to the school counselor, who would provide feedback to the school team.

Mr. [REDACTED] reviewed the recommendations made by Dr. [REDACTED] after a psychological evaluation was conducted in November 2022.<sup>158</sup> He explained that those recommendations are implemented at [REDACTED] for the Student. Mr. [REDACTED] also explained that [REDACTED] provides support for the Student to address her executive functioning weakness including support for studying and organization through teacher support as well as using a specialized executive function coach.

### **The MCPS' Case**

The MCPS argues that based on the data known at the time each IEP was developed for the Student's ninth and tenth grade SYs, each IEP was reasonably calculated to permit the Student an opportunity to make educational progress in the LRE. For this reason and based on the evidence it presented, the MCPS contends that Parent's decision to place the Student in [REDACTED] and request for tuition reimbursement should be denied.

#### [REDACTED] - [REDACTED] MS - Special Education Teacher

The MCPS presented the testimony of [REDACTED], a Special Education teacher at [REDACTED] MS. Ms. [REDACTED] generally discussed the development of an IEP. Ms. [REDACTED] testified about the Student's eighth grade school year at [REDACTED] MS but through the virtual learning program. Ms. [REDACTED] also addressed the development of the Student's ninth grade IEP and its appropriateness for the Student educational needs.

Ms. [REDACTED] has taught at [REDACTED] MS since 2019. From 2011 through 2019, Ms. [REDACTED] taught as a Math or Special Education teacher in the MCPS, in a middle and high school, and also held an Assistant Principal position. Ms. [REDACTED] holds a Master of Science in Education

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<sup>158</sup> See MCPS Ex. 7.

from [REDACTED]. She also has several teaching certificates issued by the MSDE in the areas of special education, elementary and middle school education, as well as in general education. Ms. [REDACTED] was accepted as an expert in Special Education.

At [REDACTED] MS, Ms. [REDACTED] teaches Math classes in the inclusion co-taught general education classroom setting and in the self-contained special education classroom setting. She has also been a Resource teacher and a special education case manager for students with IEPs. She explained that as a Resource teacher she is responsible for helping students meet the goals established in an IEP, to make sure students are completing their work, and to help students with executive functioning skills. She said that a Case Manager is responsible for communicating with both the students and parents about what is going on in school and to be a liaison for the teachers. Ms. [REDACTED] explained that [REDACTED] MS has a student population of approximately 1,200 students attending sixth through eighth grades, and the building has three floors with classrooms on each floor.

Ms. [REDACTED] explained that an IEP contains several sections. She added that the development of the IEP involves a team of people including an administrator, case manager, general education teacher, special education teacher, and the student's parents. She explained that other individuals are present could include a school counselor or school psychologist. Ms. [REDACTED] said that the IEP team develops the IEP by going through each section in a specific order beginning with the Student's Information section, which describes the student's disability and areas affected by the disability. The IEP team then will go through the next several sections which would include the student's present levels of academic performance, goals and objectives, accommodations for testing, and supplementary aids and services.

Ms. [REDACTED] testified that based on what is agreed in the prior sections, the final section of the IEP is where the IEP team discusses the level of services to be offered the Student and the LRE for Student. Ms. [REDACTED] explained that the Student's LRE is a placement decision where the IEP team determines what school the student will attend, meaning if the school will be the student's home school or in another program that is more restrictive. She added that IEP is a fluid document and depending on the student's progress or on other data collected, the IEP may change.

Ms. [REDACTED] testified that she first met the Student in seventh grade, but officially got to know the Student in eighth grade as the Student's Case Manager, Resource teacher, and Math teacher. During the eighth grade, because of the COVID-19 pandemic, Ms. [REDACTED] explained that the school year was conducted virtually. During this time, teaching was a challenge because many students did not come to class, had their cameras off, and it was difficult to determine if the students were learning.

Ms. [REDACTED] explained that at the beginning of eighth grade, the Student was reserved and quiet and continued to be that way for a lot of the time. After some 1:1 time, Ms. [REDACTED] developed a rapport with the Student and the Student became more comfortable discussing things occurring inside or outside of school. Ms. [REDACTED] testified that, through virtual learning, she worked 1:1 with the Student on a weekly or bi-weekly basis as well as on specific assignments to help the student break down assignments and to complete assignments.

Ms. [REDACTED] explained during the eighth grade the Student was hospitalized for anxiety. During this time, [REDACTED] MS communicated with the PHP coordinator to provide schoolwork for the Student. Ms. [REDACTED] said that when the Student was discharged, the PHP provided several educational recommendations for the Student.<sup>159</sup>

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<sup>159</sup> See MCPS Ex. 17.



The PHP recommended that when the Student returned to school it was important for teachers to check-in with the Student, offer reduced workloads, and provide supports like a flash pass and having a trusted adult as needed. Ms. [REDACTED] added that the PHP did not make any recommendations regarding class size for the Student or any recommendation regarding the school building.

Ms. [REDACTED] testified that if a student has anxiety, the student's needs can be accommodated through use of a flash pass so the student can go to a trusted adult like a counselor. The student can also be offered the chance to leave class early so a transition to the next class may be easier to handle.

Ms. [REDACTED] explained that she participated in the Student's IEP meeting at the end of eighth grade to develop the IEP for ninth grade.<sup>160</sup> Her role was to be the IEP team case manager and special education teacher. During the meeting, the Student's Parent had no disagreement with any sections of the IEP developed during the meeting, including the Student's goals for anxiety or any of the accommodations and supports for anxiety.

Ms. [REDACTED] testified that the Student's IEP for ninth grade proposed instruction outside of the general education classroom for English, Math, and Resource classes, which would be a setting only for students with IEPs. She explained that the IEP proposed the Student would spend 7 hours and 30 minutes each week in this self-contained special education class setting, outside of the general education environment. The IEP proposed the Student would receive 20 minutes per week of counseling, which was added to this IEP because of a recommendation by the PHP. Ms. [REDACTED] said that the Student would receive 1:1 time with a school counselor or social worker to discuss any needs for the Student.

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<sup>160</sup> See MCPS Ex. 1.

Ms. [REDACTED] testified that the Student's IEP for ninth grade provided that the Student would have instruction in a general education classroom, taught by a general education teacher and co-taught by a special education teacher or paraeducator for 11 hours and 15 minutes per week.

Ms. [REDACTED] explained that during the IEP meeting, the Parent mentioned that she thought the Student required a smaller learning environment, which was discussed by the IEP team. The IEP team agreed that once the ninth grade began, the team could re-evaluate the Student's need for a smaller learning environment, meaning the MCPS could do updated testing to gather data in order to determine if the request was appropriate. She added that if a parent makes a request for a specific service, and if the IEP team does not believe it has sufficient data to support the request, then the team would need to conduct testing and after obtaining data, the team will determine if the requested service should be added to the IEP.

Ms. [REDACTED] opined that, based on the information the IEP team had at the time, it had sufficient data to determine that the Student was making progress and that IEP as proposed was appropriate to offer the Student an opportunity to make educational progress. She added that the IEP team agreed to re-evaluations related to the smaller learning environment and if needed, the IEP team would make changes to the IEP, if the additional data supported any changes. Ms. [REDACTED] also explained that the Parent disagreed with [REDACTED] HS and the level of service proposed in the IEP.

