

[REDACTED],

STUDENT

v.

ST. MARY'S COUNTY

PUBLIC SCHOOLS

BEFORE BRIAN PATRICK WEEKS,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-STMY-OT-23-09054

DECISION

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

STATEMENT OF THE CASE

On April 3, 2023, [REDACTED]¹ (Parent) filed a complaint with the Office of Administrative Hearings (OAH) on the Student's behalf, requesting a hearing to review the identification, evaluation, or placement of the Student by St. Mary's County Public Schools (SMCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. §§ 1400-1419 (2017).²

I held prehearing conferences on April 28 and May 17, 2023. I held the second conference to address the Student's request to amend the complaint, to which SMCPS did not

¹ Mr. [REDACTED] is the Student's stepfather. For ease of reference and to distinguish Mr. [REDACTED] from the Student's biological father, I will refer to him throughout as "Parent" or Mr. [REDACTED].

² "U.S.C.A." is an abbreviation for the United States Code Annotated. Unless otherwise noted, references to the U.S.C.A. are to the 2017 volume.

agree. Michael J. Eig, Esquire, represented the Parent, who was present. William Fields, Esquire, represented SMCPS. I granted the Student's request to amend the complaint on the record on May 17, 2023.³

I held the hearing on September 11, 12, 13, 15, 26, 28, and 29, 2023 and October 23, 2023.⁴ Mr. Eig represented the Student. Mr. Fields represented SMCPS. At the end of the Student's case, SMCPS moved for judgment. I deferred ruling on the Motion and SMCPS presented its case.

Under the regulatory timeline, the decision in this case normally would be due on July 31, 2023, which is forty-five days after the end of the resolution period. 34 C.F.R. §§ 300.510(b)(2), 300.515(a). However, the regulations authorize me to grant a specific extension of time at the request of either party. *Id.* § 300.515(c). Because the resolution period ended June 16, 2023, the earliest the hearing could begin was at least five business days from that date to ensure that the parties could include any documents gleaned from the resolution period in its five-day disclosures. Accordingly, we looked at dates beginning with June 28, 2023. Because of various scheduling issues for both sides that were documented on the record at the May 17, 2023

³ See 34 C.F.R. § 300.508(d)(4) ("If a party files an amended due process complaint, the timelines for the resolution meeting in § 300.510(a) and the time period to resolve in § 300.510(b) begin again with the filing of the amended due process complaint.")

⁴ By agreement of the parties, the hearing originally was scheduled to end September 15, 2023. On September 13, 2023, the Student's final witness, [REDACTED], was ill and could not testify that day or the following day, so I continued the matter to September 15, 2023, skipping the scheduled date of September 14, 2023. On September 15, 2023, SMCPS raised a discovery issue about documents that it had just received from the [REDACTED] ([REDACTED]) and that it wished to use during its cross-examination of Ms. [REDACTED]. The parties requested a continuance so SMCPS could prepare these documents for admission and the Student could review them. I granted that continuance and we reconvened on September 26, 2023.

prehearing conference,⁵ the hearing could not commence until September 11, 2023, after the date when my decision would be due under the relevant timelines.⁶

The parties made a joint request that I extend the timelines for good cause to conduct the hearing and to have thirty days from the close of the record to issue my written decision. Finding good cause for the extension, I granted that request. *Id.* § 300.515(c). The last hearing date was October 23, 2023, but I held the evidentiary record open to allow SMCPS to submit an additional exhibit. The OAH received this exhibit on October 26, 2023, and the record closed that day. Accordingly, my decision is due thirty days from October 26, 2023. Because this is a Saturday, and the preceding Thursday and Friday are state holidays, my decision is due Wednesday, November 22, 2023.

Procedure is governed by the contested case provisions of the Administrative Procedure Act; the Education Article; the Maryland State Department of Education 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); Code of Maryland Regulations (COMAR) 13A.05.01.15C; COMAR 28.02.01.

⁵ Mr. Eig was out of the country until July 10, 2023. I had a pre-scheduled work conference during the second week of July 2023. SMCPS stated that one of its witnesses could not attend a July 2023 hearing. I was out of the office the first three weeks of August 2023. Mr. Fields was out of the office the final week of August 2023. Therefore, to ensure that SMCPS had time to comply with the five-day disclosure rule after Mr. Fields' return from vacation, we selected September 11, 2023 as the starting date.

⁶ We added the additional dates of September 26, 28, and 29, 2023 and October 23, 2023 after the hearing commenced because of witness unavailability and a major discovery issue that required an agreed-upon continuance to allow SMCPS to prepare documents for admission and exchange the documents with the Student for her review. I requested that the parties provide a document showing their scheduling conflicts for the months of September and October 2023 and these documents are part of the written record.

ISSUES

- (1) Whether the SMCPS' Motion for Judgment should be granted because the Student's Parents⁷ refused to provide consent to the receipt of special education and services?⁸
- (2) Whether SMCPS denied the Student a FAPE by failing to propose an appropriate Individualized Education Program (IEP) and placement for the 2022-2023 school year; and
- (3) If so, whether placement at [REDACTED] is appropriate.

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Parent, unless otherwise noted:

- P- 1. Amended Request for Due Process, 5-12-23;
- P- 2. SMCPS Third Grade Report Cards and Narratives, September 2016 to June 2017;
- P- 3. Emails between Parents and SMCPS regarding reading and math interventions, 1-31-17 and 4-26-17;
- P- 4. Emails between Parents and SMCPS regarding concerns, 8-13-17 and 10-4-17;
- P- 5. SMCPS Fourth Grade Report Cards and Narratives, September 2017 to June 2018;
- P- 6. Email to parents from [REDACTED] regarding student progress, 6-11-18;
- P- 7. SMCPS Fifth Grade Report Cards and Narratives, September 2018 to June 2019;
- P- 8. SMCPS Sixth Grade Report Cards and Narratives, September 2019 to June 2020;
- P- 9. SMCPS Seventh Grade Narratives, September 2020 to June 2021;
- P- 10. Academic Testing by [REDACTED], 9-1-21;
- P- 11. Email to school system enclosing academic testing, 9-9-21;
- P- 12. SMCPS Student Data Sheet, 9-20-21;
- P- 13. SMCPS Classroom Observation Report, 10-19-21;
- P- 14. SMCPS Academic Assessment Report, 10-29-21;
- P- 15. MCAP⁹ Assessment Score Report, 2017-2021;
- P- 16. SMCPS Psychological Evaluation, 11-9-21;

⁷ "Parents" means Mr. [REDACTED] and Ms. [REDACTED].

⁸ SMCPS raised a second argument in support of the Motion. SMCPS argued that the Student had failed to show that the placement at [REDACTED] was appropriate. I will exercise my discretion to reserve addressing this argument. COMAR 28.02.01.11B(12), (13). Because I conclude that the Student has not proven that SMCPS denied her a Free Appropriate Public Education (FAPE), I do not reach the second issue raised in the Motion. *See Sch. Comm. of the Town of Burlington, Mass. v. Dep't of Educ.*, 471 U.S. 359 (1985)

⁹ Maryland Comprehensive Assessment Program.

- P- 17. SMCPS Evaluation Report and Determination of Initial Eligibility, 11-16-21;
- P- 18. SMCPS Specific Learning Disability Team Report, 11-16-21;
- P- 19. SMCPS Prior Written Notice, 11-16-21;
- P- 20. Emails between Parents and SMCPSS regarding eligibility, 12-7-21 and 12-10-21;
- P- 21. SMCPSS Draft IEP, 12-7-21;
- P- 22. Screenshot of informal reading assessment, 12-9-21;
- P- 23. Email from SMCPSS teacher regarding Student's behavior, 1-21-22;
- P- 24. SMCPSS Prior Written Notice and Emails between Dr. [REDACTED] and SMCPSS, 2-4-22;
- P- 25. SMCPSS Teacher Forms for [REDACTED], 2-23-22;
- P- 26. Emails between the Student's mother and SMCPSS regarding abuse, 3-1-22;
- P- 27. Neuropsychological Evaluation by Dr. [REDACTED], 3-10-22;
- P- 28. SMCPSS Prior Written Notice, Evaluation Report and Determination of Initial Eligibility, and Specific Learning Disability Team Report, 5-26-22;
- P- 29. SMCPSS Prior Written Notice and Draft IEP, 6-9-22;
- P- 30. [REDACTED] Baseline Screening and Informal Assessment Data, 6-16-22;
- P- 31. SMCPSS Quarterly Progress Report, September 2021 to June 2022;
- P- 32. SMCPSS Eighth Grade Report Cards, September 2021 to June 2022;
- P- 33. SMCPSS Let's Go Learn Math Assessments, 6-23-22 and 6-25-22;
- P- 34. [REDACTED] Mathematics Summary, 6-24-22;
- P- 35. [REDACTED] Mid-Summer Academic Report, 7-16-22;
- P- 36. [REDACTED] End of Summer Academic Report, 7-29-22;
- P- 37. Letter of recommendation by Dr. [REDACTED], July 2022;
- P- 38. Letter by a therapist at [REDACTED], 8-10-22;
- P-38A. Emails denying admission to [REDACTED] and [REDACTED], 8-6-22 and 8-10-22;
- P- 39. Email to SMCPSS from Parents, 8-16-22;
- P- 40. Email regarding acceptance to [REDACTED], 8-18-22;
- P- 41. SMCPSS Prior Written Notice, 8-24-22;
- P- 42. Letter serving notice on SMCPSS, 8-24-22;
- P- 43. SMCPSS Academic Assessment Report, 8-29-22;
- P-43A. [REDACTED] Accuracy Chart, 9-1-22;
- P- 44. SMCPSS Prior Written Notice and Draft IEP, 9-19-22 and 9-13-22;
- P- 45. SMCPSS Prior Written Notice, 10-18-22;
- P- 46. SMCPSS Student Record Release, 10-21-22;
- P- 47. Student Writing Sample, Fall 2022;
- P- 48. SMCPSS Prior Written Notice and approved IEP, 1-31-23;
- P- 49. SMCPSS Second Quarter Report Card, 2-9-23;
- P- 50. *Not offered*
- P- 51. SMCPSS Student Record Release signed by the Parent, 2-27-23;
- P- 52. Letter to SMCPSS from Michael J. Eig, Esq. requesting educational file, 3-2-23;
- P- 53. Emails between Parents and [REDACTED] staff, 3-29-23 and 4-4-23;
- P- 54. SMCPSS consultation report with [REDACTED], [REDACTED] Director of Town Funding, 4-26-23;

- P- 55. SMCPS Prior Written Notice and IEP, 5-4-23;
- P- 56. Emails from [REDACTED] providing weekly updates, May 2023;
- P- 57. Letter containing [REDACTED] accreditations and affiliations, 5-8-23;
- P- 58. Letter of recommendation by [REDACTED], 5-22-23;
- P- 59. [REDACTED] Student Progress Report, 6-9-23;
- P- 60. Neuropsychological Re-evaluation by Dr. [REDACTED], 6-12-23;
- P-61-1 Student and Parents' Victim Impact Statements, [REDACTED]-23;¹⁰
- P-62 [REDACTED] Report Cards and Progress Reports, Terms 1 to 6, September 2022 to June 2023;
- P-63 Letter to SMCPS serving notice, 8-3-23;
- P-64 SMCPS Prior Written Notice and IEP, 8-22-23;
- P-65 Chart of SMCPS Goal Progression, 12-7-21 to 8-22-23;
- P-66 Resume of Dr. [REDACTED];
- P-67 Resume of Dr. [REDACTED];
- P-68 Resume of [REDACTED];
- P-69 Resume of [REDACTED];
- P-70 Letter from [REDACTED], 9-1-23;
- P-71 *Not offered;*
- P-72 *Not offered;*
- P-73 *Not offered;*
- P-74 *Not offered;*
- P-75 *Not offered;*
- P-76 SMCPS Response to complaint, 1-12-23;¹¹
- P-77 SMCPS Response to amended complaint, 5-23-23;
- P-78 *Not admitted;*
- P-79 *Not admitted;*
- P-80 *Not admitted;*
- P-81 SMCPS IEP Meeting audio recording, 1-31-23; and
- P-82 SMCPS IEP Meeting audio recording, 5-4-23.

I admitted the following exhibits on behalf of SMCPS:		Page
SMCPS Ex. 1 -	Sept. 10, 2021 Child find referral	1
SMCPS Ex. 2 -	Sept. 20, 2021 PWN ¹²	3
SMCPS Ex. 3 -	Sept. 20, 2021 Consent for assessments	6
SMCPS Ex. 4 -	Oct. 18, 2021 SMCPS Psych assessment	8
SMCPS Ex. 5 -	Oct. 19, 2021 SMCPS Classroom observation	21

¹⁰ I admitted only P-61-1 and not the other pages of this exhibit.

¹¹ This response was to an earlier-filed Due Process Complaint by the Student that was ultimately withdrawn.

¹² Prior Written Notice.

SMCPS Ex. 6 -	Nov. 16, 2021 Specific Learning Disability (SLD) team report	25
SMCPS Ex. 7 -	Nov. 16, 2021 Eligibility determination	29
SMCPS Ex. 8 -	Nov. 16, 2021 PWN	41
SMCPS Ex. 9 -	Dec. 07, 2021 IEP draft	45
SMCPS Ex. 10 -	Dec. 07, 2021 IEP markup by Ms. [REDACTED] (Student's mother)	71
SMCPS Ex. 11 -	Feb. 4, 2022 PWN	99
SMCPS Ex. 12 -	March 10, 2022 Neuropsychological Evaluation	101
SMCPS Ex. 13 -	March 10, 2022 Neuropsychological Evaluation "School Edition"	124
SMCPS Ex. 14 -	May 26, 2022 Evaluation report and eligibility determination	144
SMCPS Ex. 15 -	May 26, 2022 PWN	159
SMCPS Ex. 16 -	May 26, 2022 SLD Team Report	162
SMCPS Ex. 17 -	June 9, 2022 IEP Draft	167
SMCPS Ex. 18 -	June 9, 2022 IEP Draft – Amended	217
SMCPS Ex. 19 -	June 9, 2022 PWN	265
SMCPS Ex. 20 -	June 28, 2022 Special Education Status Report	268
SMCPS Ex. 21 -	June 28, 2022 SMCPS Notice of Parents' refusal to consent to IEP	276
SMCPS Ex. 22 -	June 28, 2022 PWN	277
SMCPS Ex. 23 -	July 30, 2022 Parent inquiry to [REDACTED]	278
SMCPS Ex. 24 -	Aug. 24, 2022 Unilateral placement and funding demand	279
SMCPS Ex. 25 -	Aug. 17, 2022 Dr. [REDACTED] letter	280

SMCPS Ex. 26 -	Aug. 17, 2022 IEP Team mtg. notice	281
SMCPS Ex. 27 -	Aug. 23, 2022 Testing Reports from Mr. Eig	283
SMCPS Ex. 28 -	Aug, 24, 2022 PWN	331
SMCPS Ex. 29 -	Sept. 13, 2022 IEP draft	334
SMCPS Ex. 30 -	Sept. 16, 2022 [REDACTED] ¹³ email	390
SMCPS Ex. 31 -	Sept. 19, 2022 PWN	391
SMCPS Ex. 32 -	Sept. 23, 2022 [REDACTED] ¹⁴ email	394
SMCPS Ex. 33 -	Sept. 28, 2022 [REDACTED] ¹⁵ email	395
SMCPS Ex. 34 -	Sept. 30, 2022 [REDACTED] ¹⁶ email	397
SMCPS Ex. 35 -	Oct. 1, 2022 [REDACTED] ¹⁷ email	398
SMCPS Ex. 36 -	Oct. 18, 2022 PWN	400
SMCPS Ex. 37 -	Oct. 20, 2022 Student's mother email	403
SMCPS Ex. 38 -	Oct. 27, 2022 [REDACTED] email	405
SMCPS Ex. 39 -	Oct. 31, 2022 [REDACTED] email	406
SMCPS Ex. 40 -	Nov. 3, 2022 [REDACTED] email	407
SMCPS Ex. 41 -	Nov. 4, 2022 [REDACTED] ¹⁸ email	409
SMCPS Ex. 42 -	Nov. 7, 2022 [REDACTED] email	410
SMCPS Ex. 43 -	Nov. 8, 2022 [REDACTED] email	412
SMCPS Ex. 44 -	Nov. 9, 2022 [REDACTED] email	413
SMCPS Ex. 45 -	Nov. 10, 2022 [REDACTED] email	416

¹³ Ms. [REDACTED] was the Student's English teacher.

¹⁴ Ms. [REDACTED] is the Associate Dean of Students at [REDACTED].

¹⁵ Ms. [REDACTED] is the Assistant Director of Academics at [REDACTED].

¹⁶ Ms. [REDACTED] was the Student's Mathematics teacher.

¹⁷ Ms. [REDACTED] was the Student's Thinking & Writing teacher.

¹⁸ Mr. [REDACTED] is the Dean of Student Life and Experience at [REDACTED].

SMCPS Ex. 46 -	Nov. 11, 2022 [REDACTED] email	418
SMCPS Ex. 47 -	Dec. 1, 2022 Due process hearing request ¹⁹	420
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SMCPS Ex. 49 -	Dec. 24, 2022 [REDACTED] attachment	429
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SMCPS Ex. 60 -	Apr. 19, 2023 [REDACTED] email	716
SMCPS Ex. 61 -	Apr. 21, 2023 [REDACTED] ²⁰ email	717
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SMCPS Ex. 63 -	Apr. 21, 2023 [REDACTED] ²¹ email attachment	725
SMCPS Ex. 64 -	Apr. 21, 2023 [REDACTED] email	726
SMCPS Ex. 65 -	Apr. 21, 2023 Student Health Center email	728

¹⁹ This due process hearing request is a prior request that is not related to this decision.

