

**MONTGOMERY COUNTY  
PUBLIC SCHOOLS**

**v.**

**STUDENT**

**BEFORE LEIGH WALDER,  
AN ADMINISTRATIVE LAW JUDGE  
OF THE MARYLAND OFFICE  
OF ADMINISTRATIVE HEARINGS  
OAH No.: MSDE-MONT-OT-23-22650**

**DECISION**

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

**STATEMENT OF THE CASE**

On a date not provided in the record, [REDACTED] and [REDACTED] (Parents) requested educational and psychological Independent Educational Evaluations (IEE) of their child, [REDACTED] (Student). On August 31, 2023, the Montgomery County Public Schools (MCPS) filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to show that its educational evaluations of the Student were appropriate and that the Parents did not have a right to IEEs at public expense under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017).<sup>1</sup>

On October 6, 2023, I held a prehearing conference (Conference) in this case on the Webex videoconference platform (Webex). Stacey Swain, Esquire, represented the MCPS at the Conference. The Parents represented themselves at the Conference. At the Conference, the parties and I discussed the timeframe for issuing this decision.

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<sup>1</sup> U.S.C.A. is an abbreviation for the United States Code Annotated. All references to the U.S.C.A. are to the version found in the 2017 volume.

Under the applicable law, a decision in this case normally would be due by Friday October 13, 2023,<sup>2</sup> which is forty-five days after the MCPS filed the Due Process Complaint. 34 Code of Federal Regulations (C.F.R.) § 300.515(a) (2022); Md. Code Ann., Educ. § 8-413(h) (Supp. 2023); COMAR 13A.05.01.15C(14); *see also* COMAR 13A.05.01.15C(11)(d)(iii) (“In accordance with 34 CFR § 300.510(a)(3), a resolution session need not be held if: [t]he public agency initiated the due process complaint.”) However, based on the need to exchange documents in conformity with the five-day disclosure rule, and based on my schedule and the parties’ schedules (as detailed in Appendix II – Schedule), the MCPS requested that I extend the timeline to allow the case to be heard on October 23 and 24, 2023, and to allow sufficient time for me to consider the evidence, evaluate legal arguments, and draft a decision. *Id.* § 300.515(c). The Parents posed no objection. I may grant specific extensions of time at the request of either party. *Id.* Accordingly, based on the noted scheduling conflicts, I found good cause to extend the regulatory timeframe as requested by the parties. *Id.* The MCPS requested that I issue a decision within thirty days after the conclusion of the hearing; the Parents did not oppose that request. The hearing concluded on October 23, 2023; therefore, the decision in this case is due on or before November 22, 2023. As such, this decision is being issued within 30 days after the conclusion of the hearing.

On October 23, 2023, I held a remote hearing on Webex, commencing at 9:30 a.m., as scheduled. COMAR 28.02.01.20B(1)(b). Ms. Swain represented the MCPS. I waited fifteen minutes for both Parents to sign on. By 9:45 a.m., only [REDACTED] signed on for the hearing. Mr. [REDACTED] proceeded to represent the Student. The entirety of the hearing concluded at 2:20 p.m., so the hearing date set for October 24, 2023, was cancelled.

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<sup>2</sup> Forty-five days from August 31, 2023, is Sunday October 15, 2023. Therefore, the decision would be due on the preceding business day, Friday October 13, 2023.

Procedure is governed by the contested case provisions of the Administrative Procedure Act; the Education Article; the Maryland State Department of Education (MSDE) procedural regulations; and the Rules of Procedure of the OAH. Educ. § 8-413(e)(1) (Supp. 2023); Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2023); COMAR 13A.05.01.15C; COMAR 28.02.01.

### **ISSUES**

1. Were the educational and psychological evaluations conducted by the MCPS appropriate?
2. Should the MCPS be required to pay for IEEs of the Student at public expense?

### **SUMMARY OF THE EVIDENCE**

Appendix I – Exhibits, contains a complete exhibit list.

#### **Testimony**

The MCPS presented the testimony of the following witnesses: (1) [REDACTED], who – without objection – was accepted as an expert in special education; (2) ([REDACTED]) [REDACTED] [REDACTED], who – without objection – was accepted as an expert in special education; (3) [REDACTED] [REDACTED], who – without objection – was accepted as an expert in school psychology; and (4) [REDACTED], who – without objection – was accepted as an expert in school psychology.

Mr. [REDACTED] testified on behalf of the Student.

## FINDINGS OF FACT

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

### Background

1. The Student, who at the time of the hearing was nine years old, began receiving special education and related services from the MCPS beginning in May 2018 as a student with a developmental delay.
2. The Student could only remain coded as a student with developmental delay until she turned eight years old, after which she would age out of this disability code.
3. On or about January 10, 2022, when the Student was in the second grade, the Student's Individualized Education Program (IEP) team met and determined that the Student required updated formal testing to determine if the Student was still eligible for special education and related services and, if so, under what new disability code.

### Ms. [REDACTED]'s Educational Assessment

4. On January 26, February 2, and February 9, 2022, [REDACTED] performed an educational assessment to determine if the Student had an educational disability and was eligible for special education and related services and to identify any current learning behaviors that were impacting the Student's progress in reading, writing, and math.
5. As part of her assessment, Ms. [REDACTED] observed the Student, for thirty-five minutes, while the Student attended her math class. Ms. [REDACTED] noted that the Student had some problem with listening comprehension, math calculation, math reasoning, work habits, and task completion. Ms. [REDACTED] noted the only significant problem the Student displayed was attention.

6. Ms. [REDACTED] administered the Brigance Inventory of Early Development III Standardized (IED III) which was used to measure the Student's performance compared to that of same-aged children from birth to seven years, eleven months.

7. The Brigance IED III was judged to be an appropriate measure for use with the Student. The Student's cultural/linguistic characteristics were appropriately represented in the normative sample.

8. The Student was very compliant when Ms. [REDACTED] administered the Brigance IED III. Ms. [REDACTED] noted that the Student seemed eager to have time in a different environment. The Student worked hard on all subtests and was given a break between the subtests where she could color on a whiteboard. The Brigance IED III assessments were administered over three different days, for a total of about two-and-a-half hours combined. Overall, Ms. [REDACTED] observed that the Student seemed to be trying her best and was a pleasure to work with behaviorally.

9. On the Brigance IED III, the Student scored a literacy<sup>3</sup> composite score of 88 (below average), a mathematics<sup>4</sup> composite score of 78 (weak), and a total academic composite score of 81 (below average).

10. As part of her educational assessment, Ms. [REDACTED] also administered the Fountas and Pinnell Benchmark Assessment (FPBA) to test the Student's reading accuracy and fluency and the Student's oral and written comprehension with two separate sets of text.