Ms. [REDACTED] acknowledged that the virtual eighth grade school year was challenging for all students. However, in her opinion, the IEP was appropriate because each section of the IEP, including the Student's PLAFP, goals, accommodations, and supports, were developed with agreement by the IEP team, including the Parent. Then the IEP team discussed services and the LRE, and proposed [REDACTED] HS as the appropriate LRE for the Student.

She added that the MCPS was willing to work with the Parent's request for a smaller learning environment, which is why it agreed to conduct re-evaluations to collect data and to assess the need for that level of service.

██████████ - ██████████ MS - Resource Teacher

██████████ is a Resource teacher in the Special Education department at ██████████ MS. She presented testimony about the Student's performance at ██████████ MS and about the appropriateness of the Student's IEP for ninth grade.

Ms. ██████████ has been a teacher at ██████████ MS for 22 years. She is responsible for all students with IEPs at ██████████ MS. Ms. ██████████ schedules and chairs IEP meetings. She oversees the department, which has 5 teachers and 8 paraeducators. Ms. ██████████ has a Master of Science Degree in Middle School Mathematics Instruction from ██████████ and has several teaching certifications issued by the MSDE. Ms. ██████████ was accepted as an expert in Special Education.

Ms. ██████████ explained that a prior written notice (PWN) is a record which documents discussions held during an IEP meeting, items that were proposed and agreed upon or rejected, and any other issues that were discussed or recommended during a meeting.

Ms. ██████████ testified that several recommendations made by Ms. ██████████ in the Education Needs Evaluation<sup>161</sup> including breaking down assignments and teacher check-ins are considered as supplementary aids and services or accommodations and are in an IEP. Ms.

██████████ also explained that on the Student's IEP for ninth grade, there is a list of supplementary aids and accommodations for the Student.<sup>162</sup>

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<sup>161</sup> See P. Ex. 3.

<sup>162</sup> See MCPS Ex. 1.

Ms. [REDACTED] explained that at [REDACTED] MS, a student with anxiety is supported by making sure the student is connected to one or more trusted adults. The student is also given a flash pass so the student can take breaks when needed, including to see the trusted adult. The student has access to a full-time social worker and a school psychologist.

Ms. [REDACTED] testified that she did not observe the Student having panic attacks at [REDACTED] MS. Ms. [REDACTED] recalled the Student visiting the school counselor often but did not recall any reports of panic attacks or a need to develop strategies to address that level of need. Ms. [REDACTED] also explained that the Student did not need any changes or support for the lunch time routine. Ms. [REDACTED] did not recall observing any issues with anxiety for the Student. However, Ms. [REDACTED] agreed that the only opportunity to observe the Student in school was during seventh grade, which later was impacted by the COVID-19 pandemic. Ms. [REDACTED] also agreed with Ms. [REDACTED]'s observations of the Student during seventh grade which indicated that the Student had difficulty staying on task and had signs of anxiety, but she was surprised by the Student's Case Manager's comment that the anxiety was debilitating.

At [REDACTED] MS, the Student required specially designed instruction to support her academic growth with reading comprehension, written language expression, and math calculation and she received support for these issues in a variety of settings. The Student was in an inclusion or co-taught general education class and also was in a self-contained special education class. Ms. [REDACTED] explained that the Student made progress every quarter on her academic goals. Ms. [REDACTED] also explained that the Student had a close peer group but there was conflict with the girls in the group.

Ms. [REDACTED] testified that the MCPS attempted to develop an IEP for the Student in January 2021, with the goal to have the IEP ready for when students returned to school from the virtual distance learning program. However, the meeting had to be rescheduled and was not held

until June 9, 2021.<sup>163</sup> During this meeting, Ms. [REDACTED] testified that the Parent indicated that the Student needed a smaller learning environment. She recalled the Parent mentioning the [REDACTED] program, but the Parent did not specifically request the IEP team to consider that program. Ms. [REDACTED] also did not recall the Parent discussing [REDACTED]. Ms. [REDACTED] testified that during this meeting, the Parent did not present any data to support the request for a smaller learning environment.

Ms. [REDACTED] explained that if a student required a smaller learning environment it would appear in the service section of the IEP where the team would have determined that a student needed more time outside of the general education classroom setting in order to make progress. Ms. [REDACTED] testified that the Parent did not disagree with level of services described on the ninth grade IEP. Ms. [REDACTED] also testified that the Parent did not disagree with other sections of the IEP, including the Student's present levels of performance, special consideration and accommodations, goals, and services. She added that as an additional service, the MCPS recommended a second Resource class, but the Parent did not want the Student to attend a Photography elective course. Otherwise, Ms. [REDACTED] explained, the Parent did not disagree with the level of services contained in the IEP.

Ms. [REDACTED] explained that the final section of the IEP is the placement section, which determines the LRE for the Student. In this section, the MCPS recommend placement at [REDACTED] HS, in the [REDACTED] program. She explained that the Parent expressed concern with the Student's transition and suggested that the Student needed a smaller learning environment. As to the Parent's concern for a smaller learning environment, Ms. [REDACTED] explained that the MCPS had data on the Student's progress which did not support a need for a more restrictive setting.

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<sup>163</sup> See MCPS Exs. 3 and 4.

For this reason, the MCPS disagreed with the Parent and continued to recommend [REDACTED] HS and the [REDACTED] program. For the reasons discussed in her testimony, Ms. [REDACTED] opined that that the IEP developed for the Student's ninth grade was reasonably calculated to provide the Student with a FAPE.

[REDACTED] - [REDACTED] HS - Special Education Resource Teacher

[REDACTED] is a Special Education teacher at [REDACTED] HS. Ms. [REDACTED] testified about an Educational Evaluation that she conducted to provide updated information to develop the Student's IEP for tenth grade. Ms. [REDACTED] also provided testimony regarding the appropriateness of the Student's tenth grade IEP.

Since 2017, Ms. [REDACTED] has been a Special Education Resource teacher. Ms. [REDACTED] has a Master of Science Degree in Special Education from [REDACTED]. She also holds several teaching certifications issued by the MSDE. Ms. [REDACTED] testified that she is the head of the Special Education department at [REDACTED] HS. In this capacity, she oversees four special education programs, including the [REDACTED] program. Ms. [REDACTED] was accepted as an expert in Special Education.

Ms. [REDACTED] explained that the goal for a student with disabilities is to find success with the least amount of support or accommodation and to be as independent as possible when accessing the curriculum. Ms. [REDACTED] further explained that the LRE ensures the school is allowing the student to meet those goals. She added that the most restrictive environment would be a self-contained special educational setting or a separate day school that is a full day special education program. By comparison, she explained that the LRE is a setting where a student accesses their education in all general education classes with accommodations.

Ms. [REDACTED] explained that a student's residential school, also known as the home school, is a school within the student's residential area, and is a part of the LRE concept. The student's home school allows the student to be in a school setting with the student's community peer group and allows for transportation to and from school to be more accessible.