²⁰ Dr. [REDACTED] was the Student's History teacher.

²¹ Ms. [REDACTED] is the Dean of Students at [REDACTED].

SMCPS Ex. 66 -	May 1, 2023 Parent's email	730
SMCPS Ex. 67 -	May 4, 2023 Amended IEP	731
SMCPS Ex. 68 -	May 4, 2023 PWN	803
SMCPS Ex. 69 -	May 5, 2023 [REDACTED] email	805
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SMCPS Ex. 79 -	[REDACTED] Resume	985
SMCPS Ex. 80 -	[REDACTED] Resume	988
SMCPS Ex. 81 -	[REDACTED] Resume	990
SMCPS Ex. 82 -	<i>Not offered</i>	
SMCPS Ex. 83 -	Aug. 16, 2022 Email from [REDACTED] on status of application	1002
SMCPS Ex. 84 -	Aug. 18, 2022 Email from [REDACTED] admitting the Student	1005
SMCPS Ex. 85 -	Aug. 22, 2022 Email from [REDACTED] ²⁵	1006
SMCPS Ex. 86 -	Aug. 24, 2022 Email from [REDACTED]	1007

²² Approved Private Special Education Residential Facilities.

²³ Approved Private Special Education Programs.

²⁴ The Student filed the amended due process complaint on this date but SMCPS did not consent to the amendment.

²⁵ Ms. [REDACTED] is the Associate Director of Admission at [REDACTED].

SMCPS Ex. 87 - 120	<i>Not offered</i>	
SMCPS Ex. 121 -	Sept. 16, 2022 Email from [REDACTED] ²⁶	1065
SMCPS Ex. 122 - 123	<i>Not offered</i>	
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²⁶ [REDACTED] is the Director of Cognition & Learning Department at [REDACTED].

²⁷ Ms. [REDACTED] was the Student's Cognition & Learning teacher at [REDACTED].

²⁸ Mr. [REDACTED] was the Student's English teacher at [REDACTED].

²⁹ Ms. [REDACTED] was the Student's Chemistry teacher at [REDACTED].

³⁰ Ms. [REDACTED] is a Cognition & Learning teacher at [REDACTED].

³¹ Ms. [REDACTED] is the Dean of Residential Life at [REDACTED].

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SMCPS Ex. 147 -	Dec. 6, 2022 Email from [REDACTED]	1111
SMCPS Ex. 148 -	Dec. 9, 2022 Email from the Student	1112
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SMCPS Ex. 150 -	Dec. 12, 2022 Email from the Student to [REDACTED]	1114
SMCPS Ex. 151 -	Dec. 12, 2022 Email from [REDACTED]	1115
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SMCPS Ex. 153 -	Jan. 5, 2023 Email from [REDACTED]	1118
SMCPS Ex. 154 -	Jan. 5, 2023 Email from [REDACTED] ³²	1119
SMCPS Ex. 155 -	Jan. 6, 2022 Email from [REDACTED] ³³ to the Student's mother	1121
SMCPS Ex. 156 -	Jan 6, 2022 Email from [REDACTED] to the Student's mother	1122
SMCPS Ex. 157 -	Jan. 10, 2022 Email from the Student to [REDACTED]	1124
SMCPS Ex. 158 -	Jan 12, 2023 Email from the Student to [REDACTED]	1125
SMCPS Ex. 159 -	Jan. 17, 2023 Email from the Student's mother to [REDACTED]	1126
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SMCPS Ex. 161 -	Jan. 20, 2023 Email from the Student to [REDACTED]	1129
SMCPS Ex. 162 -	Jan. 25, 2023 Email from [REDACTED] to the Student	1130
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³² Ms. [REDACTED] is the Director of Counseling at [REDACTED].

³³ Ms. [REDACTED] was the Student's school counselor/therapist at [REDACTED].

SMCPS Ex. 164 -	Jan. 25, 2023 Email between [REDACTED] and the Student	1132
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SMCPS Ex. 169 -	Feb. 9, 2023 Email from [REDACTED]	1140
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SMCPS Ex. 173 -	Feb. 15, 2023 Email from [REDACTED] to the Student	1144
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³⁴ Ms. [REDACTED] was the Student's Science teacher at [REDACTED].

³⁵ Information Technology.

³⁶ Ms. [REDACTED]'s title is not apparent from the record.

³⁷ Ms. [REDACTED] is a Student Life Fellow at [REDACTED].

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SMCPS Ex. 191 -	May 8, 2023 Email from [REDACTED] to the Student	1165
SMCPS Ex. 192 -	May 10, 2023 Email from [REDACTED]	1166
SMCPS Ex. 193 -	May 10, 2023 Email from [REDACTED]	1169
SMCPS Ex. 194 -	<i>Not offered</i>	
SMCPS Ex. 195 -	May 16, 2023 Email from [REDACTED] to [REDACTED]'s Deans	1171
SMCPS Ex. 196 -	May 17, 2023 Email from [REDACTED]	1172
SMCPS Ex. 197 -	May 17, 2023 Email from [REDACTED]	1173
SMCPS Ex. 198 -	May 18, 2023 Email from [REDACTED]	1175
SMCPS Ex. 199 -	May 22, 2023 Email from [REDACTED]	1176
SMCPS Ex. 200 -	May 22, 2023 Email from [REDACTED] ³⁹	1177
SMCPS Ex. 201 -	May 24, 2023 Email from [REDACTED]	1178
SMCPS Ex. 202 -	May 26, 2023 Email from [REDACTED] to the Student	1179

Exhibits 203-212 were received during the trial and either use Bates numbers provided by [REDACTED] or do not have a page number.

SMCPS Ex. 203 -	Feb. 13, 2023 Emails between Mr. Eig and [REDACTED]	1571
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³⁸ Ms. [REDACTED] was the Student's Culinary Arts Teacher at [REDACTED].

³⁹ Mr. [REDACTED]'s title is not apparent from the record.

SMCPS Ex. 204 -	July 20, 2023 Emails between [REDACTED] and Mr. Eig's office [REDACTED]	589
SMCPS Ex. 205 -	Aug. 21 2023 Email from [REDACTED] to offices of SMCPS counsel	NO PAGE #
SMCPS Ex. 206 -	Aug. 25, 2023 Email from [REDACTED] attorneys to Mr. Eig	[REDACTED] 2255
SMCPS Ex. 207 -	Aug 25, 2023 Emails between [REDACTED] attorneys and Mr. Eig	[REDACTED] 2340
SMCPS Ex. 208 -	Aug 30 2023 emails between [REDACTED] attorneys and Mr. Eig	[REDACTED] 2346
SMCPS Ex. 209 -	Sept. 5, 2023 emails between [REDACTED] attorneys and Mr. Eig	[REDACTED] 2353
SMCPS Ex. 210 -	Sept. 7, 2023 emails between [REDACTED] attorneys and Mr. Eig	[REDACTED] 2358
SMCPS Ex. 211 -	NO EXHIBIT	NO PAGE #
SMCPS Ex. 212 -	Student's Learning Profile from [REDACTED]	NO PAGE #

I admitted the following joint exhibits:

- Jt. Ex. 1 - Audio file of first half of September 19, 2022 IEP meeting
- Jt. Ex. 2 - Audio file of second half of September 19, 2022 IEP meeting

Testimony

The Parent testified and presented the following witnesses:

- [REDACTED], PhD, admitted as an expert in neuropsychology;
- [REDACTED], the Student's mother;
- [REDACTED], EdD, admitted as an expert in special education; and
- [REDACTED], Forman Director of Town Funding, admitted as an expert in special education.

SMCPS presented the following witnesses:

- [REDACTED], special education teacher at [REDACTED], admitted as an expert in special education;
- [REDACTED], SMCPS Director of Special Education, admitted as an expert in special education;
- [REDACTED], compliance instructional resource teacher at SMCPS, admitted as an expert in special education;
- [REDACTED], SMCPS Supervisor of Special Education, admitted as an expert in special education; and
- [REDACTED], school psychologist at SMCPS, admitted 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

1. The Student is fifteen years old.
2. The Student has been diagnosed with:
 - Attention Deficit Hyperactivity Disorder (ADHD), Combined Presentation;

- Specific Learning Disability (SLD)⁴⁰ with impairment in reading - dyslexia, written expression, and mathematics; and
- Post Traumatic Stress Disorder (PTSD).

3. Executive functions refer to a set of cognitive processes involved in behavioral self-management and are marked by attention, self-regulation, planning, organization, flexibility, and working memory. Executive dysfunction refers to difficulties in one or more of those cognitive processes. ██████ test., 9/11/23, T. 165-166.

4. ADHD is an executive dysfunction in one of the core elements of self-regulation.

5. Dyslexia is a brain-based learning disorder characterized by underlying weaknesses in phonemic awareness and rapid naming skills.

6. Dyslexia is hereditary. ██████ test., 9/11/23, T. 49-50.

7. The Student's biological father⁴¹ has dyslexia. *Id.*

8. PTSD is a specific long-term reaction that individuals have after experiencing significant traumatic events. ██████ test., 9/29/23, T. 1197. PTSD can include symptoms of anxiety, psychological distress, sleep disturbance, hypervigilance, numbness, and tingling. *Id.*

The 2021-2022 School Year

9. In the Summer of 2021, the Parent hired ██████ as a tutor for the Student. ██████ test., 9/11/23, T. 184.

10. During the 2021-2022 School Year, the Student was in eighth grade at ██████, a public charter school.

⁴⁰ See 34 C.F.R. section 300.8(c)(10), which states:

Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

⁴¹ For ease of reference, I will refer to the Student's father as "biological father" throughout.

11. On September 1, 2021, the Student took a Phonological Awareness Screening Test, and her approximate grade level was first grade.

12. On September 1, 2021, the Student took the Test of Word Reading Efficiency – Second Edition (TOWRE-2).

13. The TOWRE-2 is designed to measure the test taker’s ability to rapidly identify sight words or decode words.

14. The Student scores on the TOWRE-2 were:

- total word reading efficiency composite score: 79, 8th percentile, below average range;
- sight word efficiency subtest: 89, 23rd percentile; and
- phonemic decoding efficiency subtest: 71, 3rd percentile.

15. On September 1, 2021, the Student took the Word Identification and Spelling Test and scored at the first percentile or lower on word identification, spelling, the fundamental literacy ability index, and sound-symbol knowledge. Her grade equivalent for the scores was below fifth grade.

16. On September 20, 2021, the Parents gave consent for an initial assessment for special education services.

17. In early fall 2021, the Student took the MCAP, a state-mandated test in mathematics and English Language Arts (ELA). The Student was in the “Approached Expectations” level of proficiency for both MCAP tests.

18. For math, a student at the “Approached Expectations” level of proficiency on the MCAP test:

“solves problems involving ratios, proportional relationships, the number system, equations, expressions, geometry, statistics and probability where the required mathematics is either directly indicated or uses common grade level procedures, and typically needs support in conceptualizing and applying mathematics to model, reason through, and solve problems efficiently, and in relating mathematics to the real world.” P-15-3.

19. For ELA, a student at the “Approached Expectations” level of proficiency on the MCAP test:

“show[s] some ability to read grade level texts to distinguish between literal and interpretive meaning of words; and apply knowledge of word structures, word relationships, or context to read or understand unfamiliar words in grade level texts. Students identify text structures, literary devices, techniques, and themes to interact with grade level texts; and identify, compare, or draw inferences about concepts, central ideas, or supporting details.” *Id.*

The SMCPs October 2021 Psychological Assessment

20. In October 2021, SMCPs conducted a psychological assessment of the Student.

21. As part of the psychological assessment, SMCPs administered the Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V), which is designed to measure performance in several cognitive domains as well as overall intelligence with comparisons to similarly-aged peers. The overall score is referred to as a Full-Scale Intelligence Quotient (FSIQ), which is derived from a child’s performance on the seven subtests and represents a child’s general intellectual ability.

22. The WISC-V is a commonly used IQ test. ██████ test., 9/11/23, T. 58.

23. The Student’s FSIQ was 91, in the average range. The Student performed in the high average, average, or low average range on all subtests except processing speed, where she performed in the extremely low range. The Processing Speed Index score is a representation of

how quickly and accurately a student can identify visual information as well as make and implement decisions.

24. SMCPS administered the Comprehensive Test of Phonological Processing – Second Edition (CTOPP-2) to measure the Student’s phonological processing ability. The CTOPP-2 has three composite areas of phonological processing: phonological awareness, phonological memory, and rapid symbolic naming.

25. Phonological awareness refers to the ability to recognize and access the sound structure of oral language.

26. Phonological processing is related to the sound system of language and the understanding of speech sounds.

27. Phonological memory refers to encoding information phonologically for temporary storage in short-term working memory.

28. Rapid symbolic naming refers to retrieval of known information from long-term memory in order to name letters, numbers, pictures, and words.

29. On the CTOPP-2, the Student scored in the below average range for phonological awareness and phonological memory; and scored a 92 for rapid symbolic naming, which was in the 30th percentile and in the average range.

30. SMCPS administered selected subtests of the Test of Memory and Learning – Second Edition (TOMAL-2). Certain subtests from the TOMAL-2 can be combined to yield an Attention/Concentration Index (ACI), which provides information about a child’s ability to attend to uninteresting tasks.

31. The Student’s ACI score was in the below average range.

32. The Student, her mother, and the Student's math and English Language Arts (ELA) teachers completed the Conners Third Edition (Conners-3) rating scales, which examine behaviors typically indicative of ADHD.

33. All raters provided very elevated scores in the area of learning problems and executive functioning. All raters except the Student's mother provided very elevated scores for inattention.

34. The Student, her mother, and the Student's math and ELA teachers completed the Behavior Rating Inventory of Executive Function – Second Edition (BRIEF-2).

35. All raters provided clinically significant ratings in the area of cognitive regulation, including task monitoring. The Student and both teachers reported clinically significant ratings for working memory.

36. Based on the October 2021 psychological assessment, SMCPS concluded that the Student met the criteria for a diagnosis of ADHD – predominantly inattentive presentation.

37. On October 22, 2021, the Student took the Gray Oral Reading Tests – fifth edition, to examine her performance in reading accuracy, fluency, and comprehension. She scored in the poor range.

38. Reading fluency is how smoothly and accurately a person reads. ■■■ test., 9/28/23, T. 945.

39. On October 22, 2021, the Student took the Test of Written Language – Fourth Edition and scored in the average range for overall writing, a composite of the results from all the sub-tests.

40. On October 1, 15, and 22, 2021, the Student took the KeyMath-3 test and her total test performance was in the average range when compared to same-age peers. The Student scored below average on the addition, subtraction, multiplication, and division subtests.

Initial Eligibility

41. On November 16, 2021, SMCPS found the Student eligible for special education services as a student with an Other Health Impairment (OHI).

42. SMCPS drafted a proposed IEP during the 2021-2022 school year and initially sent it to the Student on December 8, 2021. The proposed IEP had goals in reading fluency, written language mechanics, math calculation skills, and behavioral self-management.

43. On December 8, 2021, the Parents requested by email that a reading phonics goal be added.

44. Phonemic awareness is a foundational skill that allows the brain to hear the sounds and language so that those sounds can be associated with a letter for learning. [REDACTED] test., 9/11/23, T. 102.

45. Phonics is applying phonemic awareness to a symbol and processing that symbol to decode a word. [REDACTED] test., 9/11/23, T. 102-103.

46. On December 10, 2021, SMCPS sent a revised IEP with a reading fluency goal and a reading phonics objective within that goal.

47. SMCPS scheduled an IEP team meeting for December 14, 2021, but the Student's mother postponed the meeting and the team agreed to meet on January 10, 2022.

48. On January 10, 2022, the Student's mother postponed the meeting until January 14, 2022.

49. On January 14, 2022, the Parents appeared at the IEP team meeting but requested more time to review the IEP draft with Dr. [REDACTED].

50. On February 4, 2022, the IEP team met but was unable to finish reviewing the present levels of academic achievement and function performance (present levels) and the new reading fluency goal because the Parents refused to agree to the IEP. The Parents also informed the IEP team that they would pursue the formal dispute process to contest the Student's primary disability coding of OHI (ADHD). The Parents believed that the primary disability code should be SLD - dyslexia.

51. In or around early [REDACTED] 2022, the Student's biological father was arrested for sexual abuse of the Student and her friends. The allegations also included that the Student's biological father provided alcohol and marijuana to the Student and her friends.

52. Shortly after her biological father's arrest, the Student began psychotherapy with therapist [REDACTED] in St. Mary's County.

53. The Parents did not provide consent for the implementation of the IEP during the 2021-2022 school year.

Dr. [REDACTED]'s 2022 Neuropsychological Evaluation

54. Dr. [REDACTED] conducted a neuropsychological evaluation of the Student on February 21 and March 10, 2022.

55. Prior to the evaluation, the Parents and two teachers completed the Achenbach Child Behavior Checklists. The answers showed significant elevations on the attention problems

and rule-breaking behavior scales. On the DSM⁴²-oriented scales, the Student scored very high on attention deficit/hyperactivity problems.

56. The Student completed the Differential Ability Scales – Second Edition School Age Battery, which, like the WISC-5, is used to measure cognitive ability. The Student earned average scores in general conceptual ability, with low average scores in nonverbal reasoning and below average scores in spatial reasoning.

