

████████████████████,

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE ERIN H. CANCIENNE,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-MONT-OT-23-22267

**DECISION**

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

**STATEMENT OF THE CASE**

On August 25, 2023, the Parent filed a Due Process Complaint (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 the Montgomery County Public Schools (MCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017);<sup>1</sup> 34 C.F.R. § 300.511(a) (2022);<sup>2</sup> Md. Code Ann., Educ. § 8-413(d)(1) (Supp. 2023);<sup>3</sup> Code of Maryland Regulations (COMAR) 13A.05.01.15C(1).

I held remote prehearing conferences on October 5, 2023 and November 3, 2023. At the November 3, 2023 prehearing conference, an amended complaint was filed without objection by

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

<sup>2</sup> “C.F.R.” is an abbreviation for the Code of Federal Regulations. Unless otherwise noted, all citations herein to the C.F.R. are to the 2022 bound volume.

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

MCPS. At both prehearing conferences, the Parent was present and represented by Briana Urbina, Esquire. Stacy Swain, Esquire, represented the MCPS at both prehearing conferences.

I held the hearing on December 6, 2023, January 5 and 22, 2024, February 2, 5, 7, and 9, 2024.<sup>4</sup> Moissette I. Sweat, Esquire, represented the Parent.<sup>5</sup> William H. Fields, Esquire, represented the MCPS.<sup>6</sup>

Under the applicable law, a decision in this case normally would be due by December 22, 2023,<sup>7</sup> forty-five days after the parties waived their right to a resolution session in writing.<sup>8</sup> 34 C.F.R. §§ 300.510(b)(2), (c)(1), 300.515(a); Educ. § 8-413(h); COMAR 13A.05.01.15C(14). However, the MCPS requested hearing dates outside that timeframe. 34 C.F.R. § 300.515(c); Educ. § 8-413(h).

At the second pre-hearing conference, the Parent stated she intended to call eighteen witnesses (two experts in psychology and speech/language pathology, six staff members from ██████████ High School (██████████), seven staff members from ██████████ High School (██████████), two employees of the central office, and the Parent). The MCPS intended to call five witnesses (a special educator, an administrator, a supervisor, and related service providers). After discussing the number of witnesses, it was determined that the hearing would take

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<sup>4</sup> The hearing was originally scheduled to continue on February 15, 23, 28, and 29, 2024. However, the case concluded earlier than expected and these hearing dates were unnecessary.

<sup>5</sup> Briana Urbina represented the Parent as co-counsel on December 6, 2023; however, on December 7, 2023, she filed a Motion to Withdraw her appearance, which was granted on January 3, 2024.

<sup>6</sup> During the hearing, Stacy Swain, Esq. observed some of the dates. However, she did not actively participate as counsel for MCPS.

<sup>7</sup> The forty-fifth day would have been December 24, 2023, but that was a Sunday, and it is the policy of the OAH that if a special education decision is due on a weekend or holiday, the due date will be the prior work day in order for it to be timely issued.

<sup>8</sup> The Parties held a resolution session between the first prehearing conference and the second prehearing conference. After the amended complaint was filed on November 3, 2023, the parties agreed in writing on November 9, 2023 to waive the resolution session for the amended complaint. See 34 C.F.R. §§ 300.508(d)(4), 300.510(a)(3)(i).

approximately ten days.<sup>9</sup> In reviewing the calendars of counsel for the MCPS,<sup>10</sup> the Parent,<sup>11</sup> and the Administrative Law Judge,<sup>12</sup> the first eleven available dates for a hearing were selected. Between the calendars for all of the parties, only one date could be selected prior to the forty-five day deadline of December 22, 2023.<sup>13</sup> During the discussion regarding the availability of all parties, the MCPS requested that I extend the timeline due to both the number of witnesses being called and the limited number of mutually available dates. The Parent opposed that request and contended that the MCPS should hire additional attorneys to litigate its cases.