Ms. [REDACTED] explained that [REDACTED] HS has several resources to assist students with anxiety and with mental health issues. A social worker and a pupil personnel worker are available to all students. Students have access to a [REDACTED] to [REDACTED], which is staffed by three mental health professionals. Additionally, [REDACTED] HS has school counselors and case managers available to students.

On an individual basis, for students with anxiety, the school can provide regular check-ins by adults and, if transitions create anxiety, the student can leave class early or late to avoid a crowded hall. Ms. [REDACTED] explained that the school will work with the Student to develop effective coping strategies which would include speaking with a trusted adult.

If a student new to [REDACTED] HS has anxiety, the school coordinates with the middle school feeder program to organize tours of the high school building and program. Before the high school year begins, students participate in an orientation program to meet teachers and walk through expected schedules. Ms. [REDACTED] explained that beyond these typical transitional opportunities, for a student with anxiety, multiple tours of the building can be offered during the summertime, and meetings with teachers can be scheduled without other students present, which contributes to development of a relationship with a trusted adult, should a student need that support.

Ms. [REDACTED] testified she participated in the July 2022 IEP meeting to develop the Student's tenth grade IEP.<sup>164</sup> During this meeting, the team agreed to complete updated assessments, including educational, psychological, and speech-language assessments. Ms. [REDACTED] explained that during this meeting, a person from [REDACTED] was present and provided information regarding the Student's grades and some narratives about how she was doing in school. Ms. [REDACTED] added that no one from [REDACTED] reported incidents of the Student having anxiety attacks or similar behavior.

Ms. [REDACTED] testified that she administered the Educational Assessment used to develop updated data for the Student's tenth grade IEP.<sup>165</sup> She explained that the assessment was conducted over two sessions. The first day of testing was at [REDACTED] HS. After this first day, the Student reported being uncomfortable during the testing. As a result, Ms. [REDACTED] offered to perform the second day of testing at [REDACTED], during which time the Student was more comfortable.

Ms. [REDACTED] explained that the assessment determined the Student's strengths and weakness in the areas of reading, writing, and math. In reading, the Student performed in the low average to average range across all subtests and a relative weakness was oral reading. The Student expressed a lack of confidence in this area. Ms. [REDACTED] explained that the Student demonstrated a relative weakness in math calculation and fluency. Ms. [REDACTED] explained that writing was a relative strength for the Student, with scores in the average range.

Ms. [REDACTED] testified that she participated in another IEP meeting in November 2022, which was a second meeting to develop the Student's tenth grade IEP.<sup>166</sup>

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<sup>164</sup> See MCPS Ex. 5.

<sup>165</sup> See MCPS Ex. 8.

<sup>166</sup> See MCPS Ex. 6.



Ms. [REDACTED] explained that attending the meeting was a teacher from [REDACTED] but no data regarding the Student was presented. During this meeting, the results of the assessments were discussed and based on the data from those assessments, the IEP was developed.

At that meeting, the IEP team agreed to change the Student's disability code from specific learning disability to multiple disabilities because, in addition to having specific learning disability, the Student's ADHD was also impacting her education. The team also changed the IEP to include a related service of speech language therapy. Ms. [REDACTED] explained that the team updated the Student's accommodations and supplementary aids.

Ms. [REDACTED] testified that during the IEP meeting, the Parent discussed the Student's issues with anxiety. She added that, based on the Parent's input and the data developed from the psychological assessment, the IEP team discussed and agreed to goals for the Student to address anxiety. Ms. [REDACTED] also explained that the team included supplementary aids and accommodations in the IEP to support the Student's anxiety issues, including: movement breaks, repetition of direction, visual aids, limit amount to be copied, guided notes, frequent or immediate feedback, check for understanding, chunking of text, limit amount of required reading, promote appropriate strategies of anxiety management, use of positive and concrete enforcers, counselor check-ins, flash pass, socially engineered work groups, and encourage the Student to ask for assistance.

Based on the updates to the IEP, the IEP team addressed services for the Student. The IEP team recommended that the Student be in four supported classes for core academics. Ms. [REDACTED] explained that the IEP team agreed that the Student should be in an inclusive, co-taught, general education class for English, Math, Science, and Social Studies.

Additionally, Ms. [REDACTED] explained the IEP team agreed that, outside of general education setting, the Student would participate in a Resource class, which is a class to help the Student with a variety of support on executive functioning skills and with any mental health issues. In addition to these classes, the Student would take two other elective courses in areas that interested the Student. Ms. [REDACTED] explained that these classes would be in the general education setting without support, other than implementing the IEP, including any required accommodations, supplementary aids, and supports.

After determining the necessary services, the MCPS recommended placement at [REDACTED] HS, in the [REDACTED] program. Ms. [REDACTED] testified the [REDACTED] program is designed to support students with learning and academic disabilities, within the general education setting, so the student can be in the LRE, which is the general education setting. Ms. [REDACTED] testified that the Parent agreed with the IEP, as developed, except for the recommended placement. The Parent requested a referral to the CIEP team, which is a process where staff from a central office becomes involved in the IEP process if a school team or parent believe that a recommended school cannot serve a student's need. She added that the CIEP team will review all the data and determine whether the MCPS has a program to meet a student's needs, and if one is not available, the CIEP team would recommend placement outside the public school program.

Based on all the data considered for the Student's tenth grade IEP, including information shared by the Parent, [REDACTED], and the results from undated assessments, Ms. [REDACTED] opined that the IEP, including the placement at [REDACTED] HS and the [REDACTED] program, was appropriate for the Student. She explained the IEP was designed to support the Student academically and provide anxiety management. Ms. [REDACTED] believed the IEP would help the Student develop skills to self-monitor her anxiety and develop independence. She added the IEP would allow the Student to make progress towards goals and objectives and prepare the Student for graduation.

In response to observations of [REDACTED] HS by Ms. [REDACTED], including the building size and any difficulty the Student may have regarding anxiety, Ms. [REDACTED] explained that there was no data to support the opinion of Ms. [REDACTED] that the Student requires a smaller school and smaller class sizes. As to lunchtime and unstructured time, Ms. [REDACTED] explained that if the Student required any assistance finding a place to eat, including with a counselor, that would be arranged. She added that the school has a student group called “[REDACTED]” who have lunch groups with students needing extra support in navigating the unstructured social spaces.

Ms. [REDACTED] agreed that the MCPS has not asked to observe the Student at [REDACTED] until recently, after the development of the tenth grade IEP. Ms. [REDACTED] also agreed that she had not observed the Student in an educational setting until she conducted the Educational Assessments. Despite this issues, Ms. [REDACTED] explained that, as a Special Education Resource Teacher, she is often required to review a student’s record, consider parent input, and gather as much data as possible, to make recommendations for students regarding educational need. Ms. [REDACTED] also explained that the observations of Ms. [REDACTED], when the Student was in seventh grade, were outdated at the time the Student’s IEP for tenth grade was developed. She added that the observation was almost two years old and would not reflect the Student’s current level of performance. Nevertheless, Ms. [REDACTED] agreed that the observations were data to be considered by the IEP team.