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<sup>3</sup> The literacy assessment tested the Student's knowledge of books and text (average), recitation of the alphabet (average), visual discrimination (average), identification of upper case letters (average), phonological awareness (average), auditory discrimination (average), phoneme manipulation (weak), ability to read words from common signs (weak), and word recognition (weak). A detailed reasoning why the Student scored within each range is set out in MCPS Exhibit 11, pages 112-114.

<sup>4</sup> The mathematics assessment tested the Student's knowledge of number concepts (average), counting by rote (average), comparing different amounts (average), sorting objects (average), matching quantities with numerals (very weak), reading numerals (weak), solving word problems (average), knowing missing numbers in sequences (very weak), addition (below average), and subtraction (very weak). A detailed reasoning why the Student scored within each range is set out in MCPS Exhibit 11, pages 114-116.

11. The Student read the first text on the FPBA with ninety-five percent accuracy. She received a fluency score of one out of three, indicating that she was able to read primarily in two-word phrases, with some three- and four-word groups at a slow rate. In the first text's comprehension conversation test, the Student received a score of four out of six, indicating that she was approaching proficiency with recalling important events, making inferences, and making connections to the text. When asked to write her understanding of the first text, the Student received a score of two out of three, meaning she reflected partial understanding of the text.

12. The Student read the second text on the FPBA with ninety-one percent accuracy. She received a fluency score of one out of three, indicating that she was able to read primarily in two-word phrases, with some three- and four-word groups at a slow rate. In the second text's comprehension conversation test, the Student received a score of four out of six, indicating that she was approaching proficiency with recalling important events, making inferences, and making connections to the text. When asked to write her understanding of the second text, the Student received a score of two out of three, meaning she reflected partial understanding of the text.

13. As part of her educational assessment, Ms. [REDACTED] reviewed MAP-RF Adaptive Oral Reading tests that the Student took in September 2021 and January 2022. On the MAP-RF administered in September 2021, the Student was below grade level expectation in the areas of phonological awareness, phonics/word recognition and listening comprehension. She met grade level expectation in picture vocabulary. On the MAP-RF administered in January 2022, the Student was still below grade level expectation in phonological awareness and phonics/word recognition, she scored approaching grade level for listening comprehension, she understood seventy-three percent of complex oral sentences, and she met grade level expectation in picture vocabulary.

14. Ms. [REDACTED] also reviewed two MAP-P Mathematics Assessments that the Student had previously completed in September 2021 and January 2022. On the MAP-P administered in September 2021, the Student received an overall score of 160.<sup>5</sup> On the MAP-P administered in January 2022, the Student received an overall score of 159.<sup>6</sup>

15. Ms. [REDACTED] also reviewed a report completed by the Student's general education teacher, Ms. [REDACTED], to understand the Student's present levels of performance in the classroom. Ms. [REDACTED] indicated that the Student was below grade-level in the areas of reading, writing, and math. In reading, Ms. [REDACTED] noted concerns with the Student's reading accuracy, fluency, and ability to demonstrate comprehension orally or when text is read aloud. In writing, Ms. [REDACTED] noted concerns with the Student's ideas/development, organization, voice, word choice, sentence fluency, and conventions. In math, Ms. [REDACTED] noted areas of concern in basic facts, math concepts, basic operations, and math application. Generally, Ms. [REDACTED] noted concerns with the Student's participation, organization, and problem-solving skills.

16. Based on her educational assessment, Ms. [REDACTED] made the following recommendations that she believed would be beneficial for the Student:

- Continued participation in a tier-III reading intervention program to work on the Student's decoding skills and sight word identification;
- Continued participation in I-ready math intervention program to help solidify the Student's math skills;
- Explicit teaching and reteaching of calculation strategies;
- Pre-loading of texts during guided reading to aid with comprehension;
- Visual supports to help with understanding of academic concepts;
- Use of prewriting graphic organizers to arrange thoughts/ideas;
- Teacher check-ins during the writing process;
- Writing supports including sentence starters/frames, word banks, highlighted lines; and
- Supports to remain on task/sustain attention including visual timers, fading prompts, verbal reminders, and reward incentives.

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<sup>5</sup> When administered, the expected range for similarly aged peers would have been 175-185.

<sup>6</sup> When administered, the expected range for similarly aged peers would have been a 181-188.

17. Ms. [REDACTED] was qualified to conduct all testing within her educational assessment and she followed all testing instructions as prescribed by the test publisher.

Mr. [REDACTED]' Psychological Assessment

18. Between March 1 and 24, 2022, [REDACTED] performed a psychological assessment in order to determine the Student's strengths and weaknesses in the areas of intellectual/cognitive and social emotional functioning.

19. All the sources of data that Mr. [REDACTED] used to assess the Student had been validated for the purpose of psychological assessment, and were individually determined, selected, and administered so as not to be discriminatory on a racial or cultural basis. All measures administered had been nationally standardized and were used for the purpose in which they were designed. Normative data was based on a sample of the United States population that was representative of racial, cultural, geographical and socioeconomic diversity of the United States. All measures were chosen based on their ability to address the Student's areas of concern (e.g., cognitive/intellectual functioning).

20. As part of his assessment, Mr. [REDACTED] conducted an informal interview with the Student's parents, who described the Student as fun, imaginative, creative, kind, and empathetic. The Student's mother indicated that her primary concern was with the Student's academic growth and social-emotional well-being. The Student's mother indicated that the Student can become easily frustrated, often has verbal outbursts, and will rip up her materials and refuse to complete tasks. The Student's father reported that he had not observed the same frustrations or behavioral outbursts as reported by the Student's mother.<sup>7</sup>

21. Mr. [REDACTED] also informally interviewed Ms. [REDACTED], who reported that the Student was kind and thoughtful. Ms. [REDACTED] noted that the Student displays challenges

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<sup>7</sup> The Student's parents live in separate homes. The Student's parents agreed that the inconsistency of behavior might be a result of the Student being in different environments.



sustaining focus, and initiating and completing tasks across academic subjects in reading, writing, and math. Ms. [REDACTED]'s primary concern was the Student's ability to retain information to develop academic skills. Ms. [REDACTED] indicated that she provided the Student with frequent reteaching, prompting, reminders, chunking, movement breaks, and instruction in individual and small group settings.

22. On March 9, 2022, Mr. [REDACTED] observed the Student in her second grade classroom for twenty-five minutes. Mr. [REDACTED] observed that the Student was on-task and completed her math tasks independently. She was not distracted by peers or objects. After completing her assignment, the Student spent eight minutes picking off an old name tag that was stuck to her desk.

23. Mr. [REDACTED] met with the Student, in-person, to conduct various tests. Throughout the assessment, the Student was pleasant and cooperative but was also easily distracted where she would gaze around, fidget with her hands or materials, and ask unrelated questions. The Student required frequent redirection and prompting to return her attention to task. Mr. [REDACTED] noted that the Student presented with some hyperactive behaviors, specifically, tapping her feet and hands, getting out of her seat, playing with testing materials, humming, and excessive talking.