57. The Student completed the Wechsler Individual Achievement Test – Fourth Edition (WIAT-4). Her total score was 69, which was in the 2nd percentile and in the extremely low range. The Student’s composite scores for reading, written expression, and mathematics were:

- reading: 85, 16th percentile, low average range;
- written expression: 55, less than 1st percentile, extremely low range;
- and
- mathematics: 82, 12th percentile, low average range.

The Student also performed below the third-grade level in the following subtests: essay composition, pseudoword decoding, decoding fluency, math fluency – subtraction, and sentence composition.

58. Dr. [REDACTED] readministered the CTOPP-2, which the Student had taken in September 2021. The Student scored a 73, in the 3rd percentile, on the CTOPP-2 rapid symbolic naming subtest. During this subtest, the test administrator showed numbers and letters to the Student and asked her to read them as quickly as possible. [REDACTED] test., 9/11/23, T. 74.

⁴² Diagnostic and Statistical Manual of Mental Disorders.

59. The Rey Complex Figure Test is a measure requiring visual construction and executive functioning skills, including planning and organizational skills. The Student scored in the extremely low range on the copy and delayed recall portions of this test.

60. The California Verbal Learning Test – Children’s Version (CVLT-C) is a multi-trial list-learning task where the test taker is asked to learn and recall a list of fifteen words over five trials. The Student scored an 86 on this test, in the 18th percentile and the low average range.

61. Dr. [REDACTED] administered tests of word fluency. The Student’s ability to generate words given a cue was scored as a 77, in the 6th percentile and in the very low range. Her phonemic fluency was scored as an 84, in the 14th percentile and in the low average range.

62. The Parents and three of her teachers completed the Comprehensive Executive Function Inventory, a self-report measure of symptoms associated with executive function difficulties. The Student’s teachers reported mostly below average scores, while the Parents reported no scores that were below average or lower. The one area of commonality among the teacher’s scores was that they all reported that the Student was well below average in working memory, which reflects how well a child can keep information in mind that is important for knowing what to do and how to do it, including remembering important things, instructions, and steps.

63. The Student and her mother completed the Multidimensional Anxiety Scale for Children – Second Edition (MASC-2) self-report form. The MASC-2 indexes the range and severity of anxiety symptoms. The Student’s self-reported scores placed her in the slightly elevated range, while the Student’s mother’s scores placed the Student in the average range.

64. The Student completed the Child Posttraumatic Stress Scale for DSM-5 (CPSS-5), and her score of 46 fell in the range consistent with severe PTSD symptoms.

65. Dr. [REDACTED] made the following recommendations with respect to the Student's academic day:

- placement in a small, highly structured classroom for core academic instruction;
- access throughout her day to a science-based reading program that is multi-sensory, syntactic, systematic, hierarchically organized, and phonics based;
- personalized instruction in mathematics to support the Student's fluency, problem solving, and calculation skills;
- personalized instruction in written expression to support essay composition skills;
- access to psychological services in school and coordination with the Student's private therapist; and
- access to a flash pass.

66. Dr. [REDACTED] made the following other recommendations in his report:

- the Student should be referred for a psychiatric evaluation to determine if medication could be helpful in managing her emotional distress, self-destructive thoughts, and ADHD;
- the Student required psychotherapy services and would likely benefit from trauma-focused cognitive behavioral therapy;

- close monitoring for safety;
- extended time for standardized testing; and
- participation in extracurricular activities.

May 26, 2022 IEP Meeting

67. On April 27, 2022, SMCPS received a redacted copy of Dr. [REDACTED]'s report. The redacted version was missing:

- Four paragraphs from the behavioral observations section (SMCPS 12, 105);⁴³ and
- The entire Emotional/Personality Features section (2+ pages), including scores from the MASC-2 and the CPSS-5 (*Id.*, 114-116).

The redacted version also left out Dr. [REDACTED]'s diagnosis of PTSD.

68. On May 26, 2022, SMCPS convened an IEP team meeting to review Dr. [REDACTED]'s report.

69. The IEP team completed an SLD report and concluded that the Student was eligible for services as a student with an SLD and agreed to change her eligibility classification to Multiple Disabilities to include the SLD and the prior disability code of OHI due to ADHD.

70. The IEP team determined that the Student was eligible for specialized instruction, accommodations, and classroom supports in the areas of cognitive (for extremely slow processing speed), reading, written language mechanics, math calculation, and self-management.

71. The IEP team added a math problem-solving goal to the IEP.

72. On June 3, 2022, SMCPS provided the proposed IEP to the Student.

⁴³ For all the SMCPS exhibits referenced in this decision, I have included the Bates stamped number for ease of reference.

The June 2022 Draft IEP

73. The draft IEP contained the following supplementary aids, services, program modifications, and supports:

- use of audiobooks;
- visual representation of tasks;
- have student repeat and/or paraphrase information;
- use of word bank to reinforce vocabulary and/or when extended writing is required;
- frequent and/or immediate feedback;
- allow use of organizational aids;
- provide proofreading checklist;
- break down assignments into smaller units;
- home-school communication;
- break pass;
- provide structured time for organization of materials;
- check-in, check-out system;
- reinforce positive behavior through non-verbal/verbal communication;
- preferential seating; and
- access to a laptop with spell check and grammar check.

74. The draft IEP goal for reading phonics read: “Given a word list of 15 regularly spelled, two-syllable words with short and long vowel sounds, [the Student] will decode each

syllable then blend them to read 13 out of 15 words aloud, with fluency on 3 out of 4 progress monitoring assessments by June 2023.” SMCPS 17, 205.

75. The draft IEP goal for written language mechanics read: “Having constructed a writing piece (narrative or prompt-based response), [the Student] will use a writing checklist to self-monitor and correct capitalization errors for sentence beginnings and proper nouns, end punctuation errors, and word usage (grammar) with 80% of the total errors being corrected in 3 out of 4 writing pieces by June 2023.” *Id.*

76. The second draft IEP goal for written language mechanics read: “Having constructed a writing piece (narrative or prompt-based response), [the Student] will use anchor charts and/or spell check tools to correct spelling errors, with 80% of the total errors being corrected in 3 out of 4 writing pieces by June 2023.” *Id.*, 206.

77. The draft IEP goal for math calculation read: “Given supplementary aids, [the Student] will create equations and inequalities with one variable and use them to solve problems with 75% accuracy (3 out of 4 opportunities) by June 2023.” *Id.*, 207.

78. The draft IEP goal for reading fluency read: “Given a grade level passage from a familiar text, [the Student] will apply self-monitoring strategies to support accuracy, phrasing (pausing at commas and periods), and expression when reading a passage with 95% accuracy as measured by a running record by June 2023.” *Id.*, 208.

79. The draft IEP goal for self-management read: “[The Student] will increase her self management skills in order to advocate for tools and independently start and complete assignments, as measured by teacher observation records by June 2023.” *Id.*

80. The draft IEP goal for math problem solving read: “With supports such as graphic organizers, guided examples, check ins, and calculation tools, [the Student] will set up and solve grade-level problems with 75% accuracy in 3 out of 4 trials.” *Id.*, 209.

81. The draft IEP contained:

- 225 minutes per week of specialized instruction outside of the general education setting to address the Student’s reading and spelling needs;
- 150 minutes per week of specialized instruction in self-management outside of the general education setting;
- seventy-five minutes per week of specialized instruction in math calculation outside of the general education setting;
- seventy-five minutes per week of specialized instruction in written language mechanics inside the general education setting; and
- seventy-five minutes per week of specialized instruction in math problem-solving inside the general education setting.

82. The total proposed time each week outside of general education was seven hours and thirty minutes, about 22% of the day.

June 9, 2022 IEP Meeting

83. At the June 9, 2022 IEP meeting, the Parents and Dr. █████ asked for clarifying language changes for the reading fluency goal to better explain what “phrasing” and “pauses” meant. █████ test., 9/28/23, T. 946.

84. At the June 9, 2022 IEP meeting, the Parents and Dr. █████ asked for a less rigorous reading phonics goal to be drafted. *Id.*, T. 946.

85. At the June 9, 2022 IEP meeting, the Parents and Dr. [REDACTED] asked for a less rigorous written language mechanics goal that focused more on constructing a sentence and less on applying mechanics to make it grammatically correct. *Id.*, T. 949.

86. At the June 9, 2022 IEP meeting, the Parents and Dr. [REDACTED] asked for the second written language mechanics goal to include direct instruction on spelling. *Id.*, T. 951.

87. At the June 9, 2022 IEP meeting, the Parents and Dr. [REDACTED] asked for the math calculation goal to be changed to focus on math calculation skills that were below the Student's grade level rather than equations and inequalities. *Id.*, T. 952.

88. The IEP team did not agree to the suggested changes because the SMCPS team members felt the goals were appropriately ambitious in light of the Student's present levels of performance. The Parents did not sign and approve the June 9, 2022 IEP.

89. The Student received the following final grades at the end of the 2021-2022 school year:

- ELA: 57%, F;
- Math: 60%, D;
- Science: 60%, D;
- Social Studies: 68%, D; and
- Spanish: 51%, F.

90. The Student was absent 42 times during the 2021-2022 school year.

Summer 2022

91. On June 28, 2022, SMCPS sent a letter to the Parents requesting that they provide signed consent to implement the draft IEP. The Parents never signed the draft IEP.

92. On June 29, 2022, the Student's mother sent the full, unredacted Dr. [REDACTED] report to the [REDACTED] to see if the school had room for the Student for the 2022-2023 school year.

93. Prior to August 16, 2022, the Parents applied to additional private schools and sent the full, unredacted Dr. [REDACTED] report to each of the schools that the Student applied to, including [REDACTED]. [REDACTED] test., 9/12/23, T. 314; [REDACTED] test., 9/26/23, T. 683-684.

94. The Student spent five weeks during the summer at the [REDACTED] in [REDACTED].

95. In August 2022, at the end of the Student's summer program at [REDACTED], the Parent signed a release and connected the Student's therapist with the Director of Admissions at the [REDACTED] to discuss the Student.

96. [REDACTED] did not accept the Student into their regular school-year program because of her need for emotional support.

97. In or around August 2022, Dr. [REDACTED] wrote a letter to the IEP team requesting that goals for reading comprehension and written expression be added to the IEP. Dr. [REDACTED] also requested that the team address the Student's trauma resulting from the incident with her biological father.

98. On August 17, 2022, the Parent shared the full, unredacted report of Dr. [REDACTED] with SMCPS.

99. On August 18, 2022, [REDACTED] accepted the Student. [REDACTED] is a private co-educational college-preparatory boarding and day school for students with learning differences in grades nine through twelve.

August 24, 2022 IEP Team Meeting

100. On August 24, 2022, the IEP team met to discuss Dr. [REDACTED]'s unredacted report and review/revise the draft June 9, 2022 IEP.

101. Before the meeting, the Parents knew that the Student would be attending [REDACTED] for the 2022-2023 school year. [REDACTED] test., 9/12/23, T. 318.

102. The IEP team agreed to add goals related to reading comprehension, phonemic awareness, written expression, and social/emotional.

103. The IEP team was unable to complete the IEP meeting and requested to reconvene to review the proposed goals.

104. The SMCPS team members asked for additional testing for the 2022-2023 school year but the Parent stated that the Student would not be made available for any additional assessments by SMCPS.

105. Mr. Eig stated that the Student's needs could not be met in a comprehensive high school.

106. The Parents informed SMCPS that they would be placing the Student at [REDACTED] for the 2022-2023 school year and sent a formal letter after the meeting requesting that SMCPS place the Student at [REDACTED] and fund the Student's tuition at [REDACTED].

107. The Parent explained his rationale for seeking a residential placement during the August 2022 IEP meeting:

- “he has lost trust in the school system and that assessments conducted by SMCPS were coached and not shared with the family.
- SMCPS has resisted the IEP for months.

- SMCPS has failed [the Student] as she is a ninth grader scoring at a third-grade level.
- Mr. [REDACTED] shared his concern about [the Student's] trauma due to an incident in the community as well as a peer committing suicide due to that incident.
- Mr. [REDACTED] shared that he refuses to send [the Student] to [REDACTED] HS due to the most recent shooting that occurred.
- Mr. [REDACTED] shared his concern about the upcoming trial due to the community incident and did not want [the Student] to be subjected to that within the county.”

P-41-2.

The September 2022 Draft IEP

108. In September 2022, the IEP team amended the June 2022 IEP.

109. The draft IEP contained the same supplementary aids, services, program modifications, and supports as the June 2022 IEP with the addition of:

- provide feedback and redirection in a neutral tone with a quiet voice;
and
- check for understanding.

110. The September 2022 IEP contained all of the goals from the June 2022 IEP with the addition of:

- *Written language expression*: “Given an independent level text and writing prompt, [the Student] will compose an analysis paragraph in response to the text with 1-topic sentence, 2-pieces of relevant evidence from the text with an explanation that connects each piece of

evidence to the topic sentence, and 1-concluding sentence in 3 out of 4 texts as measures by student work samples.” SMCPs 29, 375.

- *Social emotional/behavioral*: “When [the Student] becomes stressed, overwhelmed, anxious, and/or frustrated at school, she will use a self-regulation/coping strategy of her choosing to regulate her emotions and allow her to remain engaged in school activities, with one reminder, in 4 out of 5 opportunities, as measured by student report and teacher/staff observation and documentation.” *Id.*, 378.
- *Reading comprehension*: “After independently reading an instructional-level excerpt, [the Student] will state a central idea/theme and 2-details or quotes that contribute to the development of the central idea/theme, for 3 out of 4 excerpts, on 4 out of 5 progress monitoring assessments.” *Id.*, 379.
- *Reading phonemic awareness*: “When given a list of 10 real and nonsense words, [the Student] will substitute an identified individual sound to create a new word, correctly creating words for 8 out of 10 original words in 4 of 5 trials.” *Id.*, 380.

111. The goal for self-management was edited slightly to add “in 4 out of 5 opportunities.” *Id.*, 374.

112. The goal for written language mechanics was reworked to state “[h]aving considered a writing piece (narrative or prompt-based response), [the Student] will use an editing checklist to self-monitor and correct conventions of English capitalization, spelling, and

punctuation errors with 80% of the total initial errors being correct in 3 out of 4 student work samples.” *Id.*, 376.

113. The IEP team edited the goal for reading fluency slightly. *Id.*, 377.

September 19, 2022 IEP Meeting

114. SMCPs scheduled a meeting for September 19, 2022 to review the draft IEP.

115. SMCPs informed the Parents that the school psychologist, Dr. [REDACTED], had only limited availability on September 19, 2023 and the Parents agreed to meet on this day.

116. The Parent provided an update regarding the Student’s time at [REDACTED]. P-44-2.

117. At the meeting, the SMCPs members of the IEP team requested that the Parents provide supplemental data from [REDACTED]. *Id.*

118. Dr. [REDACTED] described the social/emotional goal, corresponding four objectives, and two supplementary aids in the social/emotional area.

119. During the meeting, Ms. [REDACTED], who was leading the IEP meeting, explained that Ms. [REDACTED] was present to discuss the services to be provided at [REDACTED] High School. Mr. Eig questioned how SMCPs knew that [REDACTED] would be the proposed placement before they had gone over the entire IEP, and Ms. [REDACTED] explained that it was the Student’s home school and Ms. [REDACTED] was there to give input on what the services would look like in the least restrictive environment.

120. The meeting concluded once Dr. [REDACTED] left the meeting, and the IEP team was not able to discuss the proposed goals in the areas of reading comprehension, written expression, phonemic awareness, and social/emotional.

121. The IEP team requested to reconvene the IEP meeting when its psychologist was available to further discuss the social/emotional section of the IEP.

October 18, 2022 IEP Meeting

122. On October 18, 2022, the IEP team reconvened to discuss the September 2022 draft IEP.

123. The Parent provided an update on the Student's time at [REDACTED]. P-45-1-2.

124. The IEP team requested that the Parents provide supplemental data from [REDACTED] after the Parents did not comply with the initial request. *Id.*

125. At the meeting, the Parents agreed to provide SMCPS with a release to talk with [REDACTED], Dr. [REDACTED], and the Student's therapist before developing and finalizing the Student's social/emotional IEP goal. The Parents provided the release on October 21, 2022.

126. The IEP team agreed to continue the meeting until it received documents regarding the Student's progress at [REDACTED] and Dr. [REDACTED] had time to speak with Dr. [REDACTED] and the Student's therapist to develop the social/emotional goal.

127. On November 3, 2022, Dr. [REDACTED] spoke with the Student's therapist, Ms. [REDACTED].

128. Ms. [REDACTED] reported that the Student had completed Trauma Focused Cognitive Behavior Therapy and was on a program of maintenance and was "pretty stable." P-54-4.

129. On November 10, 2022, Dr. [REDACTED] spoke with Dr. [REDACTED], who advised that the Student's social and emotional needs did not necessarily need to be handled by a school-based team. Dr. [REDACTED] also advised Dr. [REDACTED] that he "did not know if [the Student] could be successful at [REDACTED] High School], given her perspective, even if it was inaccurate, that when she walks through the halls and someone looks at her funny, that they would be thinking about what happened to her." P-54-5.

130. Mr. Eig's assistant, Julia Castle, emailed Ms. [REDACTED] on November 18, 2022, to ask if the IEP team could meet in December. SMCPs 76, 895.