[REDACTED] - [REDACTED] HS - School Psychologist

[REDACTED] is a School Psychologist at [REDACTED] HS. She holds a Doctoral degree and Masters degree in School Psychology from the [REDACTED]. Dr. [REDACTED] testified about the Psychological Evaluation of the Student that she conducted to provide updated information for the Student’ tenth grade IEP.

She specifically discussed the Student's attention and anxiety issues impacting the Student's executive functioning in an academic setting. Dr. [REDACTED] has been a School Psychologist since 2005 in several public schools. She has been a School Psychologist in the MCPS since 2021. Dr. [REDACTED] was accepted as an expert in School Psychology.

Dr. [REDACTED] explained that she helps students with academic and socio-emotional behavioral difficulties by assessing the student's area of strengths and weaknesses and then, through the IEP process, designs levels of support to address the student's need. Dr. [REDACTED] also explained that in terms of school counseling, she is another adult to meet with a student to address any need.

Dr. [REDACTED] conducted a Psychological Evaluation and issued a report which discussed the Student's strengths and weaknesses and recommendations for the Student.<sup>167</sup> She explained that evaluation was conducted at [REDACTED] because Ms. [REDACTED] reported that the Student feels more comfortable in the setting of her school.

Dr. [REDACTED] explained that the Student took the Wechsler Intelligence Scale for Children, 5<sup>th</sup> edition (WISC-V), which is a standardized test used to assess how a student thinks and reasons. The test assesses areas including verbal ability and working memory. On this test, Dr. [REDACTED] reported that the Student did fairly well, with most scores in the average range. However, the Student's score for working memory was in the low average range. Dr. [REDACTED] explained that the test did not directly assess for anxiety, but anxiety can be observed during testing, should a student need a break or request to stop the test. Dr. [REDACTED] reported that the Student did not show any signs of anxiety requiring a break or suspension of testing.

Dr. [REDACTED] conducted the Behavioral Assessment System for Children, 3<sup>rd</sup> edition (BASC-3), which is a standardized test and assesses social and behavioral functioning. Dr. [REDACTED] explained that the test is comprised of surveys taken by the Student, the Parent, and a teacher.

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<sup>167</sup> See MCPS Ex. 7 and P. Ex. 28.

Dr. [REDACTED] reported that the teacher reported significant concerns for anxiety, depression, and attention. The Student's survey demonstrated an at-risk score for anxiety but not depression. The Student's survey also demonstrated a concern for hyperactivity and attention. The Parent's survey had scores indicating no concern for anxiety, depression, or attention.

Another standardized test taken by the Student was the Multidimensional Anxiety Scale for Children, 2<sup>nd</sup> edition (MASC-2). Dr. [REDACTED] explained that this test is a survey taken by the Student and Parent. Dr. [REDACTED] explained that on this test the Student reported elevated general anxiety for issues like panic, tenseness, and restlessness. Based on the Parent report, Dr. [REDACTED] indicated there was not a concern for anxiety.

Dr. [REDACTED] also administered the Behavior Rating Inventory of Executive Function, 2<sup>nd</sup> edition (BRIEF-2), which is a standardized test to assess issues with attention impacting work completion and executive functioning. Dr. [REDACTED] explained that this test is also a survey taken by the Student, Parent, and a teacher. On this test, as to emotional control, Dr. [REDACTED] noted that the teacher reported a clinically elevated score, indicating a greater range of emotion impacting the Student. The Student reported a potentially clinically elevated score, meaning emotional range was more than expected for the Student. The Parent reported a score that indicated emotion was not a concern in the home setting.

To issue the Psychological Evaluation report, Dr. [REDACTED] explained that, in addition to the current testing, she considered other data including a review of Student's prior records and tests, and previous observations of the Student, including the observation by Ms. [REDACTED] when the Student was in seventh grade. She added that there were no records from [REDACTED] to review. Also, Dr. [REDACTED] did not review any of the Student's report cards from elementary or middle school. Dr. [REDACTED] indicated that she was aware the Student had been hospitalized in the PHP but did not review the Student's discharge records.

During her testimony, Dr. [REDACTED] addressed the observations contained in Ms. [REDACTED]'s Educational Needs Evaluation, which included a comment by the Student's case manager that the behaviors observed by Ms. [REDACTED] were typical for the Student, and that the Student's anxiety can be debilitating for her.<sup>168</sup> Dr. [REDACTED] explained that the report from Ms. [REDACTED] alludes to off task, inattentive behaviors. Dr. [REDACTED] indicated that the report discusses the Student's anxiety but does not specifically describe the anxiety. Instead, she said that the report describes examples of the Student being inattentive, off task, and talking to peers. Dr. [REDACTED] agreed that the comment describing the Student's anxiety as debilitating is very concerning. However, Dr. [REDACTED] explained that the report did not describe behaviors of anxiety, like panicking, shutting down, or needing a break. She added that the report described behaviors of inattention.

Dr. [REDACTED] agreed that she did not follow up with the Student's case manager to understand why the Student's anxiety was debilitating. Dr. [REDACTED] agreed that [REDACTED] progress reports contained references to the Student's tendency to overwhelm herself and need support with emotional validation and regulation. Dr. [REDACTED] agreed a review of those records would have been helpful in understanding the educational impact anxiety had on the Student's executive functioning. Dr. [REDACTED] did not observe the Student at [REDACTED].

Dr. [REDACTED] testified that she participated in the November 2023 IEP meeting to present the results of the Psychological Evaluation, to consider the presentation from other team members, and to discuss the Student's eligibility for an IEP. Dr. [REDACTED] did not recall anyone from [REDACTED] presenting any information regarding the Student's anxiety. She added that the main focus of the meeting was to discuss the evaluations.

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<sup>168</sup> See P. Ex 3. During the hearing, there was a reference that these observations were in eighth grade, which is not correct. Ms. [REDACTED] observed the Student in February and March 2020, during the Student's seventh grade year, with second observation occurring right before the COVID-19 pandemic closed schools. Ms. [REDACTED] issued the Education Need Evaluation report in May 2020. This report was used to develop the Student's eighth grade IEP.

Dr. [REDACTED] understood that at the meeting, the Parent indicated the Student required a lot more support and would be completely overwhelmed by the recommended placement at [REDACTED] HS. However, Dr. [REDACTED] testified that she did not agree with the Parent's concern. Dr. [REDACTED] explained that when she issues a psychological report, a recommendation for class size, meaning a smaller setting, cannot be made unless there is much more data to support the recommendation. Dr. [REDACTED] testified that, after looking at all the data and records reviewed, there was no data to support a finding that the Student could not attend [REDACTED] HS. Dr. [REDACTED] explained that the Student's specific learning disability and ADHD issues, which can have social impacts, were consistently supported by data. Dr. [REDACTED] also opined that the IEP developed at this meeting appropriately addressed the Student's issues with anxiety.

### **Analysis**

As this case makes clear, a primary issue presented by the parties concerns the appropriateness of the Student's IEPs for ninth and tenth grade SYs. To help focus the analysis, it is helpful to review what the Supreme Court explained in *Andrew F.*

The IEP is the centerpiece of the IDEA's education delivery system for disabled children.<sup>169</sup> The IDEA requires that every IEP include "a statement of the child's present levels of academic achievement and functional performance," describe "how the child's disability affects the child's involvement and progress in the general education curriculum," and set out "measurable annual goals, including academic and functional goals," along with a "description of how the child's progress toward meeting" those goals will be gauged.<sup>170</sup>

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<sup>169</sup> *Andrew F.*, at 994.