24. Mr. [REDACTED] administered the following subtests from the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V)<sup>8</sup>:

- Verbal Comprehension Index, which measured the Student's ability to access and apply acquired word knowledge, where the Student scored in the very low range (7th percentile);
- Visual Spatial Index, which measured the Student's ability to evaluate visual details and understand visual spatial relationships in order to construct geometric designs from a model, where the Student scored in the average range (34th percentile);

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<sup>8</sup> The WISC-V is an individually administered, comprehensive instrument for assessing the intelligence of school-age students and for identifying patterns of cognitive strengths and weaknesses.

- Fluid Reasoning Index, which measured the Student's ability to detect the underlying conceptual relationship among visual objects and to use reasoning to identify and apply rules, where the Student scored in the average range (34th percentile);
- Working Memory Index, which measured the Student's ability to register, maintain, and manipulate visual and auditory information, which requires attention and concentration, as well as visual and auditory discrimination, where the Student scored in the extremely low range (second percentile); and
- Processing Speed Index, which measured the Student's speed and accuracy of visual identification, decision making, and decision implementation, where the Student scored in the low average range (eighteenth percentile).

25. Mr. ██████ requested that the Student's parents and one of the Student's teachers complete the Behavior Assessment System for Children, Third Edition (BASC-3) so as to gain their perspective regarding the Student's social/emotional functioning, attention, and behavior in the classroom and at home.

26. On the BASC-3, the Student's mother noted concerns that placed the Student's hyperactivity, withdrawal, and somatization in the at-risk range. Her mother also noted concerns with the Student's adaptive skills, and completing daily tasks in a safe and efficient manner. Both of the Student's parents noted concerns for withdrawal and atypicality. The Student's father did not note any other concerns.

27. On the BASC-3, the Student's teacher reported observing more concerning behaviors compared to what was reported in the Student's home environment. The teacher noted concerns with the Student's ability to maintain attention in order to complete academic tasks. The teacher also reported clinically significant concerns with the Student externalizing problems and in the Student's adaptive skills. The teacher reported that the Student's strengths included functional communication.

28. Mr. ██████ requested that the Student's parents and one of the Student's teachers completed the Connors Behavior Rating Scale - Third Edition (Connors) so as to gain their

perspective regarding the Student's overall attentional and behavioral functioning at home and in school.

29. On the Connors, the Student's mother reported that the Student was exhibiting behaviors indicative of inattention and hyperactivity. The Student's mother also reported some concerns related to the Student's executive functioning (difficulty organizing, initiating, and completing tasks, and difficulty turning in completed assignments). The Student's mother also reported that the Student had difficulty retaining concepts, required additional explanation of instruction, read slowly, did not understand what she read, and had difficulty with math and spelling. The Student's mother also noted difficulty with the Student's ability interacting with peers, as well as work avoidance and frustration related to academics.

30. On the Connors, the Student's father reported that the Student was not exhibiting any significant behaviors indicative of inattention, hyperactivity, learning problems, executive functioning, or defiance/aggression. The only noted area of concern was in the Student's peer relations.

31. On the Connors, the Student's teacher reported that the Student was exhibiting behaviors indicative of inattention in the classroom. The Student's teacher reported that the Student's executive functioning was in the very elevated range (difficulty starting and finishing tasks, does not plan ahead, and completes projects at the last minute). The Student's teacher also reported concerns that were in the very elevated range concerning learning problems (the Student had difficulty reading, did not understand what she read, did not retain information, and had difficulty with spelling and math).

32. After reviewing all of the data, Mr. [REDACTED] concluded that the Student displayed relative strengths in fluid reasoning and visual spatial skills. The Student exhibited areas of cognitive weakness in working memory, verbal comprehension, reading and written expression,

and in receptive and expressive language. Mr. [REDACTED] also concluded that the Student exhibited difficulty in foundational reading skills, math concepts, and written expression.

33. Mr. [REDACTED] recommended that the Student's teachers monitor how she interacts with peers and increase her opportunity to develop social skills in a positive environment.

34. Mr. [REDACTED] concluded that the Student met the diagnostic criteria to be identified as an individual with attention deficit hyperactivity disorder (ADHD), primarily inattentive presentation. Mr. [REDACTED] noted that the Student's IEP team should consider what degree the Student's behaviors related to ADHD impact the Student's academic functioning.

35. Mr. [REDACTED] was qualified to conduct all testing within his psychological assessment and he followed all testing instructions as prescribed by the test publisher.

#### March 30, 2022 IEP Team Meeting

36. On March 30, 2022, the Student's IEP team met and reviewed the formal testing administered by Ms. [REDACTED] and Mr. [REDACTED] and determined that the Student continued to be eligible for special education and related services under the disability code of other health impaired (OHI).

37. The IEP team determined that the Student should have an OHI disability code because of the recent findings on her psychological report that indicated that the Student met the diagnostic criteria for ADHD, inattentive presentation.

38. The IEP team updated the Student's IEP after reviewing the testing administered by Ms. [REDACTED] and Mr. [REDACTED].

#### Ms. [REDACTED]'s Educational Assessment

39. On or about January 26, 2023, the Student's IEP team met and determined that the Student required updated educational testing to supplement the testing completed by Ms. [REDACTED] to include a test commonly used by children over eight-years-old.

40. On February 16, 2023, [REDACTED] performed an educational assessment to determine the Student's current learning behaviors that were impacting the Student's progress in reading, writing, and math, as to assist the IEP team in deciding additional supports to provide the Student.

41. As part of the educational assessment, Ms. [REDACTED] administered the Woodcock Johnson IV Tests of Achievement (WJ-IV) to measure the Student's academic performance in relation to her same aged peers, in the areas of reading, mathematics, and writing.

42. The Student attained the following scores on the WJ-IV reading subtests:

- Letter-word identification, which measured the Student's word identification skills, the Student scored a sixty-nine (very low range);
- Passage comprehension, which measured the Student's understanding of written text, the Student scored a seventy-one (low range);
- Word attack, which measured the Student's ability to apply phonic and structural analysis skills to the pronunciation of unfamiliar words, the Student scored a ninety (average range);
- Oral reading, which measured the Student's story reading accuracy and prosody, the Student scored a seventy-six (low range);
- Sentence reading fluency, which measured the Student's reading rate, and the Student's reading, writing, and cognitive processing speed abilities, the Student scored a fifty-eight (very low range); and
- Reading recall, which measured the Student's reading comprehension and meaningful memory, the Student scored an eighty-three (low average range).

43. During the reading recall subtest, the Student tried really hard to read the words, but as the test progressed and got harder, she got frustrated and shut down.