131. On November 22, 2022, Ms. [REDACTED] emailed Ms. Castle that the SMCPs team members could not meet in December because of winter break from December 19, 2022 to January 2, 2023. *Id.*

132. On November 27, 2022, Dr. [REDACTED] spoke with Ms. [REDACTED]. Ms. [REDACTED] stated that the Student was taking a reading class every other day and receiving Orton-Gillingham instruction focusing on syllables and dividing long and short sound vowels, phonemic awareness, and vocabulary. P-48-14. Ms. [REDACTED] provided a similar update for the Student's writing class. P-48-22. Ms. [REDACTED] reported no issues with peers. P-48-26.

133. On November 28, 2022, Ms. Castle confirmed that the IEP team meeting could take place on January 17, 2023.

134. On or around December 1, 2022, Mr. Eig filed a due process complaint on behalf of the Student. SMCPs 76, 894. The complaint was later withdrawn.

135. On January 16, 2023, Ms. [REDACTED] canceled the meeting because of scheduling conflicts. *Id.*

136. On January 17, 2023, Ms. [REDACTED] emailed Mr. Eig that a personal emergency had prevented her from following up with the SMCPs team members after the January 17, 2023 had been confirmed with Ms. Castle. She explained that once she was able to contact the team members, their calendars were full. *Id.*, 892.

137. Ms. [REDACTED] rescheduled the meeting for January 31, 2023. *Id.*, 889.

January 23, 2023 Draft IEP

138. The draft IEP contained the same supplementary aids, services, program modifications and supports as the September 2022 IEP with the addition of:

- provide manipulatives and/or sensory activities to promote listening and focusing skills; and
- allow the Student to volunteer to answer class-wide questions, rather than calling on her.

SMCPS 52, 474-475.

139. The January 23, 2023 draft IEP had the same goals as the September 2022 draft IEP with the exception of the changes listed below.

140. The IEP team edited the social emotional/behavioral goal from the September 2022 IEP to state:

“When [the Student] is presented with a situation known to be anxiety or frustration-producing (i.e., a non-preferred writing task; tasks perceived as too difficult; hard conversations with peers; or PTSD symptoms resurfacing), she will demonstrate an appropriate emotional response by finding a solution to her problem or by using a strategy to self-regulate (e.g., talk to a teacher, ask to see her counselor, take a break, ask to leave the classroom, use a fidget, use breathing strategies) back to an emotional state that allows her to return to the task at hand and be available for learning, with one reminder and within 5 minutes, for an average of 80% of observed instances.” SMCPS 52, 482.

141. The IEP team edited the self-management goal from the September 2022 IEP to state, “[The Student] will increase her self-management skills (including time management, organization, task initiation and self-advocacy) in order to organize, begin and complete her school assignments within assigned deadlines at least 80% of the time as measured by teacher observation, grade books, student report and data collection.” *Id.*, 486.

142. The proposed time in general education remained the same. *Id.*, 491.

January 31, 2023 IEP Meeting

143. The IEP team met on January 31, 2023 and reviewed the updated present levels, goals and objectives, supplementary aids and services, and transition plan.

144. The IEP team agreed to revise the social emotional/behavioral, reading phonemic awareness, reading fluency, and written language expression goals as requested by the Parents and their representatives at the IEP team meeting.

145. The Parent provided an update on the Student's time at [REDACTED] and her testimony in the criminal trial of her biological father. P-48-2.

146. Mr. Eig proposed a change to the social emotional goal to clarify the language in the goal regarding when the data collection for the goal is triggered, suggesting that it should be whenever she experiences an anxiety-inducing situation, whereas the draft goal encompassed a "known" anxiety-inducing situation.

147. For the phonemic awareness goal, Mr. Eig and Dr. [REDACTED] requested that SMCPs speak with [REDACTED] staff about what type of phonemic awareness and vocabulary interventions they were using for the Student at [REDACTED] and what data they had regarding these interventions. Dr. [REDACTED] also stated that [REDACTED] should be able to tell SMCPs where the Student is in the Orton Gillingham program, including the Student's baseline.

148. For the reading comprehension goal, at the request of Dr. [REDACTED], the IEP team decided to approach [REDACTED] staff to see if they could do additional assessments.

149. For the written language goal, the IEP team decided to edit the goal at the suggestion of the Student's representatives to add language to expand the goal to not just situations where the Student is reading, but also encompass situations where the Student is engaging with other media like audio or video.

150. The IEP team agreed to add a Supplementary Aid and Service at the request of Mr. Eig to ensure that the Student's teachers provide her with alternate ways to demonstrate learning.

151. When Ms. [REDACTED], the chair of the meeting, started to discuss the services portion of the IEP, Mr. Eig stated that it was the Student's "official position" that the discussion should be deferred until the various revisions to the IEP had been made. P-81.

152. Ms. [REDACTED] stated that she would be moving onto a discussion of services and look at "[the Student] returning to [the SMCPS] into a comprehensive high school." *Id.* Mr. Eig cut Ms. [REDACTED] off and stated that instead, they need to first look at "how much special education does [the Student] need." *Id.*

153. Ms. [REDACTED] started to talk about what reading intervention could be provided within SMCPS, and Mr. Eig again cut her off and stated that they should talk about the hours of service and then setting. *Id.*

154. Dr. [REDACTED] proposed adding an additional half-hour counseling session to the IEP in light of what she heard from the Parents during the meeting.

155. The IEP team agreed that the Student's core area classes (reading, math, social studies, and science) could be serviced in a small group setting with special education and general education teachers.

156. The Parents stated their opinion that the IEP should state that all the Student's classes will be outside of general education. SMCPS stated that they were not sure they had data to support full-time special education classes for the Student.

157. An SMCPs team member stated that the Student could be in the general education environment for her non-core subjects, such as art and Physical Education (PE) with the supports from the IEP. Other SMCPs team members agreed.

January 31, 2023 IEP

158. The IEP team incorporated the suggested edits and additions from the January 31, 2023 IEP meeting in a revised IEP sent after the meeting.

159. The IEP contained the following special considerations and accommodations:

- general administrative directions clarified;
- redirect student; and
- spell check or external spell check device.

P-48-42. The IEP team documented its basis for these accommodations as follows: “[The Student] has difficulty remembering directions and information in general over short periods of time and struggles to recall directions and other pertinent information. . . . Visual and verbal cues to redirect [the Student] to task will support her ability to bring work to completion and review it for accuracy.” *Id.*

160. The IEP also contained the following accessibility features:

- text to speech;
- small group;
- frequent breaks; and
- reduce distractions to self.

Id. The IEP team documented its basis for these accessibility features as follows: “[The Student] has difficulty maintaining focus especially in academic classes which require her to sustain attention to a task and have the capacity for goal-directed persistence.” P-48-43.

161. The IEP contained instructional and assessment accommodations. P-48-43, -44. These included notes and outlines “needed to help [the Student] focus on the instructional components instead of writing notes due to her poor processing speed.” P-48-43. Also, added were calculation devices and mathematics tools because of the Student’s processing weaknesses. P-48-43, -44. The IEP specified that the Student should be given up to 50% more time than her non-disabled peers for in-class assignments to accommodate her poor cognitive processing speed. P-48-44.

162. The January 31, 2023 IEP added an instructional support: “Provide alternative ways for students to demonstrate learning.” SMCPS 53, 537. Mr. Eig suggested this change during the IEP team meeting. The rest of the supplementary aids, services, program modifications, and supports were identical to the January 23, 2023 IEP.

163. Regarding supplementary aids and services, the IEP stated, “[d]ue to [the Student’s] weaknesses in decoding fluency, oral reading fluency, pseudoword decoding, and spelling (resulting from her Dyslexia), executive functioning skills, and attention/concentration abilities, as well as her extremely low cognitive processing speed, [the Student] requires supplementary aids and services to access grade level curriculum in all areas of the school day.” P-48-51. The IEP listed the following supplementary aids, services, program modifications and supports:

- alternative ways to demonstrate learning;
- audiobooks;
- visual representation of tasks;
- repeat and/or paraphrase information;
- use of word bank;

- frequent and/or immediate feedback;
- organizational aids;
- proofreading checklist;
- break down assignments into smaller units;
- manipulatives and/or sensory activities;
- allow the Student to volunteer rather than calling on her;
- feedback and redirection in a neutral tone with a quiet voice;
- check for understanding;
- home-school communication system;
- break pass;
- structured time for organization of materials;
- check-in, check-out system;
- reinforce positive behavior;
- preferential seating; and
- access to a laptop with spell and grammar check.

P-48-45-51.

164. The IEP team added a goal for social interaction skills: “[The Student] will demonstrate appropriate peer interaction skills for both real and hypothetical situations (including learning about styles of communication, voluntarily accepting responsibility for her actions, resolving conflict, and maintaining her own emotional regulation following conflict) with 80% frequency, as measured by self-report, counselor and staff observations and data collection.” *Id.*, 547. Mr. Eig suggested this change during the IEP team meeting.

165. The goal for reading phonemic awareness was edited to be triggered by “When verbally presented 10 real and nonsense words,” where before it had been “When given a list of 10 real and nonsense words.” *Id.*, 546.

166. The goal for social emotional/behavioral was edited to read:

“When [the Student] becomes anxious, frustrated or overwhelmed by a current event (i.e., a non-preferred writing task; tasks perceived as too difficult; hard conversations/conflicts with peers; or PTSD symptoms resurfacing) or in anticipation of an upcoming stressor, she will demonstrate an appropriate emotional response by finding a solution to her problem or by using a strategy to self-regulate (e.g., talk to a teacher, ask to see her counselor, take a break, ask to leave the classroom, use a fidget, use breathing strategies) back to an emotional state that allows her to return to the task at hand and be available for learning, with one reminder and within 5 minutes, for an average of 80% of observed instances.” *Id.*, 551.

Mr. Eig suggested this change during the IEP team meeting.

167. The rest of the goals from the January 23, 2023 draft IEP remained the same.

168. Regarding service delivery, the IEP stated, “[The Student] will be provided specialized instruction in reading to provide a Tier 3 multisensory research-based reading intervention to support the phonemic awareness and phonics goals.” P-48-64.

169. The IEP increased the frequency of counseling services to twice weekly for thirty minutes. P-48-65.

170. The IEP specified that the Student would be in a self-contained special education classroom for her ELA, math, science, and social studies classes. P-48-67. This increased her time spent in special education by about ten hours each week from what had previously been proposed. The Student would also meet daily with her case manager daily to work on her self-management goal, outside of the general education setting. P-48-66.

171. The January 31, 2023 draft IEP listed the SISS⁴⁴ Resident School and SSIS Service School as ██████████ High School. P-48-67. This information is auto populated in the IEP based on the Student's address. ██████████ test., 9/29/23, T. 1182.

172. On February 13, 2023, Julia Castle, a paralegal in Mr. Eig's office, emailed Ms. ██████████ that "[w]e are going to withdraw this hearing request and refile at a later date with more claims, so you can take the March dates off your calendar." SMCPS 203, 002.

173. On February 27, 2023, the Student's mother signed a release to allow Ms. ██████████ to talk with Ms. ██████████.

May 4, 2023 IEP Meeting

174. On May 4, 2023, the IEP team convened a meeting at the request of the Parents to review the draft IEP.

175. Mr. Eig informed SMCPS for the first time that ██████████ had asked the Student to take a mental health break, and she had returned to St. Mary's County for the partial hospitalization program at ██████████.

176. Mr. Eig informed SMCPS for the first time that the Student had turned herself in at ██████████ and admitted to using drugs while at ██████████.

177. Mr. Eig proposed that the Student needs a residential facility to meet her needs.

178. The first thirty minutes of the slightly more than hour-long meeting consisted of updates from Mr. Eig and the Parent regarding the Student's challenges at ██████████ starting with the mental health break in February 2023.

179. Dr. ██████████ discussed her recent conversation with the Student's therapist and noted an increase in risk-taking behavior by the Student, which the therapist attributed to trying

⁴⁴ Online Special Services Information System (SSIS).

to fit in with peers and self-soothing through the use of marijuana. The Student was not taking her prescribed medication consistently. The therapist noted no suicidal ideation by the Student. The therapist stated that the Student seemed to have a lot of autonomy at [REDACTED], had been moved into a single dorm room because of issues with peers, and that her mental health needs were primary instead of her academic needs at the time of their discussion.

180. Mr. Eig stated that the major goal of the meeting was to relook at the IEP as to the intensity of services that the Student needs.

181. Ms. [REDACTED] stated that “we do contend that we can continue to meet [the Student’s] needs here in a comprehensive high school with that therapy piece.” P-82. Mr. Eig asked, “how do you know that you think that way?” *Id.* Ms. [REDACTED] said, “we will go around the table but we do feel that she has a comprehensive IEP that we will implement” and was cut off by Mr. Eig who stated, “I’m not asking you to go around yet.” *Id.* Mr. Eig asked how Ms. [REDACTED] knew what the other IEP team members thought after hearing the new information. Ms. [REDACTED] and another IEP team member from SMCPS clarified that it was their position coming into the meeting that the Student’s needs could be met in a comprehensive high school. Mr. Eig said it was not necessary to go around the room and hear from the entire SMCPS team.

182. The IEP team agreed to amend the IEP to include new information from the Parents, [REDACTED], and the Student’s therapist, but did not propose any revisions to the IEP.

183. The Parents attended each of the IEP meetings from May 2022 through August 2023.

[REDACTED]

184. [REDACTED] is in [REDACTED], [REDACTED].

185. The State of [REDACTED] has not approved [REDACTED] as a private special education residential facility.

186. Tuition for [REDACTED] for the 2022-2023 school year was \$85,900.00 for boarding students, and \$70,200.00 for day students.

187. [REDACTED] has around 215 students in grades nine through twelve. [REDACTED] test., 9/15/23, T. 517-518.

188. The general [REDACTED] schedule is:

- 8:45 a.m. – first period class begins
- thirty-minute break for assembly (Monday and Friday) or advisory (Tuesday) or clubs (Thursday)
- second class
- lunch
- extra help period for students that are struggling in a subject matter area
- 1:00 p.m. – third class
- Fourth class
- 4:00 p.m. – sports
- 6:00 p.m. – dinner
- Free time
- 8:00 p.m. – 9:00 p.m. – study hall
- 10:00 p.m. – lights out⁴⁵

⁴⁵ Each of the parts of the schedule is considered a student commitment and [REDACTED] tracks attendance at each student commitment.

█ test., 9/15/23, T. 519-520, 527-528. On Wednesdays, the four classes meet for an hour only, and conclude by 1:30 so that sports can start early. █ test., 9/15/23, T. 519-520.

189. First-year classes at █ are between eight and ten students. *Id.*, T. 524.

190. The teachers at █ are general education teachers, not special education teachers. *Id.*, T. 525.

191. Every student at █ has an advisor to “head up the student’s life at █.” *Id.*, T. 531.

192. Teachers at █ receive a weeklong training when they are hired by █ that focuses on students with learning differences and then are given the opportunity the following week to work directly with department chairs on best practices in teaching students with learning differences. *Id.*, T. 525-526.

193. The Student was not placed in an executive functioning program at █.

194. █ created a “Confidential Learning Profile” for the Student. The profile is undated. It did not list PTSD as one of her diagnoses. The document provides many recommendations but no goals or objectives or ways to track progress. SMCPS 212, 025-026.

195. On September 23, 2022, █, Associate Dean of Students, emailed the Student’s mother that “I am happy to meet with [the Student] and set up an attendance plan” after the Student’s mother had emailed her about the Student “not getting up in the morning.” SMCPS 124, 740-741.

196. On September 25, 2022, the Parent emailed ██████████ that “[m]any of [the Student’s] assignments have been turned in late. Let’s talk about this.” SMCPS 125, 1074.⁴⁶

197. On September 27, 2022, ██████████, Assistant Dean of Academics, emailed the Parents that she would be creating an academic plan for the Student that “provides successful techniques to help [the Student’s] progress.” SMCPS 33, 395.

198. On September 29, 2023, Ms. ██████████ wrote to the Student’s Mathematics teacher, ██████████, “Is [the Student’s] grade up to date in the grade book? Her parents are very frustrated with her and I’m trying to paint a clearer picture of what she needs to get done.” SMCPS 127, 1082. Ms. ██████████ wrote back:

“I already talked to her mom about the fact that she has not completed any homework for class. When her mom asked her about it, [the Student] said that she did not have access to DeltaMath, which is something she had not told me for the two weeks we’ve been in class. The day I was going to address with her that she needed to communicate with me if things are not working, she was absent from class. For her quiz which I just put into the gradebook (56%), [the Student] did the first page, and then wrote “no” for every single problem on the rest of the quiz. . . I am meeting with Dr. ██████████ today to help create a plan for [the Student] to potentially do a retake and begin succeeding in math.”

Id.

199. On September 30, 2022, Ms. ██████████ emailed the Student that for her quizzes, “instead of doing multiple of the same problem, you will only need to do one problem of each kind.” SMCPS 34, 397.

200. The week of October 7, 2022, the Student missed two academic commitments and had to serve detention on October 8, 2022. SMCPS 129, 1085.

201. On October 11, 2022, Ms. ██████████ emailed the Student to remind her to make a cheat sheet for the quiz on October 12, 2022. She wrote, “You can write anything you want for

⁴⁶ For the SMCPS exhibits, beginning with SMCPS Ex. 82 there are two numbers, a red number and a number with “██████████” preceding the number. When referencing page numbers in this Decision for these exhibits, I have cited to the red number, rather than the “██████████” number.

the quiz on the front and back of a piece of printer paper. You can also type it and send it to me[,] and I will print it out for you before the quiz!” SMCPSS 132, 1089.