<sup>170</sup> *Id.* (internal citation omitted).

The IEP must also describe the “special education and related services ... that will be provided” so that the child may “advance appropriately toward attaining the annual goals” and, when possible, “be involved in and make progress in the general education curriculum.”<sup>171</sup>

To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.<sup>172</sup> Any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.<sup>173</sup> The IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement.<sup>174</sup>

There is no dispute that since the third grade the Student has required an IEP to receive specialized instruction to make educational progress. The Student has a specific learning disability which impacts her education in the areas of reading, written language, and mathematics. Since at least the sixth grade in 2019, the Student’s issues with anxiety and attention, and the impact these issues have on her executive function, have been documented. To address these issues, an IEE conducted in 2019 recommended that the Student receive specialized instruction to achieve academic progress and, in a small class setting, in the areas of reading, writing, and math.<sup>175</sup> The IEE described the small class setting as being “pulled out of the big group to receive 1:1 instruction.” For the areas impacted by her disability, the IEE essentially described that the Student be removed from a general education setting to receive special education in a self-contained classroom. The IEE, however, did not recommend that the Student be totally removed from the general education setting for the entire school day.

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<sup>171</sup> *Id.* (internal citation omitted).

<sup>172</sup> *Id.* at 999.

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> P. Ex. 2.



During the seventh grade SY, the Student attended [REDACTED] MS. In seventh grade, the Student was observed by Ms. [REDACTED], the family's educational consultant, in the general education setting, which was co-taught by a special education teacher or paraeducator. In this setting, Ms. [REDACTED] observed a class with 25 students. Ms. [REDACTED] also observed a special education self-contained class with 5 students, but this class could have as many as 12 students. In both settings, the Student exhibited signs of anxiety, off-task behaviors (attention issues), and she required adult assistance to understand tasks and to be redirected to tasks. Based on the observation, Ms. [REDACTED] recommended specialized instruction inside and outside of the general education classroom. She also recommended a small class size for all classes. The difficulty with this recommendation is that it appears to be contradictory, meaning a student cannot be educated in both settings and be in a small class size for all classes. Additionally, Ms. [REDACTED] does not explain why the Student's issues could not be addressed by providing the Student with the supports and accommodations which are typically provided to students with attention issues and anxiety, like a flash pass to a trusted adult, chunking of text and assignments, and frequent check-ins by a teacher.

The Parent testified that, in the seventh grade, the Student began having issues with anxiety and her learning disabilities became more severe. It was unclear if the Student's decline was related to her educational circumstances, because of social issues with peers, because of issues related to Student discipline, or some combination of all these issues.<sup>176</sup> The Parent also testified that the Student was uncomfortable attending [REDACTED] MS because it was too big. But there is no corroborative evidence that the Student reported a concern regarding classroom size or the overall student population at [REDACTED] MS to anyone else such as a teacher or counselor.

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<sup>176</sup> The Parent testified that the Student was serving detention in the Assistant Principal's office reported because of behavioral issues she was having in Math class. The Parent also explained there was an incident reported related to behavior involving the Student at school for which police were called. The Student also reported to the Parent that other students were teasing her about being in a special education class.

Without question, the Student's educational progress through part of the seventh grade and all of eighth grade was greatly impacted by the COVID-19 pandemic. But as it was explained in the hearing and as it has been commonly known, many students with and without disabilities had difficulty in learning during the pandemic. Nevertheless, as explained by the Parent, the Student's anxiety became more severe, and the Student did not want to attend school anymore. The Student's teachers described the difficulty the Student had staying on task, being on the computer, or participating in class during the virtual learning program. Perhaps the greatest concern for the Student occurred late in the eighth grade, when the Student became hospitalized for anxiety and suicidal thoughts in May 2021. Upon discharge from the PHP in June 2021, an educational team for [REDACTED] made several recommendations to support the Student's anxiety as she transitioned back to school. Notably absent from the recommendations was a specific recommendation that the Student be educated in a small class setting for the entire school day.

The Student's ninth grade IEP was developed during an IEP meeting on June 9, 2021. The IEP was issued on June 14, 2021. This IEP continued to recognize the Student's specific learning disability academically affected her in the areas of reading, writing, and math. The IEP also identified that the Student's behavior was affected by anxiety. There was no dispute by the Parent that the Student's disability and the areas affected by the disability as identified in this IEP were incorrect.

During the IEP meeting, the MCPS representatives and the Parent identified and agreed to the Student's current PLAFP in each area affected by her disability, including the Student's behavior. As to behavior, the MCPS teachers discussed in detail how the Student's attention issues impacted her ability to attend class and to participate in instructions. The Parent also discussed how the Student was shutting down with increased anxiety.

Because of the Student's PLAFP, including related to anxiety, the IEP team and the Parent agreed to 20 supplementary aids, services, program modifications and supports, which the Student would receive daily or as needed during the school day.<sup>177</sup> Some of these supports and accommodations, as the MCPS explained, were recommended by the PHP. Again, the Parent did not dispute that these supports and accommodations were appropriate to meet the Student needs. Notably, some of these supports and accommodations included using a flash pass to a trusted adult to help with anxiety, counselor check-ins as needed to help with anxiety management, social engineering of work groups to ensure a supportive work group, and to encourage the Student to ask for assistance when needed to reduce anxiety and prevent student shutdown.

During the IEP meeting, the MCPS and the Parent agreed on several goals and objectives to measure the Student's academic and behavioral progress. As to behavior and anxiety, the IEP established two goals for the Student to develop strategies to reduce anxiety across all school settings and to develop the ability to persevere through tasks that are difficult and or anxiety producing. There was no dispute that any proposed goals related to academic or behavioral progress were inappropriate.

After developing the IEP as just discussed, the MCPS next proposed the special education and related services the Student would receive. The IEP team proposed that from August 30, 2021 through February 2, 2022, the Student would receive special education services:

- inside a general education classroom, co-taught by a special education teacher or an instructional assistant, for 11 hours and 15 minutes per week;
- outside a general education classroom, in a self-contained classroom, from a special education teacher or an instructional assistant, for 7 hours and 30 minutes per week; and

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<sup>177</sup> See Finding of Fact 36.

- outside of general education, a related service of counseling, from a school counselor or a school psychologist for 20 minutes per week.<sup>178</sup>

The MCPS explained that it proposed the related service of counseling based on a recommendation by the educational staff at [REDACTED]. In addition to these special education and related services, the MCPS proposed the IEP could be implemented in a LRE at [REDACTED] HS.