44. The Student attained the following scores on the WJ-IV mathematics subtests:

- Applied problems, which measured the Student's ability to analyze and solve math problems, the Student scored a fifty-eight (very low range);
- Calculation, which measured the Student's ability to perform paper and pencil math computations, the Student scored a fifty-two (very low range);
- Math facts fluency, which measured the Student's ability to solve simple addition, subtraction, and multiplication facts quickly, the Student scored a fifty-four (very low range); and

- Number matrices, which measured the Student's quantitative reasoning by identifying the missing number in a matrix, the Student scored a ninety (average range).

45. The Student attained the following scores on the WJ-IV written expression

subtests:

- Spelling, which measured the Student's ability to write correctly orally presented words, the Student scored a seventy-six (low range);
- Writing samples, which measured the Student's ability to write responses to a variety of demands, the Student scored a ninety-seven (average range);
- Sentence writing fluency, which measured the Student's skill in formulating and writing simple sentences accurately, the Student scored an eighty (low average range); and
- Spelling of sounds, which measured the Student's spelling ability, particularly phonological and orthographic coding skills, the Student scored an eighty-seven (low average range).

46. The WJ-IV was judged to be an appropriate measure for use with the Student.

The Student's cultural/linguistic characteristics were appropriately represented in the normative sample.

47. As part of the educational assessment, Ms. [REDACTED] administered the FPBA reading inventory, which indicated that the Student's sight word recognition was at a kindergarten level, that the Student read a level K reading sample with ninety-seven percent accuracy (middle of second grade level), and that the Student read a level L reading sample at ninety-two percent accuracy (end of second grade level). The FPBA indicated that the Student's reading instructional level was matched to the beginning of second grade.

48. Based on her educational assessment, Ms. [REDACTED] made the following recommendations that she believed would be beneficial for the Student:

- Continuing the Student's intensive reading program with a focus on phonemic development;
- A reading program that would support the Student's fluency development;
- An intensive math program that would help the Student develop her foundational skills in calculation and for solving math problems;

- For writing assignments, visuals, word banks, and discussion with an adult and/or peers before the Student began to write and support throughout the writing process; and
- Small groups within the Student's general education classroom so that grade level text can be read to the Student and/or modified to alleviate the Student's frustration and alternative classwork to be provided as necessary.

49. Ms. [REDACTED] was qualified to conduct all testing within her educational assessment and she followed all testing instructions as prescribed by the test publisher.

March 29, 2023 IEP Team Meeting

50. On or about March 29, 2023, the Student's IEP team met and reviewed the results of Ms. [REDACTED]'s educational assessment and determined that the Student's disability coding should be changed from OHI to specific learning disability (SLD) (dyslexia, dysgraphia, and dyscalculia).

51. The IEP team updated the Student's IEP after reviewing the testing administered by Ms. [REDACTED].

Ms. [REDACTED]' Psychoeducational Evaluation

52. On June 6, 2023, [REDACTED] performed a psychoeducational assessment to determine if the Student was exhibiting symptoms of autism, as reported by her parents.

53. The Student's potential symptoms of Autism Spectrum Disorder (ASD) were assessed by Ms. [REDACTED] through the use of rating scales, classroom and recess observation, and direct assessment.

54. The Student's primary language, racial, and ethnic background were considered prior to selection and interpretation of evaluation procedures and measures for Ms. [REDACTED]' psychoeducational assessment. The standardized tests, scales and other assessment methods used were validated for use for these assessments and were identified to be nondiscriminatory on the basis of the Student's race, linguistic, and cultural background.

55. Autism Spectrum Rating Scales (ASRS)<sup>9</sup> were completed by the Student's parents, her general education teacher, and her special education teachers.

56. The following table sets out the results of the ASRS:

Scale/Composite	Mother Rating	Father Rating <sup>10</sup>	General Education Teacher Rating	Special Education Teacher Reating
Social/Communication	69	53	67	79
Unusual Behaviors	73	57	75	74
Self-Regulation	69	45	80	67
DSM-5 Scale	75	56	76	83
Treatment Scales				
Peer Socialization	74	56	77	84
Adult Socialization	66	49	77	73
Social/Emotional Reciprocity	67	57	68	77
Atypical Language	75	60	79	76
Stereotypy	72	49	73	63
Behavioral Rigidity	73	59	67	70
Sensory Sensitivity	75	47	62	65
Attention	67	48	78	73

57. To further explore the Student's social skills and potential symptoms of ASD, Ms.

█ administered the social perception domain subtest of the NEPSY-II, which provides the

<sup>9</sup> The ASRS is designed to measure behaviors of children and youth ages two through eighteen years old. The various scales on the ASRS cover a wide range of ASD related behavioral deficits, such as difficulties with social and communication skills, engagement in atypical behaviors, problems interacting with others, sensory sensitivities, behavioral rigidity, attention problems, and difficulty with self-regulation. The ASRS includes items related to evaluating the likelihood of a formal diagnosis through the DSM-5 Scale with items that are directly related to the diagnostic criteria from this manual for making formal diagnoses. Scores between sixty-five and sixty-nine are considered elevated, and scores of seventy and above are considered very elevated. Higher scores indicate that more symptoms of ASD are present when compared to same-age peers.

<sup>10</sup> Ms. █ noted that the Student's father provided ratings that fell in the average range on the ASRS, which indicated that he does not observe many symptoms of ASD in the Student's behavior. Ms. █ believed the difference in his ratings as compared to the Student's mother and teachers may have been related to the demands of each respective environment.



examiner with a measure of social cognition. The social perception domain test was comprised of two tests: (1) affect recognition; and (2) theory of mind.<sup>11</sup> In the affect recognition test, the Student scored in the average range. In the theory of mind test, the Student scored well below expected level.

58. On June 6, 2023, Ms. [REDACTED] observed the Student during recess and in class.

59. At recess, the Student played by herself at a distance from the other students. She did not interact with any of her peers during the observation. The paraeducator informed Ms. [REDACTED] that the Student typically engages in parallel play (where the Student plays in the same manner as the other children, just not with the other children), or will play with one other preferred peer.

60. In class, the Student participated in a fun activity where the teacher was making peanut butter and jelly sandwiches based on written instructions. The children were sitting on chairs gathered around the teacher's table where the teacher demonstrated sandwich making. The Student was crouched with her feet under her on the chair and clapped her hands when the other children clapped. She flapped her hands excitedly frequently during the activity. The Student appeared to be very engaged. At one point, the Student appeared to be talking to herself. The teacher transitioned to math solving problems, where the Student got one problem correct. Ms. [REDACTED] noted that the Student struggled with multiplication and subtracting three-digit numbers.

61. Based on the ASRS, observations, and direct assessment, Ms. [REDACTED] concluded that the Student met the educational criteria for autism as she demonstrated deficits in social communication, behavioral rigidity, stereotypy, difficulty adjusting to changes in routine, and regulating her attention and emotions.

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<sup>11</sup> The theory of mind subtest is used to test the Student's ability to recognize emotions, and her ability to understand the thoughts and feelings of others.