202. On October 20, 2022, the Student’s mother emailed Dr. [REDACTED], “[The Student] is struggling with a few things and I thought we had some measures in place, but the issues are still occurring. I believe we have [the Student] on an attendance plan; but she is still not getting up in time for classes. She is also not going to bed on time and struggling with organization. . . She is supposed to be meeting with Mrs. [REDACTED]⁴⁷, and is also missing those appointments.” SMCPSS 37, 403.

203. On November 3, 2022, Dr. [REDACTED] emailed the Parents regarding the Student’s laptop and stated, “There is no reason why she shouldn’t be bringing a piece of technology to class, and there have been too many instances where it is a trend and pattern. To help mitigate this, IT has given me a laptop. If [the Student] forget[s] the technology needed for class I will deliver the laptop for her use and the teacher will collect it at the end of class.” SMCPSS 40, 407.

204. On November 4, 2022, Mr. [REDACTED] emailed the Student that she had missed four student life commitments during the week and would have Saturday night detention and would be gated for the weekend, meaning she would be restricted to the upper campus. SMCPSS 41, 409.

205. On December 12, 2022, the Student was late or absent from one of her academic commitments. SMCPSS 151, 1115.

206. On December 15, 2022, Dr. [REDACTED] emailed the Parents that “[the Student] has been consistently not bringing her laptop to class.” SMCPSS 49, 428.

⁴⁷ “Mrs. [REDACTED]” is Ms. [REDACTED], the Student’s counselor/therapist.

207. In [REDACTED] 2023, after returning home to testify against her biological father in his criminal trial, the Student intentionally took eighteen tablets of Tylenol the night before she was scheduled to testify. The Student went to the hospital and the hospital discharged her and she testified the following day. The Student's biological father was convicted and sentenced to prison.

208. On February 2, 2023, Dr. [REDACTED] emailed the Parents that the Student:

“has not been motivated in her classes. She consistently goes to the health center and has also been missing classes throughout the day. She is resistant to study groups and is not being honest in completing her assignments. She has also stated to a few teachers that she leaves her paper assignments in the classroom so that she will have nothing to do in study group. I have been monitoring the situation and trying to work with [the Student], but she is also trying to avoid myself and [REDACTED] as well as go against the agreements that [REDACTED] and I have put in place for her resources.”

SMCPS 55, 564.

Leave from [REDACTED]

209. On February 16, 2023, [REDACTED] called the Parents and requested that they come pick the Student up so that she can receive mental health treatment at home.

210. On February 17, 2023, the Student was admitted to the emergency room at [REDACTED]. She denied having suicidal ideation but admitted thoughts of self-harm. The Student admitted that at [REDACTED] she smoked marijuana and drank alcohol “almost daily.” SMCPS 56, 581. [REDACTED] deemed her low risk for suicide and released her that day.

211. In February 2023, the Student attended a week-long mental health outpatient treatment program at [REDACTED] where she participated in group therapy.

212. The Student did community service at the [REDACTED] while she was at home.

213. While at home, the Student also participated in EMDR⁴⁸ therapy.

214. The Student's break from [REDACTED] lasted six weeks, and she missed some class time, spring break, and a special activity session that [REDACTED] requires during spring break.

215. The Student saw Ms. [REDACTED] during this time and continued to see her when she returned to [REDACTED]. They met three times a week initially before the Student entered the [REDACTED] program, then one to two times a week after the Student completed that program, and then one time a week once the Student returned to [REDACTED] because the Student declined to participate in many telehealth meetings.

Return to [REDACTED]

216. For the week of April 7-14, 2023, the Student missed nine student life commitments and had to serve detention. SMCPs 181, 1153.

217. For the week of April 15-22, 2023, the Student missed seven student life commitments and had to serve detention. SMCPs 185, 1158.

218. On April 18, 2023, the Student was late or an absent from one of her academic commitments. SMCPs 183, 1156.

219. On April 20, 2023, the Student requested amnesty for herself regarding substance use. [REDACTED] placed her on a no-substance-use contract, which included random testing, and required that she undergo a substance use evaluation.

220. The Student has been prescribed [REDACTED] to address her ADHD symptoms. SMCPs 56, 708.

⁴⁸ Eye Movement Desensitization and Reprocessing.

221. On April 21, 2023, an individual from the Student Health Center at [REDACTED] emailed the Student's mother to inform her that "[the Student] never comes to take [the [REDACTED]] . . . she says she just forgets[.]" SMCPs 65, 728.

222. On May 5, 2023, the Student missed an academic commitment. SMCPs 190, 1164.

223. On May 5, 2023, [REDACTED], History Teacher, wrote to the Parents that "the school is moving to coordinate [the Student's] care in a more comprehensive and systemic way by bringing together the counseling, academics and student life teams to discuss the best way to build wraparound support that meets her nuanced needs." SMCPs 69, 806.

224. By May 17, 2023, the IT department at [REDACTED] had determined that it would not provide any more loaner computers to the Student. SMCPs 197, 1173.

225. On May 18, 2023, the Student was late or absent from one of her academic commitments. SMCPs 198, 1175.

226. On May 22, 2023, the Student was hiding in her closet in her room when she was supposed to be in her writing class. The Student stated that she did not like going to the writing class because of her perception that her teacher is yelling at the class. The Student's therapist, Ms. [REDACTED], took her to the Dean's office and the Student was informed that if there was another incident where she disappeared then she would be asked to go home for the remainder of the school year. SMCPs 199, 1176.

227. For English, the Student received the following grades during the 2022-2023 school year at [REDACTED]:

- Term 1: grade: A-; effort: adequately meets expectations;
- Term 2: grade: B+; effort: adequately meets expectations; and

- Term 3: grade: B; effort: minimal effort.

The English teacher stated that the Student's:

“comparative analytical paragraphs were a strong, promising start that needed further explanation and revision since her writing was too compressed and she lacked sufficient required textual evidence . . . [the Student] did work that was good enough – but could absolutely have been improved . . . [the Student] will never truly soar until she becomes disciplined about her work in ways she completely resists in the current era.” P-62-11.

228. For Integrated Math II, the Student received the following grades during the 2022-2023 school year at [REDACTED]:

- Term 1: grade: D+; effort: minimal effort;
- Term 2: grade: B-; effort: adequately meets expectations; and
- Term 3: grade: B-; effort: adequately meets expectations.

In Term 1, the teacher wrote that the Student's “engagement has been lacking consistency.”

P-62-1. For Term 3, the teacher wrote that “at the beginning of the year, [the Student] was not doing any homework or studying for math, and not coming to extra help . . . In an effort to combat this, [the Student] and I made an agreement that she did not need to complete math homework as long as she did well on quizzes, which was great motivation for [the Student] to study for assessments and pay attention in class.” P-62-12.

229. For Global Studies, the Student received the following grades during the 2022-2023 school year at [REDACTED]:

- Term 1: grade: B-; effort: exceeds expectations;
- Term 2: grade: B+; effort: adequately meets expectations; and
- Term 3: grade: B+; effort: adequately meets expectations.

For Term 3, the teacher wrote that:

“[the Student] can struggle to complete work if she doesn’t see its value, and this term [she] slowly came to understand the value of our coursework. . . at the start of the term, she could struggle to form arguments . . . [b]y the end of the term, this improved significantly; her arguments had stronger foundations and deeper analysis.” *Id.*

230. Reading Principles is the first level of reading class at [REDACTED], and the students are taught basic reading skills such as decoding, phonemic awareness, fluency, vocabulary expansion, and comprehension. [REDACTED] test., 9/15/23, T. 549. The class is every other day for seventy minutes. *Id.*, T. 550.

231. For Reading Principles, the Student received a passing grade for terms 1-6 and her level of effort was “adequately meets expectations” for each term except term 6, when it was “exceeds expectations.” For term 1, the teacher wrote, “I know that [the Student] has found this term to be difficult in terms of getting her assignments done, arriving on time, and staying focused.” P-62-2. For term 2, the teacher wrote, “I know that being prepared for class with her computer has been especially challenging over the last two terms, but we are working with [the Student] on taking responsibility and overcoming her obstacles.” P-62-13. For term 3, the teacher wrote that “[the Student] created a system to self-monitor to focus more on her classes. . . [the Student] and I worked together to create a school binder with a pencil case, folders, paper, and dividers for her classes. We also made a checklist of items to make sure she was prepared for classes and study hall.” P-62-20.

232. Thinking and Writing is a class where [REDACTED] students learn basic writing skills and progress from writing a good sentence, to writing a paragraph, to writing a five-paragraph essay. [REDACTED] test., 9/15/23, T. 551.

233. For Thinking and Writing 9, the Student received the following grades during the 2022-2023 school year at [REDACTED]:

- Term 1: grade: C+; effort: minimal effort;
- Term 2: grade: B-; effort: minimal effort;
- Term 3: grade: B-; effort: minimal effort;
- Term 4: grade: B-; effort: minimal effort;
- Term 5: grade: B-; effort: adequately meets expectations; and
- Term 6: grade: B-; effort: minimal effort.

For term 1, the teacher wrote “[the Student] has struggled with attendance, preparedness, and task management. . . the drafts she submitted were not complete[.]” P-62-3. For term 2, the teacher wrote that “[the Student’s] productivity improved towards the end of this term, as did her engagement with class discussion and writing assignments . . . [s]he has contributed eloquently and enthusiastically to group brainstorm and class discussions.” P-62-10. For term 3, the teacher wrote, “Since the beginning of the semester, I’ve seen [the Student] substantiate her ideas with more specific details in her writing, and her drafts are improving. She has not taken the opportunity this term to revise her drafts[.]” P-62-13. For term 4, the teacher wrote that “[the Student] has demonstrated steady progress in language usage this term, with particular strength in word choice.” P-62-21.

234. For Science, the Student received the following grades during the 2022-2023 school year at [REDACTED]:

- Term 4: grade: C+; effort: minimal effort;
- Term 5: grade: C+; effort: minimal effort; and

- Term 6: grade: C-: effort: minimal effort.

For term 4, the teacher wrote, “[the Student] was often very avoidant of work . . . she benefitted from individual check-ins but was often resistant to help from me.” P-62-20. For term 5, the teacher wrote, “[the Student] struggled with attendance and work completion . . . when [the Student] is in class, she is engaged and productive[.]” P-62-25.

235. As of June 9, 2023, the Student had 95 excused absences, 53 tardy unexcused absences, and 51 absent unexcused absences for the 2022-2023 school year at [REDACTED]. These absences encompass each missed commitment. [REDACTED] takes attendance for every student commitment including breakfast.

Dr. [REDACTED]’s 2023 Evaluation of the Student

236. Dr. [REDACTED] conducted a neuropsychological re-evaluation of the Student on June 12, 2023.

237. The Student completed the WISC-5 and her FSIQ was 84, in the low average range. The Student performed in the high average, average, or low average range on all subtests except processing speed, where she performed in the extremely low range.

238. The Student completed the WIAT-4. Her total score was 70, in the 2nd percentile and in the very low range. The Student’s composite scores were:

- reading: 88, 21st percentile, low average range;
- written expression: 60, less than 1st percentile, extremely low range;
- and
- mathematics: 79, 8th percentile, very low range.

For reading, the Student scored in the very low range on the Decoding, Reading Fluency, and Orthographic Processing subtests. The Student also performed below the third-grade level in the

following subtests: essay composition, pseudoword decoding, decoding fluency, and math fluency – subtraction.

239. The Student completed the TOWRE-2 test. The Student scores on the TOWRE-2 were:

- total word reading efficiency composite score: 82, 12th percentile, below average;
- sight word efficiency subtest: 93, 32nd percentile; and
- phonemic decoding efficiency subtest: 73, 3rd percentile.

240. The Student scored a 95 on the CVLT-C, in the 37th percentile.

241. The Student took the Wide Range Assessment of Memory and Learning – Third Edition to assess visual and narrative memory. Her scores were solidly in the average range.

242. The Student completed two measures assessing verbal fluency. The Student’s ability to generate words given a cue was scored as a 76, in the 5th percentile and in the very low range. Her phonemic fluency was scored as a 102, in the 55th percentile and in the average range.

243. The Student scored a 101, in the 53rd percentile on the rapid symbolic naming portion of the CTOPP-2.

244. On August 21, 2023, Ms. [REDACTED] wrote to Erin Spurrier, a colleague of Mr. Fields, that “[t]he [REDACTED] does not have any text messages or other correspondence with the [Student’s] family.” SMCPS 205, 008.

August 22, 2023 IEP Meeting

245. On August 22, 2023, the IEP team convened a meeting to review the draft IEP.

246. The IEP team agreed to amend the IEP to provide information from the Parents, Dr. [REDACTED]'s 2023 evaluation, and a 2022-2023 report card from [REDACTED].

247. On August 25, 2023, [REDACTED], Esquire, [REDACTED], wrote to Mr. Eig about the production of documents pursuant to a subpoena sent to [REDACTED], identified all of the responsive documents that would be produced, and asked, "Do you have any concerns about us producing these documents?" SMCS 206, 009. She further added, "there is correspondence from the Health Center . . . and many emails regarding [the Student's] prescription for [REDACTED] and vitamins. These can be withheld as health records, unless you would like us to produce them or see them as beneficial to [the Student's] case. Please let me know." *Id.* Mr. Eig responded by email that same day, "Give me over the weekend to make sure, but I think we are going to be OK with disclosing all of these." SMCS 207, 011.

248. On September 1, 2023, Ms. [REDACTED] sent documents responsive to the SMCS subpoena to Mr. Fields. SMCS 209, 020.

249. On September 5, 2023, [REDACTED], Esquire, emailed Mr. Eig regarding Mr. Fields' request for clarification regarding documents that were covered by the SMCS subpoena sent to [REDACTED]. Mr. [REDACTED] stated, "I have no intention of sending him further documents." SMCS 209, 017.

250. On September 7, 2023, after [REDACTED] had identified additional documents responsive to the SMCS subpoena, Mr. [REDACTED] wrote to Mr. Eig to inquire if he had any objection to the production of the additional documents. SMCS 210, 022.

DISCUSSION

Burden of Proof

The standard of proof in this case is a preponderance of the evidence. COMAR 28.02.01.21K(1). To prove an assertion or a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002). The burden of proof rests on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005). The Parent is seeking relief and bears the burden of proof to show that the challenged actions by SMCPSS did not meet the requirements of the law. SMCPSS bears the burden to show that its motion for judgment should be granted by a preponderance of the evidence. COMAR 28.02.01.21K(3).

Motion for Judgment

At the conclusion of the Student’s case-in-chief on September 28, 2023, SMCPSS made a Motion for Judgment (Motion). The OAH regulation governing a motion for judgment states:

E. Motion for Judgment.

(1) A party may move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party. The moving party shall state all reasons why the motion should be granted. No objection to the motion for judgment shall be necessary. A party does not waive the right to make the motion by introducing evidence during the presentation of any opposing party's case.

(2) When a party moves for judgment at the close of the evidence offered by an opposing party, the ALJ may:

(a) Proceed to determine the facts and to render judgment against an opposing party; or

(b) Decline to render judgment until the close of all evidence.

(3) A party who moves for judgment at the close of the evidence offered by an opposing party may offer evidence if the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been made.

COMAR 28.02.01.12E.

SMCPS argued that I should grant the Motion because: (1) the Parents failed to consent to the receipt of special education services and this meant that SMCPS had no obligation to provide FAPE; and (2) the Student failed to show that placement at [REDACTED] was appropriate. The Parent argued that the Student did not need to agree to the implementation of the IEP before unilaterally placing the Student at [REDACTED] and requesting reimbursement. I reserved ruling on the Motion. *Id.* Having considered the applicable law and the parties' arguments, I deny the Motion.

An agency that is responsible for making a FAPE available to a child with a disability shall seek to obtain informed consent from the parent of such child before providing special education and related services to the child. 20 U.S.C.A. § 1414(a)(1)(D)(i)(II); *see also* 34 C.F.R. 300.300(b). If the parent of a child refuses to consent to services, the agency shall not provide special education and related services to the child. *Id.* § 1414(a)(1)(D)(ii)(II). The statute further states:

(III) Effect on agency obligations

If the parent of such child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent--

(aa) the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide such child with the special education and related services for which the local educational agency requests such consent; and

(bb) the local educational agency shall not be required to convene an IEP meeting or develop an IEP under this section for the child for the special education and related services for which the local educational agency requests such consent.

Id. § 1414(a)(1)(D)(III).

SMCPS cited the case of *Cone v. Randolph County Schools Board of Education*, 657 F. Supp. 2d 667 (M.D. N.C. 2009) in support of the Motion. In *Cone*, the parties had been litigating the appropriate educational placement for the child since 2001. *Id.* at 670. The school

system began providing the child with special education services in 1993 at various facilities within and outside of North Carolina. *Id.* In July 2001, the school system amended the child's IEP to change his placement from an out-of-state residential program to an in-state residential program. *Id.* The parents challenged the placement at the in-state residential program but lost. *Id.* at 671. The litigation terminated January 24, 2005 when the Supreme Court denied certiorari. *Id.*

In *Cone*, the school system in March 2005 sent the student an application for the in-state residential program and an IEP meeting was held but attempts to finalize the IEP were unsuccessful. The school system ended its payment for the student's out-of-state residential program when its stay-put obligation ended at the end of the 2004-2005 school year. *Id.* The student remained at the out-of-state residential program at the beginning of the 2005-2006 school year, and the parents submitted an application for the in-state residential program on September 14, 2005 but attached a thirteen-page letter discouraging admission. *Id.* at 672. There was another IEP team meeting, but the parents refused to sign the IEP which would have placed the Student at the in-state residential program and instead filed a due process challenge to the IEP. *Id.*

The Court denied tuition reimbursement, concluding that the parents forfeited any entitlement to reimbursement when they delayed and frustrated the application process for the in-state residential program. *Id.* at 676. The Court concluded that the parents "refusal to cooperate with implementation of the [in-state residential program] placement . . . constituted a refusal to consent to receive special education and related services under IDEA. When parents refuse to consent to such services, the school district no longer has an obligation to provide FAPE to the child." *Id.* at 676.