Based on the parties' calendars, the intention for the parties to collectively call twenty-three witnesses, the anticipated ten days of hearing, the intent of the MCPS to file a dispositive motion,<sup>14</sup> and the request by the MCPS, I found good cause to extend the deadline. Therefore, the deadline to issue a decision was extended to thirty days from the conclusion of the hearing. The hearing was originally scheduled to include testimony from twenty-three witnesses and finish on February

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<sup>9</sup> Counsel for the Parent initially stated she needed five days to present eighteen witnesses. However, based on the number of witnesses, I estimated the Parent's case would take at least six days. Counsel for MCPS stated she needed four days for five witnesses. An eleventh hearing date was scheduled in order to have an extra day for any unexpected delays.

<sup>10</sup> Counsel for MCPS was not available on November 13, 14, 16-17, 20-22, and 27-30, 2023; December 1, 5, 7-8, 11-15, 18-22, and 26-29, 2023; January 2-4, 8-12, 16-17, 19, 23-26, and 29-31, 2024; and February 1, 6, 8, 13, 16, 20-21, and 26-27, 2024. Counsel was unavailable due to other previously scheduled hearings, IEP meetings, and prepaid and preplanned leave.

<sup>11</sup> Counsel for the Parent was not available on November 13, 15, 22, and 29, 2023; December 1, 5, 15, 18, 20, 22, and 29, 2023; January 8, 9, 12, 26, and 31, 2024; February 1, 12, 13, and 14, 2024. Counsel's unavailability was due to other previously scheduled hearings, doctor's appointments, and prepaid and preplanned continuing legal education courses.

<sup>12</sup> The Administrative Law Judge had other previously scheduled hearings on November 13, 27, and 29, 2023; December 1, 8, 14, 15, and 19, 2023; January 9, and 18, 2024; and February 20-22, and 26, 2024. She had previously scheduled leave on November 20-22, 2023; and December 4, and 20-22, 2023. The following State holidays were also during the time periods considered: November 23-24, 2023, December 25, 2023, January 1, and 15, 2024, and February 19, 2024.

<sup>13</sup> In the Second Prehearing Conference Report, issued on November 13, 2023, the parties were instructed to notify the OAH if any previously unavailable date became available as they progressed through the months of November, December, January, and February. The OAH was willing to offer earlier hearing dates if the parties had joint availability. However, neither party notified the OAH of any additional availability.

<sup>14</sup> Due to the limited availability for all parties, the dispositive motion deadlines and ruling were able to be scheduled without further delaying the hearing dates.

29, 2024; however, at the hearing, only eight witnesses testified, and the hearing concluded twenty days earlier, on February 9, 2024. Therefore, the decision is due by March 8, 2024.<sup>15</sup>

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

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

1. Did the MCPS fail to provide services and aids required in the Student's Individualized Education Program (IEP) for the 2022-2023 school year, including but not limited to a) co-teacher support, and b) accommodations?
2. Was the transfer of the Student from [REDACTED] to [REDACTED] in the spring of 2023 a change in placement or a change in location under the IDEA?
3. Did the transfer of the Student from [REDACTED] to [REDACTED] deny the Student a free appropriate public education (FAPE) for the 2022-2023 school year?
4. Did the IEP team at [REDACTED] properly develop an IEP for the Student when he transferred to [REDACTED]?
5. Whether the IEP created by the Wheaton IEP team denied the Student a FAPE?

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<sup>15</sup> The thirtieth day is March 10, 2024, but that is a Sunday, and it is the policy of the OAH that if a special education decision is due on a weekend or holiday, the due date will be the prior work day.

<sup>16</sup> The issues were originally stated in the Second Prehearing Conference Report, issued on November 13, 2023. The issues stated herein are modified in style and form, but not substance.

## SUMMARY OF THE EVIDENCE

### Exhibits<sup>17</sup>

Appendix I – Exhibits, contains a complete exhibit list.

### Testimony

The Parent testified and presented the following witnesses:

- Student;
- [REDACTED], LCSW-C,<sup>18</sup> accepted as an expert in clinical social work and therapy as it relates to emotional disorders in children;
- [REDACTED], M.S.Ed., special education case manager for the Student at Wheaton for the 2022-2023 school year, accepted as an expert in special education.<sup>19</sup>

The MCPS presented the following witnesses:

- [REDACTED], Ed.D., Principal at Northwood, accepted as an expert in school administration and special education;
- [REDACTED], Ed.D., Associate Superintendent for MCPS, admitted as an expert in school administration and special education.