62. Based on her psychoeducational evaluation, Ms. [REDACTED] made the following recommendations that she believed would be beneficial for the Student:

- Have the Student’s parents share the results of the psychoeducational assessment with any outside providers working with the Student;
- The IEP team should discuss which educational code is primary in describing the Student’s academic needs, while considering Specific Learning Disability, autism, or previously identified ADHD;
- The IEP team should consider adding support to help the Student develop her social skills with same-age peers. The Student would likely benefit from a social skills group and access to a trusted adult to problem-solve peer interaction and develop coping skills;
- The Student may benefit from a review of her day and advanced notice of changes in her routine; and
- The Student may benefit from breaks or being given alternate locations when she experiences sensory overload.

63. Ms. [REDACTED] was qualified to conduct all testing within her psychoeducational assessment and she followed all testing instructions as prescribed by the test publisher.

July 11, 2023 IEP Team Meeting

64. On or about July 11, 2023, the Student’s IEP team met and reviewed the Student’s psychoeducational evaluation and determined that the Student met the educational criteria for autism because she demonstrated deficits in social communication, behavioral rigidity, stereotypy, difficulty adjusting to changes in routine, and regulating her attention and emotions. The IEP team agreed that the Student’s disability code should remain as SLD as this best described her as a learner.

65. The IEP team updated the Student’s IEP after reviewing the testing administered by Ms. [REDACTED].

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66. When not in school, the Student participates in an empowerment program called ██████████ where the Student exercises and learns how to deal with her feelings and how to make friends.

67. The Student has a large group of friends from the ██████████ program.

## DISCUSSION

### Legal Framework

To determine if a student qualifies as a child with a disability under the IDEA, the student must undergo an appropriate evaluation process to ascertain if the student has an educational disability and, as a result, requires special education services. 34 C.F.R. §§ 300.8, 300.301; COMAR 13A.05.01.06; see also 20 U.S.C.A. § 1414 (2017). Additionally, a local education agency (LEA) generally must ensure a child with a disability is reevaluated at least once every three years. 20 U.S.C.A. § 1414(a)(2); 34 C.F.R. § 300.303; COMAR 13A.05.01.06E. Parents who disagree with a school evaluation may, under certain circumstances, obtain an IEE at public expense. 34 C.F.R. § 300.502(a)(1); COMAR 13A.05.01.14B. An IEE is defined as “an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.” 34 C.F.R. § 300.502(a)(3)(i). Public expense means that “the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.” 34 C.F.R. § 300.502(a)(3)(ii).

Parental rights to an IEE at public expense are established by the IDEA and its implementing regulations. Under the IDEA, “[a] parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency.” 34 C.F.R. § 300.502(b)(1); *see also* Educ. § 8-405(b)(4)(i)(1); COMAR 13A.05.01.14B(1). Upon receiving a request for an IEE at public expense, a LEA has one of two

choices: provide the evaluation at public expense or file a special education due process complaint to defend its evaluation. 34 C.F.R. § 300.502(b)(2)(i)-(ii); Educ. § 8-405(b)(4)(iii)-(iv).

For the LEA's evaluation to be appropriate, it must "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining" the student's eligibility, educational disability, and the content of the student's IEP. 20 U.S.C.A. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1); COMAR 13A.05.01.05B(2); *see also* 34 C.F.R. §§ 300.15, 300.304-.311; COMAR 13A.05.01.06. Furthermore, the LEA shall "not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child" and must "use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors." 20 U.S.C.A. § 1414(b)(2)(B)-(C); 34 C.F.R. § 300.304(b)(2), (3); COMAR 13A.05.01.05B(3), C.

In addition, the LEA is obligated to ensure that assessments and other evaluation materials:

- (i) are selected and administered so as not to be discriminatory on a racial or cultural basis;
- (ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;
- (iii) are used for purposes for which the assessments or measures are valid and reliable;
- (iv) are administered by trained and knowledgeable personnel; and
- (v) are administered in accordance with any instructions provided by the producer of such assessments.

20 U.S.C.A. § 1414(b)(3)(A); *see also* 34 C.F.R. § 300.304(c)(1); *see also* COMAR

13A.05.01.05. Finally, the LEA must assess a student in "all areas of suspected disability." 20

U.S.C.A. § 1414(b)(3)(B); *see also* 34 C.F.R. § 300.304(c)(4); *see also* COMAR 13A.05.01.05B(1).

The Court in *E.P. ex rel. J.P. v. Howard County Public School System* adopted the language of previous courts and stated:

In challenging an evaluation, courts have found that a parent “cannot simply argue that the evaluation was inappropriate because they disagree with its findings.” In [*West Chester Area School District v. G.D.*], the court explained: “Because IDEA evaluations depend on the exercise of professional judgment, they are entitled to a reasonable degree of deference. Accordingly, when plaintiffs challenge a decision reached by an educational professional, they must show more than simple disagreement with the conclusion; they must show the professional judgment rendered is actually wrong, and not just in doubt. For example, a plaintiff must show evidence of a flawed evaluation process, by failing to follow regulatory requirements, or if the district failed to investigate an area of suspected disability with little or no explanation why.”

No. ELH-15-3725, 2017 WL 3608180, at \*28 (D. Md. Aug. 21, 2017), *aff’d per curiam*, 727 F. App’x 55 (4th Cir. June 19, 2018) (citations and footnotes omitted).

The MCPS bears the burden of showing that its evaluations are appropriate under the IDEA. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005); 34 C.F.R. § 300.502(b)(2)(i). The standard of proof in this case is a preponderance of the evidence. State Gov’t § 10-217; COMAR 28.02.01.21K(1). To prove an assertion or a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

#### Parties’ Positions

The MCPS maintains that the issue here is a narrow one; specifically, whether the evaluations of the Student administered by the MCPS met the IDEA requirements outlined above. The MCPS contends that the evaluations were comprehensive, appropriate, and consistent with the requirements of the IDEA and its accompanying regulations, thereby warranting denial of the Parents’ request for an IEE at public expense.

The Parent asserts that the educational and psychological assessments did not capture the full picture of the Student and that a second opinion is warranted to validate whether the data captured within MCPS' assessments are correct. The Parent explained that the Student was tested during a time when there were unprecedented events, such as COVID-19 related school closures, and during times when the Student was living in two separate households. The Parent was worried that the Student was evaluated during times that she was tired and not in the best mood. The Parent was especially concerned with Ms. [REDACTED] observing the Student's behavior during recess, as opposed to observing the Student during her out-of-school activities for [REDACTED]. The Parent believes that had Ms. [REDACTED] observed the Student in this environment, her conclusion about the Student having autism may have been different.

### Analysis

For the reasons set out below, I find that the MCPS has met its burden of showing that the evaluations conducted by Mr. [REDACTED], Ms. [REDACTED], Ms. [REDACTED], and Ms. [REDACTED] were appropriate under the IDEA.