Cone is distinguishable. There is no disputing the fact that the Parents never gave explicit consent for implementation of any of the draft IEPs by signing the IEP. However, unlike in *Cone*, there has not been a judicial determination that the SMCPS' proposed placement would provide FAPE. Accordingly, this case has a very different procedural posture than *Cone*.

In looking at the plain language of the statute, I find the following highlighted language significant:

If the parent of such child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent—

(aa) the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide such child **with the special education and related services for which the local educational agency requests such consent;**

20 U.S.C.A. § 1414(a)(1)(D)(III)(aa) (emphasis added). The highlighted language is significant because it seems to limit the scope of the regulation to the specific special education and related services that the parent did not consent to. Here, the Student's argument is not that SMCPS failed to provide the Student with the "special education and related services for which the local educational agency requests such consent", i.e., the various IEPs offered by SMCPS. Instead, the argument is that those IEPs would not provide a FAPE. *See Sch. Comm. of the Town of Burlington, Mass. v. Dep't of Educ.*, 471 U.S. 359 (1985); *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993).

SMCPS did not provide nor was I able to find a case that stands for the proposition that a student must consent to special education services before effectuating a private placement or forfeit her right to seek reimbursement for the private placement. However, I did find that, in

promulgating changes to its regulations—specifically, 34 C.F.R. section 300.300, the United States Department of Education reasoned that:

Under §300.300(b)(1), parental consent is for the initial provision of special education and related services generally, not for a particular service or services. . . . In situations where a parent disagrees with the provision of a particular special education or related service and the parent and public agency agree that the child would be provided with FAPE if the child did not receive that service, the public agency should remove the service from the child’s IEP and would not have a basis for using the procedures in subpart E to require that the service be provided to the child. If, however, the parent and public agency disagree about whether the child would be provided with FAPE if the child did not receive a particular special education or related service, the parent may use the due process procedures in subpart E of these regulations to obtain a ruling that the service with which the parent disagrees is not appropriate for their child.

73 Fed. Reg. 231, 73011 (Dec. 1, 2008) (codified at 34. C.F.R. section 300.300).

The case of *Forest Grove School District v. T.A.*, 557 U.S. 230 (2009) also supports the conclusion that the Parents did not need to consent to the receipt of special education services before placing the Student at [REDACTED] and seeking reimbursement. In *Forest Grove*, the school system argued that the 1997 amendments to the IDEA, and specifically 20 U.S.C.A.

§ 1412(a)(10)(c)(ii),⁴⁹ only authorize reimbursement for private placement where the child has previously received special-education services through the public school. The Court disagreed, finding that the statutory provision at issue, because it uses the word “may”, “is best read as elaborating on the general rule that courts may order reimbursement.” 557 U.S. at 242. The Court also relied upon the absence of any clear legislative intent to abrogate its decisions in *Burlington* and *Carter*, which established that the courts have broad authority to grant appropriate relief including reimbursement for the cost of private special education. *Id.* at 243.

⁴⁹ “If the parents of a child with a disability, **who previously received special education and related services under the authority of a public agency**, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.” (emphasis added).

The Parents remained engaged in the IEP process even though they refused to agree to the SMCPS' proposed placement. In accord with the logic of the Court in *Forest Grove*, they did not have to first consent to and receive special education services under an IEP they considered inappropriate before filing a due process claim. For these reasons, I deny the Motion.

Analysis

The Student argued that SMCPS committed procedural and substantive violations of the IDEA that denied the Student a FAPE. The Student argued that SMCPS committed three procedural violations. First, SMCPS predetermined the Student's placement. Second, SMCPS failed to respond to or did not follow the collective input of the Student's IEP team participants. I will consider these first two arguments together since they are inextricably linked. Third, SMCPS failed to have an IEP in place at the beginning of the 2022-2023 school year.

After considering the evidence, I conclude that SMCPS listened to the Parents' input and did not predetermine the Student's service hours or placement. Further, I conclude that the SMCPS' failure to have an IEP in place for the 2022-2023 school year did not impede the Student's right to a FAPE because the Parents obstructed the IEP process by failing to provide Dr. [REDACTED]'s full evaluation to SMCPS until right before the start of the 2022-2023 school year. I conclude that the SMCPS' failure to have an IEP in place for the 2022-2023 school year did not deprive the Student of educational benefit because the Parents would not have accepted anything other than a private placement at [REDACTED].

On the substantive side, I conclude that the Student has not proven that special education classes were required for her non-core academic classes. Further, I conclude that SMCPS did not fail to consider the Student's progress at [REDACTED]. Accordingly, the Student has failed to prove that the IEP at issue would not have provided a FAPE.

I. *Procedural Violations*

Emphasizing the importance of the procedural safeguards embodied in title 20, section 1415 of the U.S.C.A., the Supreme Court explained in *Board of Education of the Hendrick Hudson Central School District, Westchester County v. Rowley*:

When the elaborate and highly specific procedural safeguards embodied in § 1415 are contrasted with the general and somewhat imprecise substantive admonitions contained in the Act,^[50] we think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process as it did upon the measurement of the resulting IEP against a substantive standard. We think that the congressional emphasis upon full participation of concerned parties throughout the development of the IEP . . . demonstrates the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP.

458 U.S. 176, 205–06 (citation omitted). The essence of the procedural safeguards under the IDEA is to ensure full and meaningful participation of “concerned parties,” including the parents of a child, throughout the IEP development process. *See DiBuo v. Bd. of Educ. of Worcester Cnty.*, 309 F.3d 184, 191 (4th Cir. 2002).

Congress amended the IDEA in 2004 to provide that certain procedural violations may result in a finding that a child was denied a FAPE. In relevant part, the IDEA states the following:

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education *only if* the procedural inadequacies—
(I) impeded the child’s right to a free appropriate public education;

⁵⁰ The Supreme Court in *Rowley* interpreted what was titled the Education for All Handicapped Children Act (EHA), the predecessor to the IDEA.

(II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or
(III) caused a deprivation of educational benefits.

20 U.S.C.A. § 1415(f)(3)(E)(ii) (emphasis added); *see also* 34 C.F.R. § 300.513(a)(2).

A. Failure to Consider the Parents' Input & Predetermination

i. Applicable Law

Predetermination is a type of procedural violation that consists of deciding a student's placement before developing an IEP. *See* 34 C.F.R. § 300.116(b)(2) ("In determining the educational placement of a child with a disability . . . each public agency must ensure that . . . [t]he child's placement . . . [i]s based on the child's IEP . . ."). "A school district violates the IDEA if it predetermines placement for a student before the IEP is developed or steers the IEP to the predetermined placement." *K.D. ex rel. C.L. v. Dep't of Educ.*, 665 F.3d 1110, 1123 (9th Cir. 2011). "Predetermination violates the IDEA because the [IDEA] requires that the placement be based on the IEP, and not vice versa." *Id.* (citing *Spielberg ex rel. Spielberg v. Henrico Cnty. Pub. Sch.*, 853 F.2d 256, 259 (4th Cir. 1988)).

Courts have declined to find predetermination where school staff come to IEP meetings with a proposal in mind, as long as they remain open to input from the parents and their experts. Discussing *Spielberg*, the United States District Court for the District of Maryland explained that "while a school system must not finalize its placement decision before an IEP meeting, it can and should have given some thought to that placement." *Hanson ex rel. Hanson v. Smith*, 212 F. Supp. 2d 474, 486 (D. Md. 2002). The court also discussed *Doyle v. Arlington County School Board*, 806 F. Supp. 1253, 1262 (E.D. Va. 1992), *aff'd*, 39 F.3d 1176 (4th Cir. 1994), and stated "if the school system has already *fully* made up its mind before the parents ever get involved, it

has denied them the opportunity for any meaningful input.” *Hanson*, 212 F. Supp. 2d at 486 (emphasis added). Citing *Doyle*’s discussion of *Spielberg*, the court continued, “*Spielberg* required the school board to come to the table with an ‘open mind,’ but did not require them to come to the IEP table with a ‘blank mind.’” *Id.* (quoting *Doyle*, 806 F. Supp. at 1262).

As the Sixth Circuit succinctly offered, “predetermination is not synonymous with preparation.” *Nack ex rel. Nack v. Orange City Sch. Dist.*, 454 F.3d 604, 610 (6th Cir. 2006). “[S]chool evaluators may prepare reports and come with pre-formed opinions regarding the best course of action for the child as long as they are willing to listen to the parents and parents have the opportunity to make objections and suggestions.” *Id.* (quoting *N.L. ex rel. Ms. C. v. Knox Cnty. Sch.*, 315 F.3d 688, 694 (6th Cir. 2003)); *see also G.D. v. Westmoreland Sch. Dist.*, 930 F.2d 942, 947–48 (1st Cir. 1991) (finding no predetermination when school district came to team meeting with draft IEP and approved at subsequent meeting); *K.D.*, 665 F.3d at 1123 (finding no predetermination where district had a placement in mind before meeting but considered other options and reasonably rejected them).

Meaningful parental participation has not been interpreted by courts to mean that school staff cannot disagree with parental input. “To avoid a finding of predetermination, there must be evidence the state has an open mind and might possibly be swayed by the parents’ opinions and support for the IEP provisions they believe are necessary for their child.” *R.L. ex rel. O.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014). “A state can make this showing by, for example, evidence that it ‘was receptive and responsive at all stages’ to the parents’ position, even if it was ultimately rejected.” *Id.* (quoting *Doyle*, 806 F. Supp. at 1262).

ii. Discussion

The Student acknowledged that (1) the Parents presented at every IEP meeting; and (2) SMCPS held IEP team meetings and listened to the Parents. Nevertheless, the Student argued that SMCPS significantly impeded the Parents' opportunity to participate in the decisionmaking process regarding the provision of FAPE when SMCPS (1) failed to consider the Parents' input and (2) failed to explain its position regarding the number of special education service hours and placement. I conclude that the Student has not proven that SMCPS failed to consider the Parents' input. I further conclude that the Student has not proven that SMCPS failed to explain its position regarding special education service hours and placement.

The IEP team continuously amended the IEP between December 2021 and May 2023. Beginning in February 2022, the IEP team met eight times in total, culminating in the May 2023 meeting. Dr. [REDACTED] and the Parents were present at every meeting. Mr. Eig was present for four of the eight meetings, beginning with the August 2022 meeting.⁵¹ The Parents, Mr. Eig, and Dr. [REDACTED] were active participants in each meeting. Nearly every time that the Parents requested that a goal be added or that language for a goal be tweaked, SMCPS not only considered but also complied with the Parents' request. Therefore, it is clear that SMCPS did not fail to consider the Parents' input.

At the first IEP team meeting in February 2022, the IEP team reviewed the December 10, 2021 draft IEP and considered the goals that the Parents sent on December 8, 2021. P-24-1. The Parents had suggested a reading phonics goal, and SMCPS informally assessed the Student and determined that a reading fluency goal with a reading phonics objective was more appropriate

⁵¹ The Student retained Mr. Eig in the summer of 2022, which is why he did not participate in the prior IEP meetings.

because the Student demonstrated mastery of the skills in the Parents' proposed goal. *Id.* The Parents expressed verbal disagreement with the goal. *Id.*

At the second IEP team meeting in May 2022, the IEP team considered Dr. [REDACTED]'s report. P-28. After reviewing Dr. [REDACTED]'s report, the IEP team changed the Student's disability coding to Multiple Disabilities for her OHI and her SLDs in reading (dyslexia), written language, and mathematics. P-28-1.

At the third IEP team meeting in June 2022, the IEP team reviewed the draft IEP. P-29. The PWN reflects only that the "parents, and their advocate, expressed disagreement with the services the team determined were appropriate for [the Student] to achieve the goals agreed upon by the team." P-29-1. Ms. [REDACTED] testified regarding the input from the Parents and Dr. [REDACTED] at this meeting, which included suggestions that the IEP team make three of the goals less rigorous. *See* findings of fact (FOF) 70-74. The IEP team did not agree to the Parents' suggestions, and Ms. [REDACTED] explained that SMCPS wanted goals that pushed the Student to show academic growth over the course of an entire year and that reflected what she was capable of doing, such as constructing a writing piece. [REDACTED] test., 9/28/23, T. 948-954.

At the fourth IEP team meeting in August 2022, the IEP team reviewed the unredacted Dr. [REDACTED] report and a letter from Dr. [REDACTED] that recommended additional goals for reading comprehension and written language and that the IEP address the Student's social/emotional needs due to the recent trauma she suffered. P-41. The IEP team discussed adding an Emotional Disability as the Student's primary disability. P-41-2. The Parents, Mr. Eig, and Dr. [REDACTED] stated that the Student's disability code should not be changed because she did not meet the criteria for an Emotional Disability and instead requested a social/emotional goal be added to the IEP. *Id.* The SMCPS members agreed and did not change the Student's disability code to

Emotional Disability. Mr. Eig told the IEP team that the Student would be attending [REDACTED] for the 2022-2023 school year. *Id.* The IEP team agreed to reconvene to review proposed goals in the areas of reading comprehension, written expression, phonemic awareness, and social/emotional. *Id.*

At the fifth IEP meeting in September 2022, the IEP team met to review the revised IEP with new goals that had been suggested by the Parents. P-44. The Parent spoke regarding the Student's start to the school year at [REDACTED]. P-44-2. The IEP team asked the Parents to provide supplemental data from [REDACTED]. *Id.* Because Dr. [REDACTED], school psychologist, had to leave the meeting, the IEP team ended the meeting. *Id.* At the sixth IEP meeting in October 2022, the IEP team, including the Parents, Mr. Eig, and Dr. [REDACTED], agreed to suspend the meeting until the family sent documentation of the Student's progress at [REDACTED] and Dr. [REDACTED] had an opportunity to speak with Dr. [REDACTED], [REDACTED] staff, and Ms. [REDACTED], the Student's therapist. P-45. The Parent spoke regarding the Student's first semester at [REDACTED]. P-45-2.

At the seventh IEP meeting in January 2023, the IEP team met to review the draft IEP. P-48. The IEP team updated the present levels, goals and objectives, supplementary aids and services, and the secondary transition plan based on information given by Dr. [REDACTED], [REDACTED] staff, and Ms. [REDACTED]. P-48-1. The IEP team agreed to revise the social emotional/behavioral, reading phonemic awareness, reading fluency, and written language expression goals – all of these changes were made at the suggestion of Mr. Eig and Dr. [REDACTED]. *See FoF 127-131.* The Parent provided an update regarding the Student's testimony at her biological father's trial. P-48-2. In response, Dr. [REDACTED] proposed an extra therapy session be added to the IEP to match what the Student was receiving from [REDACTED] at the time of the meeting. Mr. Eig stated that all the Student's classes should be small and taught by a special

education teacher. The SMCPS participants agreed that small classes were appropriate for the Student's core academic classes but stated that they did not believe that sufficient data existed to justify a full-day special education setting for the Student. Ms. [REDACTED] explained that she believed that the Student's non-core subjects could be in the general education setting with the supports from the IEP.

At the eighth IEP meeting in May 2023, the IEP team met at the request of the Parents to consider information from the Parents. P-55. In the meeting, the IEP team considered the Parent's extensive update, quarterly reports from [REDACTED], an update from Ms. [REDACTED], and an update from Ms. [REDACTED]. P-55-2. Dr. [REDACTED] gave an update regarding her conversation with the Student's therapist. In this meeting, Mr. Eig stated that the Student needed a residential placement, and advised that the purpose of the meeting was to revisit the question of whether the Student needed a full-time special education program. In response, Ms. [REDACTED] stated, "we do contend that we can continue to meet [the Student's] needs here in a comprehensive high school with that therapy piece." P-82. Mr. Eig ultimately stated that he did not want to hear from individual SMCPS IEP team members regarding why they thought this way.

The above record of the IEP meetings shows that the SMCPS IEP team members gave the Parents, Mr. Eig, and Dr. [REDACTED] the ability to meaningfully participate in the process of drafting the IEP. The proposed IEP changed and became more intensive over time because of the input of the Parents, Mr. Eig, and Dr. [REDACTED]. Goals were added, service hours increased, and supplementary aids and services expanded based on their input.

Contrary to the Student's closing argument, the SMCPS members did consider the intensity of services needed and placement - this was done at the January 2023 meeting. Placement first became an issue at the August 2022 meeting when Mr. Eig informed SMCPS that

the Student would attend [REDACTED] and that her needs could not be met in a comprehensive high school. The PWN for the August 2022 meeting does not indicate that there was any discussion regarding placement. Further, the Student did not ever raise the prospect of a private placement and give SMCPS the opportunity to respond before placing the Student at [REDACTED].

At the January 2023 meeting, when it was time to discuss services and placement, Mr. Eig stated that it was the Student's "official position" that the discussion should be deferred until the various revisions to the IEP had been made. P-81. Ultimately, Ms. [REDACTED] started to discuss services and placement and the IEP team discussed whether a full-time special education program was needed for the Student. The Parents and SMCPS disagreed on this point. There was no further discussion of services or placement at this meeting, as the IEP team still had to make revisions to the IEP based on the discussion at the meeting.