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<sup>17</sup> All premarked exhibits for both parties are maintained with the file, but only the exhibits admitted into evidence were considered. COMAR 28.02.01.22C. Generally, the descriptions of the exhibits are the descriptions the parties included in their table of contents.

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

<sup>19</sup> The Parent did not offer this witness as an expert. However, on cross examination, MCPS offered her as an expert, as her qualifications and experience were given during direct examination.

## FINDINGS OF FACT

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

### June 2022 IEP

1. In June 2022, the Student attended the [REDACTED],<sup>20</sup> an MCPS school.
2. On June 3, 2022, the IEP team, including the Parent, met to review the Student's progress and revise his IEP (June 2022 IEP). During the IEP meeting, the IEP team considered the Student's most recent formal assessment data from June 11, 2019. The team agreed to update achievement testing at the beginning of the 2022-23 school year.
3. On the June 2022 IEP, the team continued the Student's special education coding as "Other Health Impaired." (OHI). The Student's need for special education services were in the areas of: "Academic – Reading Comprehension, Academic – Speech and Language Expressive Language, Academic – Written Language Content, Academic – Written Language Expression, Behavioral – Organization, and Behavioral – Self-management." Parent Ex. A-4.8, p. 324.
4. The June 2022 IEP lists several accommodations for the Student including graphic organizers, text to speech, small group instruction, providing the Student with notes and outlines, monitoring the Student on his test responses, and providing him with extended time on tests and assignments. Parent Ex. A-4.8, pp. 344-346.
5. The June 2022 IEP listed several supplementary aids, services, program modifications and supports for the Student. These included that the teachers would provide the

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<sup>20</sup> The Student attended [REDACTED] previously from August 2021 to January 2022. He then attended the [REDACTED] [REDACTED] for the remainder of the 2021-2022 school year. No allegations were made regarding any specific violations of the IDEA during the time the Student was at the [REDACTED].

Student with advanced notification of testing, guided graphic organizers for multi-step assignments, a copy of student/teacher notes, frequent and immediate feedback, and chunking of assignments. The teachers would also assist the Student in developing various skills regarding reading, comprehension, and expression. Parent Ex. A-4.8, pp. 347-351.

6. The Parent did not object to any of the goals on the June 2022 IEP. Testimony of the Parent; Parent Ex. A-4.8, pp. 354-359.

7. On the June 2022 IEP, the Student received instruction outside of the general education environment to “receive supports with his speech and language teacher as well as through a resource class.” Parent Ex. A-4.8, p. 362.

8. The Parent attended the June 2022 IEP meeting and agreed to the June 2022 IEP to be implemented during the 2022-2023 school year. Testimony of the Parent.

9. The June 2022 IEP was amended during the 2022-2023 school year on January 11, 2023 (January 2023 Amended IEP) and April 17, 2023 (April 2023 Amended IEP). Parent Exs. A-4.8, A-4.10, and A-4.11.

2022-2023 School Year at [REDACTED]

10. In the 2022-2023 school year, the Student began the year as a tenth-grade student at [REDACTED]. Testimony of the Student; Testimony of the Parent; Testimony of Dr. [REDACTED].

11. In August 2022, the Student completed the Woodcock-Johnson VI assessment. These results were discussed at the October 2022 and January 2023 IEP team meetings.<sup>21</sup> Parent Ex. A-4.1, p. 185, 187.

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<sup>21</sup> During the hearing, there was some testimony that there had been no educational testing since 2019. Testimony of the Parent. I find this was inaccurate. Two exhibits reference results from the Woodcock Johnson VI assessment from August 2022. Parent Exs. A-4.1 and A-4.13. Ms. [REDACTED] also testified regarding her review of the Woodcock Johnson VI assessment from 2022.

12. The Student began the 2022-2023 school year taking Honors English 10, AP<sup>22</sup> Government, Honors Chemistry, Resource, Honors Health B, and Honors Algebra 2.<sup>23</sup>

Testimony of the Student.

13. At [REDACTED], the Student was in a self-contained, [REDACTED]<sup>24</sup> resource class. Parent Exs. A-4.8 and A-4.10.