### **Ms. [REDACTED]'s Educational Assessment**

In conducting her educational assessment, Ms. [REDACTED] used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information that could assist the Student's IEP team in determining the Student's eligibility, educational disability, and contents of the Student's IEP. 20 U.S.C.A. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1); COMAR 13A.05.01.05B(2); *see also* 34 C.F.R. §§ 300.15, 300.304-.311; COMAR 13A.05.01.06. Specifically, in compiling the Student's educational assessment, Ms. [REDACTED] administered the Brigance IED III to measure the Student's performance compared to that of same-aged children from birth to seven years, eleven months. Ms. [REDACTED] also administered the FPBA to test the Student's reading accuracy and fluency and the Student's oral and written

comprehension with two separate sets of text. Ms. [REDACTED] reviewed MAP-RF Adaptive Oral Reading tests that the Student took in September 2021 and January 2022, as well as MAP-P Mathematics Assessments that the Student had previously completed in September 2021 and January 2022. Ms. [REDACTED] also reviewed a report completed by the Student's general education teacher, Ms. [REDACTED], to understand the Student's present levels of performance in the classroom.

As set out in the paragraph above, Ms. [REDACTED] obviously did not use any single measure or assessment as the sole criterion for determining whether the Student was a child with a disability or determining an appropriate educational program for the Student. 20 U.S.C.A. § 1414(b)(2)(B)-(C); 34 C.F.R. § 300.304(b)(2), (3); COMAR 13A.05.01.05B(3), C. Ms. [REDACTED] indicated in her report that the use of the Brigance IED III was judged to be an appropriate measure for use with the Student. *Id.*; see also MCPS Ex. 11, p. 111. Although Ms. [REDACTED] did not indicate in her report whether the FPBA, MAP-RF Adaptive Oral Reading test, or MAP-P Mathematics Assessment were technically sound instruments that would assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors, the Parent made no allegations to the contrary.

The Parent made no allegation that the testing that Ms. [REDACTED] selected and administered was discriminatory. 20 U.S.C.A. § 1414(b)(3)(A)(i). The Parent made no allegation that the testing was administered in a language or form that would not have yielded inaccurate information. *Id.* § 1414(b)(3)(A)(ii). In fact, Ms. [REDACTED] noted that the Student's cultural/linguistic characteristics were appropriately represented in the normative sample of the Brigance IED III. MCPS Ex. 11, p. 111. Although Ms. [REDACTED] did not include such a statement in her report regarding the FPBA, MAP-RF Adaptive Oral Reading test, or MAP-P Mathematics Assessment, again, the Parent made no allegations to the contrary.

The Parent's allegation that Ms. [REDACTED]'s assessments were invalid or unreliable due to the Student being tested near the time that COVID-19 related school closures occurred, during times when the Student was living in two separate households, and during times that the Student was tired or not in the best mood, is not supported by any evidence. Ms. [REDACTED] noted that the Student was very compliant when she administered the Brigance IED III. MCPS Ex. 11, p. 111. Ms. [REDACTED] noted that the Student seemed eager to have time in a different environment and, overall, the Student seemed to be trying her best and was a pleasure to work with behaviorally. *Id.*

Ms. [REDACTED] has worked for the MCPS for approximately ten years, holds a Bachelor of Science and a Master of Education degree in special education, and was qualified – without objection – as an expert in special education. *See* MCPS Ex. 17. Ms. [REDACTED] credibly testified that she was qualified to administer the testing found in her educational assessment and that the testing was administered in accordance with any instructions provided by the producer of such assessments. 20 U.S.C.A. § 1414(b)(3)(A)(iv), (v).

#### **Mr. [REDACTED]' Psychological Assessment**

In conducting his psychological assessment, Mr. [REDACTED] used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information that could assist the Student's IEP team in determining the Student's eligibility, educational disability, and contents of the Student's IEP. 20 U.S.C.A. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1); COMAR 13A.05.01.05B(2); *see also* 34 C.F.R. §§ 300.15, 300.304-.311; COMAR 13A.05.01.06. Specifically, in compiling the Student's psychological assessment, Mr. [REDACTED] conducted informal interviews with the Student's parents and teacher, and listened to their concerns. Mr. [REDACTED] observed the Student in her second grade classroom for twenty-five minutes. Mr. [REDACTED] met with the Student and administered the WISC-V. Mr. [REDACTED] reviewed BASC-3 and Conners results submitted by the Student's parents and teachers.



As set out in the paragraph above, Mr. [REDACTED] obviously did not use any single measure or assessment as the sole criterion for determining whether the Student was a child with a disability or determining an appropriate educational program for the Student. 20 U.S.C.A. § 1414(b)(2)(B)-(C); 34 C.F.R. § 300.304(b)(2), (3); COMAR 13A.05.01.05B(3), C. Mr. [REDACTED] indicated in his report that all the sources of data that Mr. [REDACTED] used to assess the Student had been validated for the purpose of psychological assessment, and were individually determined, selected, and administered so as not to be discriminatory on a racial or cultural basis. All measures administered had been nationally standardized and were used for the purpose in which they were designed. Normative data was based on a sample of the United States population that was representative of racial, cultural, geographical and socioeconomic diversity of the United States. All measures were chosen based on their ability to address the Student's areas of concern (e.g., cognitive/intellectual functioning). *Id.*; *see also* MCPS Ex. 13, p. 129.

The Parent's allegation that Mr. [REDACTED]'s assessments were invalid or unreliable due to the Student being tested near the time that COVID-19 related school closures occurred, during times when the Student was living in two separate households, and during times that the Student was tired or not in the best mood, is not supported by any evidence. Mr. [REDACTED] was candid in his report and noted that throughout the assessment, the Student was pleasant and cooperative but was also easily distracted where she would gaze around, fidget with her hands or materials, and ask unrelated questions. The Student required frequent redirection and prompting to return her attention to task. Mr. [REDACTED] noted that the Student presented with some hyperactive behaviors, specifically, tapping her feet and hands, getting out of her seat, playing with testing materials, humming, and excessive talking. MCPS Ex. 13, p. 131. Mr. [REDACTED] was asked about this behavior and whether it impacted the Student's results. Mr. [REDACTED] remarked that "[t]hose

things didn't keep us from completing [the assessments] and gathering the information." Tr. 84:23-24.

Mr. [REDACTED] has worked for the MCPS for approximately two years, holds a Bachelor of Science, a Master of Arts, and an Educational Specialist degree in psychology, and was qualified – without objection – as an expert in school psychology. *See* MCPS Ex. 19. Mr. [REDACTED] credibly testified that he was qualified to administer the testing found in his psychological assessment and that the testing was administered in accordance with any instructions provided by the producer of such assessments. 20 U.S.C.A. § 1414(b)(3)(A)(iv), (v).