As discussed further below in relation to the claim of predetermination, there was only minimal discussion of services or placement at the May 2023 meeting, but that was because after Ms. [REDACTED] began the discussion with "we do contend that we can continue to meet [the Student's] needs here in a comprehensive high school with that therapy piece," Mr. Eig interrupted to ask her how she knew what the other SMCPS team members thought about the new information presented at the meeting. P-82. During the course of their heated exchange, Mr. Eig told Ms. [REDACTED] two times that he did not want to hear from those other team members. *Id.* Thus, the Student cannot now argue that the SMCPS team members failed to explain their position regarding service hours and placement at the May 2023 meeting when Mr. Eig expressly told them not to explain their position at the meeting.

To support her predetermination argument, the Student stated that SMCPS never considered the Student's need for full-time special education. This is not factually correct. At

the January 2023 meeting, Mr. Eig stated his belief that the Student need a full-time special education program and there was a discussion regarding this option. Ms. [REDACTED] stated that she did not think there was data to support a full-time special education program for the Student. There was discussion of placement at the January 2023 and May 2023 meetings, although as noted above the discussion at the May 2023 meeting was brief because of Mr. Eig's statements that he did not want to hear from all of the SMCPS team members.

This was not a situation where the IEP was fully developed and presented to the Parents as a *fait accompli*. See *Hanson ex rel. Hanson v. Smith*, 212 F. Supp. 2d 474, 486 (D. Md. 2002). After multiple prior meetings, it is expected that the SMCPS team would come to the January and May 2023 meetings prepared with a proposal for placement - this does not constitute predetermination.

In *Nack*, three separate IEP meetings were held concerning the student's IEP where the parent, who "was always able to be a significant part of the discussions," actively participated in each of these meetings. 454 F.3d at 610. Prior to and during these meetings, the parent "repeatedly made school officials aware" of her disapproval of her son's participation in a special education classroom and her desire for him to remain in the general regular education setting. *Id.* "While there clearly had been ongoing discussions concerning [the student] and certain portions of the IEP had been drafted in advance," the Court explained in finding no predetermination, "[the parent] was given many opportunities to comment on the IEP and, by every indication, [the school system] took her suggestions seriously." *Id.* at 611. The Court elaborated further that "school evaluators may . . . come with pre-formed opinions regarding the best course of action for the child as long as they are willing to listen to the parents and parents have the opportunity to make objections and suggestions." *Id.*

Here, the Student has not identified a single situation where the Parents did not have the opportunity to make objections or suggestions at the eight IEP meetings. It is only because, in the end, the SMCPS team members disagreed with the need for a full-time special education program and a private placement that the Student complains of predetermination and failure to consider parental input. The Parent provided input regarding the Student's time at [REDACTED] in every IEP meeting during the 2022-2023 school year. The SMCPS team members took his input, and other input provided on behalf of the Parents, seriously as evidenced by the fact that the January 2023 draft IEP was much more intensive than what had been proposed in August 2022. In fact, the IEP team amended the draft IEP to reflect much of what was requested by Mr. Eig at the January 2023 meeting, including small class sizes and special education classes for the Student's core academic subjects.

Finally, Ms. [REDACTED]'s statement during the May 2023 meeting does not constitute evidence of predetermination. There was no discussion of changing the IEP in any way during the May 2023 meeting, and Mr. Eig stated that the only thing he wished to discuss and the reason for calling the meeting was to reopen discussion regarding the intensity of services, even though this had been discussed at the January 2023 meeting, SMCPS had explained its position at that time, and SMCPS had sent a draft IEP that reflected their position at the January 2023 meeting. The only updates during the May 2023 meeting came from the Parent and Dr. [REDACTED], relaying her conversation with the Student's therapist. These updates were not a ringing endorsement of the Student's progress at [REDACTED], as they revealed (for the first time) that the Student had been ordered to leave [REDACTED] for a mental health break in February 2023, had been engaged in substance use, and, per her therapist, the Student seemed to have too much autonomy at [REDACTED]. The statement that sent the meeting into a tailspin - Ms. [REDACTED]'s statement that SMCPS could

meet the Student's needs in a comprehensive high school "with that therapy piece" - was actually directly responsive to what was presented in the May 2023 meeting because the issues discussed by the Parent and Dr. [REDACTED] related to the Student's social/emotional functioning and need for therapy. Accordingly, this statement provides further evidence that SMCPs considered the Parents' input at the May 2023 meeting and did not engage in predetermination.

B. Failure to Have IEP In Place for 2022-2023 School Year

i. Applicable Law

The IDEA states that "[a]t the beginning of each school year, each local educational agency, State educational agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in the agency's jurisdiction, an individualized education program, as defined in paragraph (1)(A)." 20 U.S.C.A. § 1414(d)(2)(A).

ii. Analysis

SMCPs did not have an IEP in place for the Student on the first day of the 2022-2023 school year. Therefore, a procedural violation occurred. It is thus necessary to determine whether that violation "impeded the child's right to a free appropriate public education" or "caused a deprivation of educational benefits." I conclude that the violation did not impede the Student's right to a FAPE or cause a deprivation of educational benefits.

In *MM v. School District of Greenville County*, 303 F.3d 523 (4th Cir. 2002), the Court dealt with a nearly identical fact pattern. MM received special education services and was enrolled in a public preschool program. *Id.* at 528. In May 1996, the IEP team convened and proposed an IEP that the parents objected to. *Id.* at 529. The parents insisted that an in-home autism treatment should be part of the IEP. *Id.* The parents cancelled the final IEP meeting that had been scheduled for August 22nd. *Id.* The parents then unilaterally placed MM in a private

kindergarten program and she never attended classes in the public school district during the 1996-1997 school year. *Id.* The Court concluded that the Student had not suffered any educational loss because the parents would not have accepted any IEP that did not include reimbursement for the in-home autism program. *Id.* at 535. The Court noted that “it would be improper to hold [the] School District liable for the procedural violation of failing to have the IEP completed and signed, when that failure was the result of [the parents’] lack of cooperation.” *Id.* at 535.

The facts here are nearly identical to those in *MM*. First, the Parents failed to fully cooperate in the IEP process. Regardless of their motive, they withheld critical information that was necessary to finalize the IEP. Dr. ██████’s full report was in their hands from at least April 2022, and they did not share the unredacted report with SMCPs until August 17, 2023, just prior to the start of the 2022-2023 school year. Therefore, the SMCPs’ failure to develop an IEP with a social/emotional goal by the start of the school year was entirely the fault of the Parents.⁵²

Further, like in *MM*, the record is clear that the Parents would not have accepted anything less than a private placement at the August 2022 and the January 2023 meetings. On August 18, 2022, ██████ accepted the Student. Therefore, before the August 24, 2022 meeting, the Parents already knew that the Student would be attending ██████ for the 2022-2023 school year beginning in September 2022. ██████ test., 9/12/23, T. 318. At the meeting, the Parents informed SMCPs that they would be placing the Student at ██████ and that she would not be available for any assessments by SMCPs. Mr. Eig stated that the Student’s needs could not be

⁵² The Student argued that even though Dr. ██████ had specifically addressed the Student’s trauma in his full report, SMCPs should have done its own evaluation. I do not agree. If the Student wanted the Student’s PTSD to be addressed in the IEP, she could have provided the full report in April 2022.

met in a comprehensive high school in St. Mary's County. The Parent explained his rationale for seeking a residential placement during the August 2022 IEP meeting:

- “he has lost trust in the school system and that assessments conducted by SMCPS were coached and not shared with the family.
- SMCPS has resisted the IEP for months.
- SMCPS has failed [the Student] as she is a ninth grader scoring at a third-grade level.
- Mr. [REDACTED] shared his concern about [the Student's] trauma due to an incident in the community as well as a peer committing suicide due to that incident.
- Mr. [REDACTED] shared that he refuses to send [the Student] to [REDACTED] HS due to the most recent shooting that occurred.
- Mr. [REDACTED] shared his concern about the upcoming trial due to the community incident and did not want [the Student] to be subjected to that within the county.”

P-41-2. These do not sound like the statements of an individual who is willing to consider placement at SMCPS. Notably, none of these assertions have anything to do with the content of the IEP. Therefore, on the basis of the statements of the Parent and Mr. Eig, it is reasonable to infer that the Parents would not have accepted any FAPE offered by SMCPS that placed her at a school in SMCPS. Accordingly, the Student has not proven any loss of educational benefit caused by the SMCPS' failure to have an IEP in place at the start of the 2022-2023 school year.

The Student cited to *Gerstmyer v. Howard County Public Schools*, 850 F. Supp. 361 (D. Md. 1994), but this case is factually distinguishable. In *Gerstmyer*, the parents requested that the

student be evaluated in May, but the school system told the parents that the evaluation could not take place until the fall. *Id.* at 365. The parents obtained a private evaluation and advised the school system of the results on August 5, but the school system did not schedule a meeting until September 21. *Id.* The school system then postponed this meeting so that they could do additional evaluations, even though they had refused to do an evaluation in May. *Id.* The meeting was rescheduled for October 23, and then postponed again by the school system. *Id.* When the meeting finally took place on October 30, the school presented a boilerplate IEP that was not individualized to the student's needs. *Id.*

Clearly, the facts in *Gerstmyer* are very different. SMCPS timely evaluated the Student and proposed an IEP. The Parents never agreed to an IEP during the 2021-2022 school year. The recommendations from the Student's private evaluation were considered and mostly adopted by the IEP team. The Parents withheld a key portion of their expert's report that had information that needed to be in the IEP, thereby preventing the IEP team from finalizing the IEP by the beginning of the school year. Therefore, *Gerstmyer* is distinguishable.

II. Substantive Violations

The Student argued that the proposed IEP was not reasonably calculated to provide a FAPE because it: (1) contained only part-time special education; and (2) did not acknowledge the Student's progress at [REDACTED]. I conclude that the Student has not shown that the proposed IEP was not reasonably calculated to provide a FAPE.⁵³ The Student did not prove that full-time special education was necessary in order for the IEP to provide a FAPE. The Student also did

⁵³ Because I conclude that the Student has failed to prove that the IEP was not reasonably calculated to provide a FAPE, I do not reach the question of whether reimbursement for [REDACTED] is appropriate. The portion of the SMCPS Motion for Judgment dealing with [REDACTED] becomes moot as a result of my decision that the Student did not meet her burden of proving that the IEP was not reasonably calculated to provide a FAPE.

not prove that SMCPS failed to consider the Student's progress at [REDACTED] when it drafted the January 2023 IEP.

A. Applicable Law

The IDEA requires “that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living.” 20 U.S.C.A. § 1400(d)(1)(A); *see also* Md. Code Ann., Educ. § 8-403 (2022).

The IDEA defines a FAPE as special education and related services that:

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (D) are provided in conformity with the [IEP] required under section 1414(d) of this title.

20 U.S.C.A. § 1401(9); *see also* Md. Code Ann., Educ. § 8-401(a)(3) (2022).

The United States Supreme Court was first called upon to interpret what Congress meant by a FAPE in *Rowley*. In *Rowley*, the Court held that if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a FAPE. *Id.* at 189. The Court explicitly rejected the petitioner's argument that the IDEA requires the provision of services sufficient to maximize each child's potential commensurate with the opportunity provided for other children. *Id.* at 198. Instead, the Court concluded that the basic floor of opportunity provided by the IDEA consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the child. *Id.*

at 201. The Court did not seek to define educational benefit but held that an IEP should be reasonably calculated to enable the child to receive passing marks and advance from grade to grade. *Id.* at 203-204.

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, the agency must offer an IEP reasonably calculated to enable a student to make progress appropriate in light of the student's circumstances. *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017). Consideration of the student's particular circumstances is key to this analysis; the Court emphasized in *Endrew F.* that the "adequacy of a given IEP turns on the unique circumstances of the child for whom it was created." *Id.* at 1001.⁵⁴

Ultimately, a disabled student's "educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives." *Id.* at 1000. Moreover, the IEP must be reasonably calculated to allow a child to advance from grade to grade, if that is a "reasonable prospect." *Id.*

The IEP is the "primary vehicle" through which a public agency provides a student with a FAPE. *See M.S. ex rel Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009).

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

⁵⁴ The United States Court of Appeals for the Fourth Circuit reexamined its precedent to bring it in line with the standard announced by the U.S. Supreme Court in *Endrew F.* *See R.F. by and through E.F. v. Cecil Cnty. Pub. Sch.*, 919 F.3d 237 (4th Cir. 2019).

(iv) the academic, developmental, and functional needs of the child.

20 U.S.C.A. § 1414(d)(3)(A).

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). . . ." 34 C.F.R. § 300.320(a)(1)(i). To comply with the IDEA, an IEP must, among other things, allow a student with a disability to advance toward measurable annual academic and functional goals that meet the needs resulting from the child's disability or disabilities, by providing appropriate special education and related services, supplementary aids, program modifications, supports, and accommodations. 20 U.S.C.A. § 1414(d)(1)(A)(i)(II), (IV), (VI)(aa).

In addition to the IDEA's requirement that disabled children receive a FAPE, the law requires that, to the maximum extent appropriate, children with disabilities be educated with their non-disabled peers. 20 U.S.C.A. § 1412(a)(5). This requirement is referred to as "least restrictive environment." The IDEA mandates that removal of children with disabilities from the regular educational environment shall occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C.A. § 1412(a)(5)(A). Accordingly, in such a case a FAPE might require placement of a student in a private school setting that would be fully funded by the student's public school district. 34 C.F.R. § 300.115; COMAR 13A.05.01.10B.

An agency is required to ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. 34 C.F.R.

§ 300.115(a). The continuum is required to include alternative placements such as instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. 34 C.F.R. § 300.115(b)(1). The continuum must also allow for supplementary services to be provided in conjunction with regular class placement. 34 C.F.R. § 300.115(b)(2).

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child. 34 C.F.R. § 300.104. The determination as to whether a student needs services beyond the regular school day to receive any educational benefit is dependent on the particular facts of a case. *Burke Cnty. Bd. of Educ. v. Denton*, 895 F.2d 973 (4th Cir. 1990). Generally, if services provided in a residential facility are necessary for a student to make educational progress, then residential placement is required to provide the student with a FAPE; however, residential placement is not warranted when the residential placement merely “enhances an *otherwise sufficient* day program.” *Burke*, 895 F.2d at 980, *quoting Abrahamson v. Hershman*, 701 F.2d 223, 227 (3rd Cir. 1983) (emphasis in original). Even though mental health issues can interfere with academic progress, the IDEA does not make public school systems responsible for residential placements that primarily address mental health issues. *A.H. v. Arlington Sch. Bd.*, 2021 WL 1269896 (E.D.Va. 2021) (citations omitted).

B. Analysis

My analysis focuses on whether the January 2023 IEP was reasonably calculated to enable the Student to make progress appropriate in light of her circumstances. *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017); *see also R.F. by and through E.F. v. Cecil*

Cnty. Pub. Sch., 919 F.3d 237 (4th Cir. 2019).⁵⁵ Because the discussion about placement only occurred during the January 2023 meeting, the IEP finalized after that meeting is the operative IEP. The Student argued only that the part-time special education portion of the IEP did not provide a FAPE, but the analysis must necessarily focus on the entire IEP, since the services and placement portion of the IEP flow from the goals and objectives.

i. The January 2023 IEP

The IEP team completed a draft IEP in January 2023. The IEP contained the following special considerations and accommodations:

- general administrative directions clarified;
- redirect student; and
- spell check or external spell check device.

P-48-42. The IEP team documented its basis for these accommodations as follows: “[The Student] has difficulty remembering directions and information in general over short periods of time and struggles to recall directions and other pertinent information. . . . Visual and verbal cues to redirect [the Student] to task will support her ability to bring work to completion and review it for accuracy.” *Id.*

The IEP also contained the following accessibility features:

- text to speech;
- small group;

⁵⁵ The IEP team also proposed a draft IEP in June 2022. The Parents never consented to this IEP. After the Parents belatedly provided Dr. [REDACTED]’s full report to SMCPS in August 2022, the IEP team edited the June 2022 draft IEP. I concluded above that the SMCPS’ failure to have an IEP in place at the start of the 2022-2023 school year was entirely the fault of the Parents and did not impede the Student’s right to a FAPE or deprive the Student of educational benefits. Therefore, the IEP at issue for the 2022-2023 school year was the January 2023 IEP, which incorporated recommendations from Dr. [REDACTED]’s full report.

- frequent breaks; and
- reduce distractions to self.

Id. The IEP team documented its basis for these accessibility features as follows: “[The Student] has difficulty maintaining focus especially in academic classes which require her to sustain attention to a task and have the capacity for goal-directed persistence.” P-48-43.

The IEP contained instructional and assessments accommodations. P-48-43, -44. These included notes and outlines “needed to help [the Student] focus on the instructional components instead of writing notes due to her poor processing speed.” P-48-43. Also added were calculation devices and mathematics tools because of the Student’s processing weaknesses. P-48-43, -44. The IEP specified that the Student should be given up to 50% more time than her non-disabled peers for in-class assignments to accommodate her poor cognitive processing speed. P-48-44.