The Parent disagreed with the MCPS proposals regarding the special education services, including the educational placement at [REDACTED] HS. The Parent continued to assert that the Student required small class setting throughout the school day. Based on the history as described in this Decision, the credible evidence demonstrates that the Parent's opinion is based on the observations of Ms. [REDACTED] during seventh grade, the Student's decline during the COVID-19 pandemic and related virtual learning, the Student's report of an educational setting being too big, and the Student's hospitalization. The Parent's disagreement is also rooted in the fact that, for ninth grade, the MCPS proposed fewer special education services than the Student's eighth grade IEP. Because the Parent believed that the MCPS did not propose an IEP that was reasonably calculated to provide the Student with a FAPE, the Parent unilaterally placed the Student at [REDACTED], and requested the MCPS to fund the Student's tuition at that school. The MCPS disagreed with the Parent's position and denied the funding request.

In support of the Parent's position, Ms. [REDACTED] was of the opinion that the Student's ninth grade IEP, issued on June 14, 2021, and the LRE placement at [REDACTED] HS were inappropriate and did not provide the Student with a FAPE. She explained that the Student's academic weaknesses were impacting her ability to access the curriculum and that the classes were too big. She added that the Student's anxiety was debilitating, that Student was unable to participate in class, and that the Student's executive functioning was impacted. Ms. [REDACTED]

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<sup>178</sup> MCPS Ex. 1

explained that although the IEP proposed support and accommodations to address anxiety, the Student was not at point where she could implement those strategies. Ms. [REDACTED] also provided the opinion that because of the Student's anxiety issues, [REDACTED] HS was too large of a building for the Student to navigate even with adult support.

On behalf of the MCPS, Ms. [REDACTED] explained that when the Student's ninth grade IEP was developed, the data the MCPS had at the time was that the Student was making progress. She also explained that the IEP team did not have sufficient data to consider the Parent's request for small class sizes throughout the day and agreed to make changes to the IEP, should additional data support the change. Ms. [REDACTED] opined that the IEP as developed was appropriate to provide the Student with a FAPE, including the LRE placement at [REDACTED] HS. Ms. [REDACTED]'s opinion was based upon the agreement between the MCPS and Parent regarding the Student's PLAFP, goals, accommodations, and supplementary aids and supports.

Ms. [REDACTED] also explained that when the IEP was developed, the Student had been making progress every school quarter toward her academic goals. Based on the agreement between the MCPS and the Parent with the development of each section of the IEP, Ms. [REDACTED] also opined that the Student's IEP provided the Student with a FAPE, including the LRE at [REDACTED] HS.

As *Andrew F.* explains, the adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.<sup>179</sup> Additionally, when reviewing the adequacy of an IEP, there is a deference to the educational authorities, who have the primary responsibility for formulating the education to be accorded to a student with disabilities, and for choosing the educational method most suitable to the child's needs.<sup>180</sup>

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<sup>179</sup> *Id.* at 1001.

<sup>180</sup> *Id.*

In this case, if any deference is accorded to the expert opinions provided by Ms. [REDACTED] and Ms. [REDACTED], it is because I find those opinions to be more credible and supported by the evidence.

As explained earlier, prior to the development of the IEP, the Student's background, as explained by Ms. [REDACTED], revealed a Student struggling with anxiety and attention issues, during seventh grade, which became exacerbated during a virtual learning experience in eighth grade. Just before the IEP was developed, the Student was hospitalized for anxiety and suicidal thoughts.

But the circumstances described by Ms. [REDACTED] are contrasted by the uncontested testimony of Ms. [REDACTED] and Ms. [REDACTED], indicating that the Student was making academic progress during the same time. Additionally, the discharge recommendations for the PHP included the types of support and accommodations provided in the Student's IEP. The change in special education services from the eighth grade IEP to the ninth grade IEP as recommended by the MCPS include the related service of counseling, which was recommended by the PHP. Further, Ms. [REDACTED]'s conclusions that the Student required small class sizes throughout the school day or was not at a point in her mental health where she could access the supports and accommodations of the IEP, were not supported by the PHP treatment and discharge records. Not only does the discharge plan not recommend small class sizes but the PHP records indicate that the Student was doing quite well with her recovery, was actively involved in her treatment, and was able to transition back to school. I found the PHP evidence important because this evidence was the only "objective" evidence supporting the MCPS regarding the Student's ability to function in the school setting with support and accommodations.

Otherwise, the Parent did not dispute that the IEP was developed with her agreement regarding the Student's PLAFP in the areas of her specific learning disability affecting her academically and behaviorally. There is also no dispute that the IEP provided adequate goals and objectives to permit the Student an opportunity to make academic progress, and that the accommodations, supplementary aids and services were appropriate for the Student. As a result, I agree with the MCPS' position, and find that the IEP developed on June 14, 2021 was reasonably calculated to enable the Student to make progress appropriate in light of her unique circumstances.<sup>181</sup>

Based on the proposed IEP, the MCPS proposed an IEP which included a combination of special education services to be received by the Student in a general education classroom, co-taught by a general education teacher and a special education teacher or paraeducator. The Student would also receive special education services in a self-contained special education classroom from a special education teacher. Based on the special education services proposed, the MCPS recommended that the Student attend school at ██████ HS, which is the Student's residential public high school. This high school also contains the ██████ program. Ms. ██████ explained that the ██████ program is designed to support students with learning disabilities, within the general education setting. For these reasons, the MCPS found this educational setting to be an appropriate LRE for the Student.

The Parent disagreed with this determination because of a belief that the Student could not function in the class sizes at ██████ HS and because of the student population and building size. Again, the root of the Parent's concern was based on the Student's debilitating anxiety.

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<sup>181</sup> *Id.*

By federal law, the MCPS is required to educate the Student in the LRE, which means that “to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled.”<sup>182</sup> Additionally, LRE means that “special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”<sup>183</sup>

As already discussed, I found the testimony of the MCPS experts, Ms. [REDACTED] and Ms. [REDACTED], to be more persuasive and to establish that the Student’s academic and behavioral disabilities, including anxiety, were appropriately addressed by the IEPs supplementary aids, services, and accommodations. For the same reasons as previously discussed, and because the proposed IEP recommends an educational setting which can implement the Student’s IEP in a combination of general education and special education classroom, which is also the Student’s residential school, I find that the proposed LRE at [REDACTED] HS meets the requirements of the IDEA.

The Student attended [REDACTED] for ninth grade. [REDACTED] provided a [REDACTED] education in a very small school and classroom setting. [REDACTED] did not implement the Student’s ninth grade IEP but instead implemented an Educational Program to provide the Student with intensive individualized support to manage her anxiety and to ensure the Student was academically successful. Based on the testimony of the Parent and [REDACTED] teacher, I learned that the Student thrived both academically and behaviorally and was a much happier and more confident student.

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<sup>182</sup> 34 C.F.R. § 300.114(a)(i).

<sup>183</sup> *Id.* at § 300.114(a)(ii).



To develop the Student's IEP for tenth grade, the MCPS and the Parent originally met in July 2022. At this meeting the MCPS and the Parent agreed to conduct updated assessments before crafting the IEP. In August 2022, because the MCPS had not proposed the Student's tenth grade IEP, and the ninth grade IEP continued in effect, the Parent notified the MCPS that she believed an IEP reasonably calculated to provide the Student with a FAPE was not proposed by the MCPS. The Parent continued to unilaterally place the Student at [REDACTED] and requested the MCPS to fund the Student's tuition at [REDACTED]. Again, the MCPS denied the Parent's request and asserted that the Student's IEP provided the Student with a FAPE in the LRE at [REDACTED] HS.