**Ms. [REDACTED]'s Educational Assessment**

In conducting her educational assessment, Ms. [REDACTED] used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information that could assist the Student's IEP team in determining the Student's eligibility, educational disability, and contents of the Student's IEP. 20 U.S.C.A. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1); COMAR 13A.05.01.05B(2); *see also* 34 C.F.R. §§ 300.15, 300.304-.311; COMAR 13A.05.01.06. Specifically, in compiling the Student's educational assessment, Ms. [REDACTED] administered the WJ-IV and the FPBA reading inventory.

As set out in the paragraph above, Ms. [REDACTED] obviously did not use any single measure or assessment as the sole criterion for determining whether the Student was a child with a disability or determining an appropriate educational program for the Student. 20 U.S.C.A. § 1414(b)(2)(B)-(C); 34 C.F.R. § 300.304(b)(2), (3); COMAR 13A.05.01.05B(3), C. Ms. [REDACTED] indicated in her report that the use of the WJ-IV was judged to be an appropriate measure for use with the Student. *Id.*; *see also* MCPS Ex. 12, p. 112. Although Ms. [REDACTED] did not indicate in her report whether the FPBA reading inventory was a technically sound instrument that could assess the relative contribution of cognitive and

behavioral factors, in addition to physical or developmental factors, the Parent made no allegations to the contrary.

The Parent made no allegation that the testing that Ms. [REDACTED] selected and administered was discriminatory. 20 U.S.C.A. § 1414(b)(3)(A)(i). The Parent made no allegation that the testing was administered in a language or form that would not have yielded inaccurate information. *Id.* § 1414(b)(3)(A)(ii). In fact, Ms. [REDACTED] noted that the Student's cultural/linguistic characteristics were appropriately represented in the normative sample of the WJ-IV. MCPS Ex. 12, p. 112. Although Ms. [REDACTED] did not include such a statement in her report regarding the FPBA reading inventory, again, the Parent made no allegation to the contrary.

The Parent's allegation that Ms. [REDACTED]'s assessments were invalid or unreliable due to the Student being tested near the time that COVID-19 related school closures occurred, during times when the Student was living in two separate households, and during times that the Student was tired or not in the best mood, is not supported by any evidence. In her report, Ms. [REDACTED] documented the different comments that the Student made during the testing administration, and also noted the Student's affect and behavior. Ms. [REDACTED] testified that she did this because "at this point, that kind of told us a lot about [the Student], what was going on with [the Student]." Tr. 64:17-19. Ms. [REDACTED] noted that the student "shut down" during the WJ-IV's reading recall subtest. MCPS Ex. 12, p. 123. Ms. [REDACTED] was asked about this behavior and testified: "If a student has shut down and I can't finish the subtest, then that's kind of significant, because I can't really get a score and I can't get a really good baseline. But it also tells me that this is an area of need or this is an area of frustration for that student. So that's something that we want to

note in the report . . .” Tr. 72:12-17. Nevertheless, Ms. [REDACTED] explained that a student shutting down during testing does not invalidate the test. Tr. 73:9-14.

Ms. [REDACTED] has worked in the field of special education for twenty-nine years, holds a Bachelor of Arts in speech therapy and a Master of Education degree in special education, and was qualified – without objection – as an expert in special education. *See* MCPS Ex. 20. Ms. [REDACTED] credibly testified that she was qualified to administer the testing found in her educational assessment and that the testing was administered in accordance with any instructions provided by the producer of such assessments. 20 U.S.C.A. § 1414(b)(3)(A)(iv), (v).

#### **Ms. [REDACTED]’ Psychoeducational Assessment**

In conducting her psychoeducational assessment, Ms. [REDACTED] used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information that could assist the Student’s IEP team in determining the Student’s eligibility, educational disability, and contents of the Student’s IEP. 20 U.S.C.A. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1); COMAR 13A.05.01.05B(2); *see also* 34 C.F.R. §§ 300.15, 300.304-.311; COMAR 13A.05.01.06. Specifically, in compiling the Student’s psychoeducational assessment, Ms. [REDACTED] reviewed the ASRS completed by the Student’s parents, her general education teacher, and her special education teachers. Ms. [REDACTED] also administered the social perception domain subtest of the NEPSY-II. Ms. [REDACTED] also observed the Student during the Student's recess and while the Student was in the classroom.

As set out in the paragraph above, Ms. [REDACTED] obviously did not use any single measure or assessment as the sole criterion for determining whether the Student was a child with a disability or determining an appropriate educational program for the Student. 20 U.S.C.A. § 1414(b)(2)(B)-(C); 34 C.F.R. § 300.304(b)(2), (3); COMAR 13A.05.01.05B(3), C. Ms. [REDACTED]

indicated in her report that the Student's primary language, racial, and ethnic background were considered prior to selection and interpretation of evaluation procedures and measures for Ms. [REDACTED]'s psychoeducational assessment. The standardized tests, scales and other assessment methods used were validated for use for these assessments and were identified to be nondiscriminatory on the basis of the Student's race, linguistic, or cultural background. *Id.*; see also MCPS Ex. 14, p. 143.

The Parent's allegation that Ms. [REDACTED]'s assessments were invalid or unreliable due to the Student being tested near the time that COVID-19 related school closures occurred, during times when the Student was living in two separate households, and during times that the Student was tired or not in the best mood, is not supported by any evidence. Ms. [REDACTED] testified that the Student appeared a little anxious during testing, which Ms. [REDACTED] did not think was unusual considering that the Student was unfamiliar with Ms. [REDACTED]. Tr. 119:16-20. Ms. [REDACTED] also testified that the Student was not consistent with making eye contact, and required some redirection. Tr. 120:1-7. Nevertheless, Ms. [REDACTED] credibly testified that these issues did not impact the testing. Tr. 120:16-18.

The Parent testified and argued that he believed that Ms. [REDACTED] should have observed the Student while the Student was participating in [REDACTED], as opposed to recess. The Parent believed that if Ms. [REDACTED] observed the Student in [REDACTED], her opinion that the Student had features of ASD might have been different. Ms. [REDACTED] testified that she was unaware that the Student participated in [REDACTED]. Tr. 137-38:18-2. She further testified that she chooses testing environments based on what is available during the school day. Tr. 138:13-16. I do not find that Ms. [REDACTED]'s decision to observe the Student during recess as opposed to observing the Student while she participated in [REDACTED] had any significant impact on Ms. [REDACTED]'s assessment. Ms. [REDACTED]'s observation of the Student during recess was

one of four methods of assessing the Student. Ms. [REDACTED] provided a valid reason why she observed the Student during recess and she used this observation in conjunction with her classroom observation, along with the results of the ASRS and NEPSY-II, to conclude as she did.