14. At the beginning of the 2022-2023 school year, there were no co-teachers in the Student's AP Government and Algebra 2 classes. Parent Ex. B-9, p. 555.

15. On November 9, 2022, the Parent emailed a school counselor stating the Student "has been working hard but he's really struggled with AP Government and MC2."<sup>25</sup> It further states "He'd like to switch to Honors NSL<sup>[26]</sup> Government." The email suggests that the Student would switch to an Honors NSL Government class, as well as a different Algebra 2 class, but would need another first period class. Parent Ex. B-7, p. 551-552.

16. The November 9, 2022 email does not mention any alleged failures to provide IEP services, supports, or accommodations. Parent Ex. B-7, pp. 551-552.

17. On December 15, 2022, the Parent emailed Dr. [REDACTED], the principal at [REDACTED], to express her concern with the English teacher assigning a specific music video<sup>27</sup>

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<sup>22</sup> Advanced Placement.

<sup>23</sup> Dr. [REDACTED], the Principal of [REDACTED], explained the different expectations of honors, on level classes, and AP classes. The curriculum for on level and honors classes are the same, but there is more enrichment in assignments and higher expectations in the honors class. AP courses are designed to be taken by students in 11th and 12th grades and are introductory college level classes. AP classes move faster, have a lot of reading, and are more rigorous than honors classes.

<sup>24</sup> [REDACTED] was defined as [REDACTED]. Several witnesses testified that some schools now use the term "[REDACTED]" to refer to students who are both [REDACTED] and have a learning disability.

<sup>25</sup> The abbreviation MC2 was not defined during the testimony. However, the Parent explained it was a college level music class.

<sup>26</sup> National, State, and Local.

<sup>27</sup> The video was not offered into evidence by either side. It was identified as the "[REDACTED]" video by [REDACTED] or [REDACTED].

which concerned violence and had strong racial overtones.<sup>28</sup> MCPS Exs. 37, p. 227, and 38, pp. 228-231.

18. On the January 2023 Amended IEP, the team continued the Student's special education coding as OHI. The Student's needs for special education services were in the same areas as the June 2022 IEP. Parent Ex. A-4.10, p. 411.

19. On the January 2023 Amended IEP, all of the accommodations and goals from the June 2022 IEP were continued. Parent Ex. A-4.10, pp. 435-437 and 446-455.

20. The January 2023 Amended IEP continued all of the supplementary aides, services, program modification and supports for the Student which were contained in the June 2022 IEP, and included additional items. Parent Ex. A-4.10, pp. 438-443.

21. Except for speech and language services, and the resource class, the January 2023 Amended IEP stated the Student would participate with non-disabled peers in academic, non-academic, and extracurricular activities. Parent Ex. A-4.10, p. 458.

22. The Parent attended the January 2023 IEP meeting and did not object to any section of the January 2023 Amended IEP. Testimony of the Parent.

23. During the period of time between October 2022 through February 2023, the Parent made several complaints via email to teachers and administrators at [REDACTED] and the MCPS. These complaints included both allegations of failing to provide special education accommodations and allegations regarding general education issues (such as grading inequity and racial insensitivity). See Parent Exs., B-1, B-3, B-5, B-6, B-7, B-10, C-1, C-2, C-9, C-10, C-11, C-13, and C-14; MCPS Exs. 30, 31, 33, 35, 37, 38, 40, 42, 44, and 45.

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<sup>28</sup> The email indicates that MCPS disputes whether this video was assigned. The assignment of this video was not asserted to have violated any specific part of the Student's IEP, but was instead part of the larger disagreements between the Parent and MCPS during the relevant time frame.

24. In January 2023, the Parent requested a Change in School Assignment (COSA) for the Student for the 2023-2024 school year, which the MCPS denied.<sup>29</sup> Testimony of the Parent.

25. In March 2023, the Parent again requested a COSA for the Student for the 2023-2024 school year, which the MCPS denied. Testimony of the Parent.

26. After the denial of the March 2023 COSA request, the Parent did not submit any other written COSA request. Testimony of the Parent.