By November 2022, the updated assessments were completed, including a Speech Language Assessment, an Educational Evaluation, and a Psychological Evaluation. On November 10, 2022, the MCPS and the Parent participated in an IEP meeting to develop the IEP. At this meeting, based on the updated assessments, the MCPS and the Parent agreed to change the Student's learning disability code from a Specific Learning Disability to Multiple Disabilities to include the Student's Specific Learning Disability and an Other Health Impairment, related to the Student's diagnoses for ADHD and Anxiety.

Much like the Student's ninth grade IEP, the MCPS and the Parent agreed to the Student's updated PLAFP, goals, accommodations, and supplementary aids, services, program modifications, and supports, which now included 27 items.<sup>184</sup> After completing these sections of the Student's IEP, the MCPS proposed the special educational services the Student will receive, which included a mix of education inside a co-taught general education classroom for 15 hours per week; outside general education in a self contained special education classroom for 3 hours

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<sup>184</sup> See Finding of Fact No. 83.

and 45 minutes per week; a related service of counseling outside of general education for 20 minutes per week; and a related service of speech language therapy for 45 minutes, twice a month. The total time outside general education, in a self-contained classroom or for a related service, was 4 hours and 27.5 minutes per week. Based on the Student's IEP, the MCPS again recommended the [REDACTED] HS and the [REDACTED] program as the Student's LRE to implement the IEP.

The Parent disagreed with the proposed IEP, again relying on the opinion of Ms. [REDACTED] because the proposed IEP provided fewer special education services inside a special education class than recommended by the ninth grade IEP. Ms. [REDACTED] also explained that even though the Student was doing much better at [REDACTED], the Psychological Evaluation conducted by Dr. [REDACTED] indicated that the Student's anxiety was still clinically significant, indicating the Student still required a greater level of specialized instruction than proposed by the MCPS. After an observation of [REDACTED] HS, Ms. [REDACTED] continued to find the educational setting too large for the Student based on her anxiety.

The MCPS contends that the proposed tenth grade IEP was reasonably calculated to provide the Student with educational benefit and that [REDACTED] HS, and the [REDACTED] program, continues to be the appropriate LRE for the Student. To support this position, as with the other MCPS experts, Ms. [REDACTED] explained that the Student's IEP was developed with agreement by the Parent as to all aspects of the IEP, meaning the IEP as designed addressed the Student's individual academic and behavioral needs and provided adequate supports and accommodations so the Student could make educational progress.

Based on the Psychological Evaluation she conducted, Dr. [REDACTED] provided relevant information regarding the Student's issues with attention and anxiety. In her opinion, the Student's anxiety was related to the Student's issues with attention and executive functioning.

Additionally, Dr. [REDACTED] was of the opinion that most of Ms. [REDACTED]'s observations of the Student in a school setting described examples of the Student's issues with attention and executive functioning as opposed to typical behaviors related to anxiety. Finally, Dr. [REDACTED] explained that making a recommendation for small class settings throughout the school day required much more data than was currently available for the Student and the MCPS. Based on the IEP as developed on November 10, 2022, Dr. [REDACTED] was of the opinion that the IEP appropriately addresses the Student's issues with anxiety.

For the reasons discussed earlier, I found Ms. [REDACTED]'s testimony and opinions unpersuasive. As to the tenth grade IEP, I found the opinion of Dr. [REDACTED] more credible and reliable, because of her experience and knowledge in the specialized field of school psychology. More importantly, Dr. [REDACTED] conducted the updated psychological evaluation of the Student and based on a series of standardized testing, was more capable of providing current and reliable opinions regarding the Student's issues with attention and anxiety.

When developing the Student's proposed IEP, the MCPS updated the Student's PLAFP and goals and objectives. Again, with agreement by the MCPS and the Parent, the IEP addressed the Student's unique academic and behavioral issues and provided necessary program modifications, accommodations, and supplementary aids to support the Student, all of which were informed by the updated assessments. Importantly, the Parent brought no new information to the IEP meeting to demonstrate the Student required a small class size throughout the school day in order to make academic or behavioral progress.

As discussed earlier, *Andrew F.* explained that to meet its substantive obligation under the IDEA, the MCPS must offer an IEP reasonably calculated to enable the Student to make progress appropriate in light of the child's circumstances.<sup>185</sup>

Any review of the proposed IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.<sup>186</sup> Based on my review, and for the reasons discussed, I am persuaded that the November 10, 2022 IEP was reasonable.

As to the proposed educational setting at [REDACTED] HS and the [REDACTED] program, my earlier discussion and determination remains the same and I will not repeat it, except to note that the Parent requested a referral to the MCPS' CIEP team. The MCPS denied the request because it believed the Student's IEP could be implemented in the LRE at [REDACTED] HS. The Parent did not raise this issue as a procedural due process violation.

To be sure, based on the Student's success at [REDACTED], the Parent placed the Student in a program that was ideal for the Student at the time. But under the IDEA, based on the IEPs proposed, which I conclude met the *Andrew F.* standards, the MCPS did not fail to provide the Student with a FAPE, and is not required to fund the Student's unilateral placement at [REDACTED].<sup>187</sup>

Because I have found the Parent has not met her burden of proof to demonstrate that the MCPS failed to propose an IEP which offered the Student a FAPE for the Student's ninth and tenth grade SYs, I find it unnecessary to address the Parent's request for a prospective placement at [REDACTED] for the eleventh grade SY.

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<sup>185</sup> *Id.* at 999.

<sup>186</sup> *Id.*

<sup>187</sup> *See Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7, 12-13 (1993).

## CONCLUSIONS OF LAW

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

1. For ninth grade, the MCPS offered the Student a FAPE, through a proposed IEP issued on June 14, 2021, and a LRE at [REDACTED] HS, which adequately addressed the Student's unique academic, speech/language, social/emotional, and behavioral needs.<sup>188</sup>

2. For tenth grade, the MCPS offered the Student a FAPE, through a proposed IEP issued on November 10, 2022 and a LRE at [REDACTED] HS, which adequately addressed the Student's unique academic, speech/language, social/emotional, and behavioral needs.<sup>189</sup>

3. The Parent is not entitled to reimbursement for her unilateral placement of the Student at [REDACTED] for the 2021-2022 and 2022-2023 SYs.<sup>190</sup>

## ORDER

I **ORDER** that Parent's due process complaint dated May 2, 2023 is without merit and is hereby **DISMISSED**.

December 29, 2023  
Date Decision Issued

Daniel Andrews  
Administrative Law Judge

DA/ja  
#209181

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<sup>188</sup> *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017).

<sup>189</sup> *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017).

<sup>190</sup> *Sch. Committee of the Town of Burlington, MA v. Dep't of Educ.*, 471 U.S. 359 (1985); *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7, 12-13 (1993).

**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) (Supp. 2023). 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 To:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

██████████,  
STUDENT

v.