Ms. [REDACTED] has worked for the MCPS for approximately ten years, holds a Bachelor of Science and a Master of Arts degree in psychology, and was qualified – without objection – as an expert in school psychology. *See* MCPS Ex. 18. Ms. [REDACTED] credibly testified that she was qualified to administer the testing found in her psychoeducational assessment and that the testing was administered in accordance with any instructions provided by the producer of such assessments. 20 U.S.C.A. § 1414(b)(3)(A)(iv), (v).

### **Summary**

The evidence in this record demonstrates that Ms. [REDACTED], Mr. [REDACTED], Ms. [REDACTED], and Ms. [REDACTED] prepared detailed and insightful educational, psychological, and psychoeducational assessments. MCPS Exs. 11-14. All evaluators included a complete record of the results of the instruments used, included a detailed analysis of the results of their assessments, employed a clear structure for presenting information in their assessments, and included a detailed description of the instruments used and their purposes. I credit the knowledgeable and detailed testimony of these expert witnesses regarding the information they properly included in their respective assessments.

The MCPS demonstrated that all four assessors used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the Student's parents, that assisted the IEP team in determining the Student's eligibility, educational disability, and the content of the Student's IEP. 20 U.S.C.A. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1); COMAR 13A.05.01.05B(2); *see also* 34 C.F.R. §§

300.15, 300.304-311; COMAR 13A.05.01.06. None of the four assessors used any single measure or assessment as the sole criterion for determining whether the Student was a child with a disability or determining an appropriate educational program for the Student. Further, these assessors used technically sound instruments to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 20 U.S.C.A. § 1414(b)(2)(B)-(C); 34 C.F.R. § 300.304(b)(2), (3); COMAR 13A.05.01.05B(3), C.

In addition, MCPS's met its obligation to ensure that the assessments and other evaluation materials:

- (i) are selected and administered so as not to be discriminatory on a racial or cultural basis;
- (ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;
- (iii) are used for purposes for which the assessments or measures are valid and reliable;
- (iv) are administered by trained and knowledgeable personnel; and
- (v) are administered in accordance with any instructions provided by the producer of such assessments.

20 U.S.C.A. § 1414(b)(3)(A); *see also* 34 C.F.R. § 300.304(c)(1); *see also* COMAR 13A.05.01.05. Finally, the MCPS assessed the Student in all areas of suspected disability. 20 U.S.C.A. § 1414(b)(3)(B); *see also* 34 C.F.R. § 300.304(c)(4); *see also* COMAR 13A.05.01.05B(1).

As noted above, the critical question before me is not the *results* of the MCPS testing, or any action taken by the Student's IEP team after the evaluations were considered, but whether the evaluations were properly administered in accordance with the standards and requirements set forth above. The Parents have presented no evidence, either through testimony, documentation, or expert opinion, that challenged the MCPS assessments or demonstrated that the assessments failed to meet the IDEA's procedural requirements. In this case, the MCPS has

established that the evaluations conducted by MCPS were proper, comprehensive, and in compliance with applicable law.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the educational and psychological evaluations conducted by the MCPS were appropriate. 20 U.S.C.A. § 1414(b); 34 C.F.R. § 300.304; COMAR 13A.05.01.05. Therefore, I further conclude, as a matter of law, that the MCPS should not be required to pay for IEEs of the Student at public expense. 34 C.F.R § 300.502(a)(1), (b)(2); COMAR 13A.05.01.14B(3)(a).

### **ORDER**

I **ORDER** that the Montgomery County Public Schools' educational assessments and psychological assessments were appropriate and that the Parents' request for independent educational and psychological evaluations at public expense be **DENIED**.

November 21, 2023  
Date Decision Issued

Leigh Walder  
Administrative Law Judge

LW/ja  
#208511

### **REVIEW RIGHTS**

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

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

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



**Copies Mailed To:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**MONTGOMERY COUNTY  
PUBLIC SCHOOLS**

v.



**STUDENT**

**BEFORE LEIGH WALDER,  
AN ADMINISTRATIVE LAW JUDGE  
OF THE MARYLAND OFFICE  
OF ADMINISTRATIVE HEARINGS  
OAH No.: MSDE-MONT-OT-23-22650**

**APPENDIX I – EXHIBITS**

I admitted the following exhibits offered by the MCPS:

IEPS		
MCPS Ex. 1	March 30, 2022 IEP Amended January 11, 2023	MCPS 0001-0045
MCPS Ex. 2	March 29, 2023 IEP Amended July 18, 2023	MCPS 0046-0096
Prior Written Notices		
MCPS Ex. 3	January 10, 2022 Prior Written Notice	MCPS 0097-0098
MCPS Ex. 4	March 30, 2022 Prior Written Notice	MCPS 0099
MCPS Ex. 5	September 6, 2022 Prior Written Notice	MCPS_0100
MCPS Ex. 6	January 11, 2023 Prior Written Notice	MCPS 0101-0102
MCPS Ex. 7	January 26, 2023 Prior Written Notice	MCPS 0103
MCPS Ex. 8	April 26, 2023 Prior Written Notice	MCPS 0104-0105
MCPS Ex. 9	May 10, 2023 Prior Written Notice	MCPS 0106-0107
MCPS Ex. 10	July 11, 2023 Prior Written Notice	MCPS 0108-0109
Assessments and Evaluations		
MCPS Ex. 11	Educational Assessment Report (February 2022)	MCPS 0110-0120
MCPS Ex. 12	Educational Assessment Report (April 21, 2023)	MCPS 0121-0127
MCPS Ex. 13	Psychological Reevaluation of Initial Evaluation from April 8, 2021 (March 2022)	MCPS_0128-0140
MCPS Ex. 14	Report of School Phycologist (June 14, 2023)	MCPS 0141-0147
MCPS Ex. 15	Report of Speech-Language Re-Assessment (March 22, 2022)	MCPS_0148-0154
MCPS Ex. 16	Physical Disabilities Program (March 29, 2022)	MCPS 0155-0156
Resumes		
MCPS Ex. 17		MCPS 0157-0158
MCPS Ex. 18		MCPS_0159-0160
MCPS Ex. 19		MCPS 0161-0163
MCPS Ex. 20		MCPS 0164-0165

The Parents did not offer any exhibits into evidence.

**APPENDIX II – SCHEDULE**

**October 2023**

Monday	Tuesday	Wednesday	Thursday	Friday
2	3	4	5	6
				Conference held
9	10	11	12	13
OAH closed (Columbus Day)	Ms. Swain is attending another due process hearing	ALJ Walder has a mandatory docket at OAH	ALJ Walder has a mandatory docket at OAH	ALJ Walder has a mandatory docket at OAH
16	17	18	19	20
ALJ Walder has a mandatory conference	ALJ Walder has a mandatory conference	ALJ Walder has a mandatory conference	ALJ Walder has a mandatory conference	Ms. Swain is attending another due process hearing
23	24	25	26	27
Day 1 of hearing	Day 2 of hearing (not utilized)			