Regarding supplementary aids and services, the IEP stated, “[d]ue to [the Student’s] weaknesses in decoding fluency, oral reading fluency, pseudoword decoding, and spelling (resulting from her Dyslexia), executive functioning skills, and attention/concentration abilities, as well as her extremely low cognitive processing speed, [the Student] requires supplementary aids and services to access grade level curriculum in all areas of the school day.” P-48-51. The IEP listed the following supplementary aids, services, program modifications and supports:

- alternative ways to demonstrate learning;
- audiobooks;
- visual representation of tasks;
- repeat and/or paraphrase information;
- use of word bank;

- frequent and/or immediate feedback;
- organizational aids;
- proofreading checklist;
- break down assignments into smaller units;
- manipulatives and/or sensory activities;
- allow the Student to volunteer rather than calling on her;
- feedback and redirection in a neutral tone with a quiet voice;
- check for understanding;
- home-school communication system;
- break pass;
- structured time for organization of materials;
- check-in, check-out system;
- reinforce positive behavior;
- preferential seating; and
- access to laptop with spell and grammar check.

P-48-45-51.

The IEP had ten total goals. P-48. The goals were in the following areas:

- reading phonemic awareness;
- reading phonics;
- reading fluency;
- reading comprehension;
- math calculation;

- math problem solving;
- written language mechanics;
- written language expression;
- social emotional/behavioral; and
- self-management.

P-48.

For the services section of the IEP, the document stated that the Student would require specialized instruction in her core academic classes of ELA, math, science, and social studies.

P-48-63-65. The Student would also have a daily check-in/check-out with a case manager outside of the general education classroom to support her self-management goal. P-48-63, -65.

The Student would also meet with a school counselor, social worker, or psychologist twice weekly for thirty minutes to support her social emotional/behavioral goal. P-48-65. The IEP specified that the Student would receive “specialized instruction in reading to provide a Tier 3 multisensory research-based reading intervention to support her phonemic awareness and phonics goals.” P-48-64.

In total, the IEP proposed that 53.35% of the Student’s day be spent in the special education placement, with seventeen hours and forty minutes each week. P-48-66. This represented a major increase from what had been proposed by the IEP team in June 2022, before SMCPSS received Dr. [REDACTED]’s full report. The number of hours spent in special education classes increased by more than a factor of two.

As noted above, the Student did not argue that the substance of the IEP was deficient in any way, just that the proposed services would not provide the Student with a FAPE. From August 2022, on the SMCPSS team members agreed to every request by the Parents to amend the

IEP goals and supplementary aids. Further, the Student did not identify any recommendation from Dr. [REDACTED]'s full report that is missing from the January 2023 IEP.

Most importantly, Dr. [REDACTED] recommended in his report that the Student (1) "requires placement in a small, highly structured classroom for core academic instruction given significant deficits in multiple areas of academic functioning" and (2) "requires access to a science-based reading program." P-27-18. The January 2023 IEP is consistent with these recommendations.

ii. The Need for a Full-Time Special Education Program

The PWN for the June 2022 meeting reflects that there was disagreement as to the services in the IEP, but there is no indication that the Parents identified the need for a full-time special education program at that meeting. P-29. In fact, the Parent admitted in his testimony that the issue of whether the Student could be successful in general education classes only became apparent once the Student spent the 2022 summer at [REDACTED]. [REDACTED] test., 9/11/23, T. 218-219. In other words, only after the Parents had already walked away from the June 2022 IEP meeting and declined to consent to the receipt of special education services did it become apparent to the Parent that general education classes for non-core academic subjects at SMCPS would not be appropriate for the Student.

It is notable that Dr. [REDACTED] did not recommend a full-time special education placement in his July 2022 letter to SMCPS. The first statement that the Student's needs could not be met in a comprehensive high school came from Mr. Eig at the August 2022 meeting. P-41-2. The PWN for that meeting does not reflect the rationale, if any, offered by Mr. Eig for why the Student needed a full-time special education program. The timing of Mr. Eig's raising of this issue, and the lack of a rationale, is conspicuous.

At the August 2022 meeting, Mr. Eig's statement that the Student's needs could not be met in a comprehensive high school was presented to the team as a conclusion and the basis for the private placement without any discussion ever having taken place and with the team still needing to draft a social/emotional goal after having just received Dr. [REDACTED]'s full report days before the meeting. The Parent identified the following reasons for the private placement: (1) the Student's trauma related to her biological father's sexual abuse; (2) the upcoming trial related to the sexual abuse; and (3) a shooting that occurred at [REDACTED] High School. These reasons do not relate to the IEP that was in place at the time of the August 2022 meeting. The trauma had not yet been addressed in the IEP because of the Parents' decision to withhold Dr. [REDACTED]'s full report. Thus, the IEP team had no ability to address the trauma or plan for the upcoming trial because the Student was no longer in St. Mary's County. Further, the shooting at [REDACTED] High School has nothing to do with the Student's IEP.

Discussion regarding the need for a full-time special education placement did occur at the January 2023 meeting. The Parents stated their opinion that the IEP should provide that all the Student's classes will be outside of general education. SMCPS stated that it was not sure it had data to support a full-time special education program for the Student. Ms. [REDACTED] stated that the Student could be in the general education environment for her non-core subjects such as art and PE with the supports from the IEP. Other SMCPS team members agreed.

Mr. Eig suggested that there was "utterly no data to support that." P-81. However, there was utterly no data, nor was there any recommendation from Dr. [REDACTED], that the Student needed

to be in special education classes for non-core subjects such as Art and PE.⁵⁶ In order to move to a more restrictive setting on the LRE continuum, the IEP team needed data or an evidence-based recommendation to support the need for a more restrictive setting for these classes.

The Student argued that [REDACTED] was the proposed placement from the IEP team. In fact, there was never any discussion of [REDACTED] as the placement. The SMCPS' witnesses testified uniformly that the reason that [REDACTED] is listed as the service school is because it is the school that the Student was zoned for and the computer system auto populates the zoned school unless a more restrictive environment is determined to be necessary at the IEP meeting. Ms. [REDACTED] appeared at the IEP meetings to explain how the IEP would be implemented at [REDACTED] as the least restrictive environment, the Student's zoned school. At the only meeting where placement was discussed, the January 31, 2023 meeting, Ms. [REDACTED] started the conversation off by saying she wanted to discuss "[the Student] returning to [the SMCPS] into a comprehensive high school." P-81. Therefore, there was never any discussion of placement at [REDACTED]; instead, the proposed placement was a comprehensive high school within St. Mary's County.

The Student argued that SMCPS failed to present any evidence regarding the proposed placement, however, they do not have the burden of proof in this matter. The burden of persuasion only shifts once the Student has met her burden of demonstrating that the placement was not reasonably calculated to provide a FAPE. The Student did not meet this burden.

The Parent, Dr. [REDACTED], and Dr. [REDACTED] testified during the hearing that the Student needed full-time special education services. However, I did not find their testimony convincing.

⁵⁶ This case is distinguishable from *D.C. v. Bryant-James*, 675 F. Supp. 2d 115 (D. D.C. 2009), because in *Bryant-James*, the Court found that the IEP was only partially responsive to the evaluator's recommendations whereas here the IEP appears to be totally responsive to Dr. [REDACTED]'s recommendations. Further, the student in *Bryant-James* had significant auditory information processing issues that are not present in this case. *Id.*

The Parent stated that he did not believe that the Student could participate in general education classes because of what he learned at [REDACTED] and his conversations with Ms. [REDACTED] and Dr. [REDACTED]. [REDACTED] test., 9/11/23, T. 218-219.⁵⁷ He did not provide any details of his conversations with Ms. [REDACTED] or Dr. [REDACTED]. He did not explain what he meant by “[t]he experience at [REDACTED].” *Id.*, T. 218. Earlier in his testimony, he stated that “I don’t think there were specific emotional problems” at [REDACTED]. *Id.*, T. 204. Thus, there is no record of any issues at [REDACTED]. In fact, the documentary evidence shows that the Student only had courses in core academic areas while at [REDACTED], so her time at [REDACTED] could not furnish any evidence to demonstrate that special education was necessary for non-core academic areas. *See* P-35. While the stated reason for [REDACTED] not accepting the Student was its inability to provide her with emotional support, there are no details as to how the Student’s emotional problems impacted her ability to make progress in non-core academic areas.

Dr. [REDACTED] stated that “I thought that the IEP that they wrote for [the Student] to be implemented at [REDACTED], using a block schedule, and co-teaching, would not be enough to support her, based on her needs.” Dr. [REDACTED] test., 9/12/23, T. 428. However, she did not explain why the Student needed a full day of special education, other than the fact that she was “struggling already.” *Id.*, T. 429. Dr. [REDACTED]’ concerns regarding co-teaching were similarly vague and boil down to her speculative belief that a general education teacher at [REDACTED]

⁵⁷ The Parent also referenced a conversation he had with the Student’s therapist where the gist of the communication was that the Student should not be placed in the same school with the other girls who had been abused by the Student’s biological father. However, this statement was never shared with SMCPs and on cross-examination the Parent admitted that he was not sure who had made the statement. *See* [REDACTED] test., 9/12/23, T. 304-305. He also admitted he does not know where the girls who had been abused go to school. *Id.*, T. 305. As such, I give this testimony little weight.

could not implement the Student's IEP. *Id.*, T. 430. This same concern is apparent when Dr. [REDACTED] raised the class size issue. *Id.* Dr. [REDACTED] stated that it would be challenging to have access to emotional support on a regular basis but acknowledged on cross examination that this support would be available through SMCPs counselors and school psychologists. *Id.*, T. 431, T. 457.

In sum, Dr. [REDACTED] did not provide any details to explain why the Student could not make appropriate progress in general education classes for her non-core academic subjects. Further, the basis of Dr. [REDACTED]'s opinion is questionable, as she testified that she based her opinion on her knowledge of [REDACTED] High School from other clients who have attended that school and how their IEPs have been implemented. As noted above, the limited discussion of placement at the IEP meetings referenced a comprehensive high school in St. Mary's County, not [REDACTED].

Dr. [REDACTED] testified regarding the IEP that "I don't think she's going to be available or capable of making progress in a general education setting given the accumulative impact of her low reading, math and writing skills and the overlay of psychological trauma." Dr. [REDACTED] test., 9/11/23, T. 100. He added, "I felt a general education setting given its size, complexity, peer relationships and community understanding of her trauma would really inhibit her ability to make appropriate progress." *Id.*, T. 101. Dr. [REDACTED]'s concerns are not directly responsive to the January 2023 IEP, namely, they do not address the specific classes that were to be taught in a general education setting, such as art and PE. Like Dr. [REDACTED]'s opinion, Dr. [REDACTED]'s opinion is not specific enough to be credited as establishing a need for special education classes for non-core academic areas.

Of course, the other major problem with Dr. [REDACTED]'s testimony regarding the necessity for a full-time special education program is that it was not contained in his very extensive report

shared with SMCPSS in August 2022.⁵⁸ In fact, the recommendation from that report is that the Student needs “[p]lacement in a small, highly structured classroom for **core academic instruction.**” P-27-18 (emphasis added). Further, Dr. ██████ drafted his July 2022 report and letter requesting additional goals before the Parents placed the Student at ██████. The letter did not recommend a private or residential placement. Thus, because Dr. ██████ did not include a recommendation for a full-time special education program in either his April 2022 report or July 2022 letter, his testimony at the hearing constitutes a post-hoc attempt to edit his report from spring 2022 and the July 2022 letter to reflect the reality that the Student was at ██████. Therefore, I give Dr. ██████’s testimony on the necessity for a full-time special education program no weight.

iii. Failure to Consider Progress from ██████

The Student argued that ██████ is “working” and that SMCPSS failed to consider the Student’s progress at ██████ when it drafted the IEP. As noted above, the Student did not provide any information to SMCPSS regarding ██████ before the Parents placed her there. The limited, anecdotal information provided by ██████ before and during the January and May 2023 meetings was considered by the IEP team. The IEP team did not err in concluding that the information from ██████ did not provide enough information to justify a full-time special education program.

At the September 2022 IEP meeting, the first meeting after the Student started at ██████, the Parent shared an update regarding ██████. The IEP team requested that the Parents provide supplemental data from ██████. At the October 2022 IEP meeting, the Parent provided another

⁵⁸ Dr. ██████’s report from summer 2023 did contain a recommendation as to placement, but of course this was not before the IEP team when it drafted the IEP in January 2023.

narrative update, the Parents agreed to sign a release so that the SMCPS team members could talk with personnel from [REDACTED]. The IEP team again requested that the Parents provide supplementary data from [REDACTED]. The Parents never provided any supplementary data from [REDACTED].

On November 27, 2022, Dr. [REDACTED] spoke with Ms [REDACTED]. Ms. [REDACTED] stated that the Student was taking a reading class every other day and receiving Orton-Gillingham instruction focusing on syllables and dividing long and short sound vowels, phonemic awareness, and vocabulary. P-48-14. This minimal update, devoid of any data or indication of a baseline and progress, does not pertain at all to the Student's non-core academic classes at [REDACTED]. Ms. [REDACTED] provided a similar update for the Student's writing class. P-48-22. Ms. [REDACTED] reported no issues with peers. P-48-26.

The Student's school counselor at [REDACTED] provided an update to Dr. [REDACTED]. *See Id.* The counselor reported that the Student would need counseling one to two times per week. *Id.* The counselor reported that the Student seemed less anxious than when she first arrived at [REDACTED]. *Id.* The counselor reported that she is available on an as-needed basis for the Student, but that the Student has not needed to utilize this option to date. *Id.*

At the January 2023 IEP meeting, in addition to the updates from [REDACTED]'s therapist relayed by Dr. [REDACTED], the Parent also reported regarding the negative impact of the court proceedings on the Student's mental health and social/emotional functioning while at [REDACTED]. *See P-48-25.* In response, Dr. [REDACTED] stated at the January 31, 2023 meeting that the Student's IEP would be amended to state that she would have two counseling sessions each week, to match what she was then receiving at [REDACTED]. This action shows the responsiveness of the SMCPS team members to the input from [REDACTED] and the Parent.

On February 27, 2023, the Student's mother signed a student record release to allow Ms. [REDACTED] to receive records from [REDACTED]. P-51. On April 26, 2023, Ms. [REDACTED] provided input from the Student's counselor, advisor, and dorm parent. Again, no data was provided, just a narrative report. The Student's counselor reported that the Student was not taking advantage of the support offered and not doing well. P-54-1. The counselor reported that she meets with the Student once per week. *Id.* Ms. [REDACTED] also reported that the Student meets with a Maryland-based counselor once a week. *Id.* The [REDACTED] counselor suggested that the Student continue with twice weekly counseling sessions. *Id.* The IEP already contained this service.

The Maryland-based counselor reported that the Student had purposefully missed most appointments in the past month. P-55-27. The counselor reported an increase in risk-taking behaviors and that the Student was not taking her prescribed medication. *Id.* The counselor reported concerns that the Student had too much autonomy at [REDACTED] and that the function of her risk-taking behavior was to fit in with peers. *Id.*

Ms. [REDACTED] reported that the Student continued to need extra help to complete assignments and struggled with her executive functioning. P-54-2. Ms. [REDACTED] reported that in her ceramics and metal smithing classes, the Student had a positive attitude and was able to seek help from peers when needed. *Id.* The dorm parent reported significant improvement in the Student keeping her room clean and that the Student's peer relationships seemed to be going well. *Id.*

In short, it is clear that Dr. [REDACTED], on behalf of SMCPS, did her due diligence in terms of speaking with Ms. [REDACTED], the Student's counselor at [REDACTED], and the Student's Maryland-based counselor. [REDACTED] did not furnish any data or make any recommendation that the IEP team add something additional to the January 2023 IEP. The information that the IEP team received

shows, at best, de minimis, anecdotal progress by the Student at [REDACTED]. There is no quantitative data.⁵⁹ There are no concerns noted regarding the Student's non-core academic classes. Notably, there was no recommendation from any individual that worked regularly with the Student that she needed to be in a residential placement.⁶⁰ Accordingly, the Student has not proven that SMCPS failed to consider the Student's progress at [REDACTED].

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the SMCPS' Motion for Judgment should be denied because the Parents did not refuse to provide consent to the receipt of special education and services. COMAR 28.02.01.12E; 20 U.S.C.A. § 1414(a)(1)(D)(III) (2017); *Forest Grove School District v. T.A.*, 557 U.S. 230 (2009).

I further conclude that the Student has not proven that SMCPS failed to propose an appropriate IEP and placement for the 2022-2023 school year. 20 U.S.C.A. § 1401(9); *Bd. of Educ. of the Hendrick Hudson Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017); *R.F. by and through E.F. v. Cecil Cnty. Pub. Sch.*, 919 F.3d 237 (4th Cir. 2019).

⁵⁹ The report card from [REDACTED] contains minimal narrative specific to the Student and does not explain how she obtained the grades. Therefore, I give it little weight.

⁶⁰ In this way, this case is distinguishable from *Mrs. B. v. Milford Board of Education*, 103 F.3d 1114 (2nd Cir. 1997), where a clinical evaluator concluded that the student's debilitating emotional problems could only be properly addressed in a highly structured residential setting, and *Linda E. v. Bristol Warren Regional School District*, 758 F. Supp. 2d 75 (D. R.I. 2010), where a treating therapist of the Student testified that a residential placement was necessary for the student to make academic or emotional progress.

ORDER

I **ORDER** that the Student's request for reimbursement of tuition expenses for the 2022-2023 school year at [REDACTED] is **DENIED**.

November 21, 2023
Date Decision Issued

Brian Patrick Weeks
Administrative Law Judge

BPW/dlm
#208039

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 & Supp. 2023). 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]