MONTGOMERY COUNTY  
PUBLIC SCHOOLS

BEFORE DANIEL ANDREWS,  
AN ADMINISTRATIVE LAW JUDGE  
OF THE MARYLAND OFFICE  
OF ADMINISTRATIVE HEARINGS  
OAH No.: MSDE-MONT-OT-23-11691

**APPENDIX**  
**FILE EXHIBIT LIST**

I admitted the following exhibits<sup>1</sup> into evidence on behalf of the Student and Parents:

- P. Ex. 1 - Request for Due Process, May 1, 2023 (1-11)
- P. Ex. 2 - Educational Assessment, ██████████, Psy.D., July 8, 2019 (1-20)
- P. Ex. 2A - MCPS, Prior Written Notice (PWN), January 22, 2020 (1-2)
- P. Ex. 3 - Educational Needs Evaluation, ██████████, May 18, 2020 (1-6)
- P. Ex. 4 - MCPS, Individualized Education Plan (IEP) Meeting Notes, ██████████, June 18, 2020 (1-2)
- P. Ex. 5 - Letter from MCPS regarding compensatory services, June 4, 2021 (1)
- P. Ex. 6 - ██████████ Psychiatric Progress Notes, dates of service May 21 through June 7, 2021 (1-10)
- P. Ex. 7 - ██████████ Discharge Summary, June 8, 2021 (1-5)
- P. Ex. 8 - MCPS, PWN, with attached Amended IEP, June 10, 2021 (1-49)
- P. Ex. 9 - Parent Letter to MCPS regarding private placement at the ██████████, August 4, 2021, with attached MCPS letter to Parent rejecting request for funding of private placement, August 9, 2021 (1-2)
- P. Ex. 10 - ██████████, Cycle 1 Report Card, October 2021 (1-2)
- P. Ex. 11 - ██████████, Semester 1 Report Card, February 2022 (1-2)
- P. Ex. 12 - ██████████, Cycle 3 Report Card, March 2022 (1-2)
- P. Ex. 13 - ██████████, Cycle 4 Report Card, April 2022 (1-2)
- P. Ex. 14 - ██████████, Student Work Samples, 2021-2022 SY (1-9)
- P. Ex. 15 - School Observation Report (██████████), ██████████, May 25, 2022 (1-2)
- P. Ex. 16 - ██████████, Student Transcript, June 14, 2022 (1-2)
- P. Ex. 17 - ██████████, Semester 2 Report Card, June 2022
- P. Ex. 18 - MCPS Secondary Teacher Report by ██████████, June 2022
- P. Ex. 19 - Email to MCPS from Meghan M. Probert, Esq., detailing accommodations provided by ██████████, with attached documents request by MCPS for IEP meeting, July 7, 2022 (1-2)<sup>2</sup>

<sup>1</sup> Any parenthetical references are bate-stamped page numbering as provided by the parties.

<sup>2</sup> The documents attached in the email were not made a part of Parent Exhibit 19.

- P. Ex. 20 - MCPS, IEP Meeting Notes, July 20, 2022 (1-2)
- P. Ex. 21 - IEP Meeting Notes, [REDACTED], July 20, 2022 (1-3)
- P. Ex. 22 - MCPS, PWN, July 20, 2022 (1-2)
- P. Ex. 23 - MCPS, Authorization of Release, July 25, 2022, MCPS, Notice and Consent for Assessment, July 27, 2022, both documents signed by the Parent (1-4)
- P. Ex. 24 - Parent Letter to MCPS regarding private placement at the [REDACTED], August 4, 2022, with attached MCPS letter to Parent rejecting request for funding of private placement, August 24, 2022 (1-2)
- P. Ex. 25 - MCPS, Speech Language Assessment, August 30, 2022 (1-6)
- P. Ex. 26 - [REDACTED], Cycle 1 Report Card, October 2022 (1-2)
- P. Ex. 27 - MCPS, Educational Assessment Report, November 1, 2022 (1-9)
- P. Ex. 28 - MCPS, Psychological Evaluation, November 3, 2022 (1-9)
- P. Ex. 29 - MCPS, PWN and IEP Meeting Notes, November 10, 2022 (1-4)
- P. Ex. 30 - MCPS, IEP, November 10, 2022 (1-51)
- P. Ex. 31 - [REDACTED], Semester 1 Report Card, February 2023 (1-2)
- P. Ex. 32 - Email containing parent's observation notes, February 16, 2022 (1-2)
- P. Ex. 33 - Proposed Program Visit Report, [REDACTED], March 10, 2023 (1-5)
- P. Ex. 34 - [REDACTED], Cycle 3 Report Card, March 2023 (1-2)
- P. Ex. 35 - [REDACTED], Cycle 4 Report Card, April 2023 (1-2)
- P. Ex. 36 - School Observation Report, [REDACTED], May 10, 2023 (1-2)
- P. Ex. 37 - [REDACTED], Semester 2 Report Card, June 2023
- P. Ex. 38 - Parent Letter to MCPS regarding private placement at the [REDACTED], August 3, 2023 (1)
- P. Ex. 39 - Curriculum Vitae of [REDACTED] (1-4)
- P. Ex. 40 - Curriculum Vitae of [REDACTED] (1-2)
- P. Ex. 41 - Curriculum Vitae of [REDACTED] (1)
- P. Ex. 42 - Teacher Reports by [REDACTED], November 2023 (1-6)
- P. Ex. 43 - [REDACTED] Cycle 1 Report Card, November 2023 (1-2)
- P. Ex. 44 - Biography Statement of [REDACTED] (1)
- P. Ex. 45 - MCPS, IEP Meeting Notes, [REDACTED], November 11, 2023 (1-3)

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

- MCPS Ex. 1 - IEP, February 3, 2021 (0001-0047)
- MCPS Ex. 2 - IEP, November 10, 2022 (0046-0098)
- MCPS Ex. 3 - PWN, February 5, 2021 (0099-0100)
- MCPS Ex. 4 - PWN, June 10, 2021 (0101-0102)
- MCPS Ex. 5 - PWN, July 20, 2022 (0103)
- MCPS Ex. 6 - PWN, November 10, 2022 (0104-0105)
- MCPS Ex. 7 - Psychological Report, November 3, 2022 (0106-0114)
- MCPS Ex. 8 - Educational Assessment, November 10, 2022 (0115-0123)
- MCPS Ex. 9 - Speech Language Assessment, August 23, 2023 (0124-0129)
- MCPS Ex. 10 - Eligibility Screening Form, Parent Interview/Questionnaire, June 29, 2022 (0130-0132)
- MCPS Ex. 11 - Curriculum Vitae, [REDACTED], Special Education Resource Teacher (0133-0134)
- MCPS Ex. 12 - Curriculum Vitae, [REDACTED], Special Education Math Teacher (0135)
- MCPS Ex. 13 - Curriculum Vitae, [REDACTED], Speech Language (0136-0138)



MCPS Ex. 14 - *Curriculum Vitae*, [REDACTED], School Psychologist (0139-0143)  
MCPS Ex. 15 - *Curriculum Vitae*, [REDACTED], Resource Teacher (0144-0145)  
MCPS Ex. 16 - *Curriculum Vitae*, [REDACTED], Assistant Principal (0146-0147)