27. During late March 2023, the Parent and Dr. [REDACTED], Assistant Superintendent of MCPS, had several telephone conversations regarding the Parent's various concerns with [REDACTED], including racial insensitivity and grading inequities. Testimony of Dr. [REDACTED].

28. On April 11, 2023, while in class at [REDACTED], the Student was pulled out of class and told that as of that day he was to report to [REDACTED].

29. On April 11, 2023, Dr. [REDACTED] emailed the Parent and offered to transfer the Student to Wheaton. MCPS Ex. 2, p. 16.

30. On April 12, 2023, the Parent sent an email to Dr. [REDACTED], with the subject line "[REDACTED] Transfer Request," which stated, "With the caveat that the same classes and after-school sports (Boy's Tennis) will be made available, we would like to pursue moving him to Wheaton as soon as possible." Parent Ex. J-1, pp. 683-684, and MCPS Ex. 5, p. 18.

31. The April 12, 2023 email requested a meeting with the [REDACTED] principal, the administrator for tenth grade, the special education supervisor, the special education case worker and the tennis coach, as well as virtual meetings or phone calls with each assigned teacher when the schedule was confirmed. Parent Ex. J-1, pp. 683-684. The April 12, 2003 email did not specifically ask for an IEP team meeting or a review of the current IEP.

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<sup>29</sup> The parties did not provide the exact dates for any COSA request or subsequent denial.

32. No meeting occurred as a result of the April 12, 2023 email.

2022-2023 School Year at [REDACTED]

33. On April 17, 2023, the Student began attending Wheaton and continued to attend [REDACTED] as of the date of the hearing.

34. On April 17, 2023, the IEP was amended. The only change from the January 2023 Amended IEP and the April 2023 Amended IEP was the change of service school from [REDACTED] to [REDACTED]. Parent's Exs. A-4.10, pp. 411-461, and A-4.11, pp. 462-512.

35. There was no IEP meeting to discuss the change from the January 2023 Amended IEP to the April 2023 Amended IEP. Testimony of the Parent.

36. When the Student began at [REDACTED] on April 17, 2023, he was able to continue with all of the same courses except for Honors Health B and [REDACTED] Resource. Testimony of the Parent; Testimony of Dr. [REDACTED]; Testimony of Ms. [REDACTED].

37. Shortly after starting at [REDACTED], the MCPS arranged for the Student to continue to take Honors Health B through the MCPS virtual academy. Testimony of the Student; Testimony of Dr. [REDACTED].

38. The Student was enrolled in a resource class at [REDACTED] that was not self-contained and was not designated as [REDACTED]. Testimony of the Parent; Testimony of Ms. [REDACTED]; Testimony of Dr. [REDACTED].

39. For at least a portion of the 2022-2023 school year at Wheaton, there was no co-teacher in the Student's classes for Chemistry and Algebra II. Testimony of the Parent.

40. On an IEP approved on May 31, 2023 (May 2023 IEP), the team continued the Student's special education coding as OHI. Parent Ex. A-4.1, p. 177.

41. The May 2023 IEP describes the OHI to include attention deficit-hyperactivity disorder (ADHD) with related executive functioning concerns. Parent Ex. A-4.1, p. 179.

42. Pursuant to the May 2023 IEP, the Student received instruction in general education classes for the majority of the week and only received instruction outside of the general education setting for forty minutes each week for his speech services. Parent Ex. 4.1, p. 221.

43. As of May 24, 2023, the Student's cumulative grade point average (GPA) was 4.0 and his cumulative weighted GPA was 4.71.<sup>30</sup> Parent Ex. A-1, p. 3. The Student had earned fifteen credit hours in courses such as Honors English, Honors U.S. History, Honors NSL Government, Honors Geometry, Honors Algebra, Honors Biology, Honors Chemistry, French Immersion, and AP French LC.<sup>31</sup> Parent Ex. A-1, p. 0003.

44. At the conclusion of the 2022-2023 school year, the Student continued to have mostly As and some Bs on his report cards. Testimony of the Parent and the Student.

45. During the 2022-2023 school year, the Student received tutoring services from [REDACTED], which cost a total of \$4,887.34. Parent Ex. Q-2, pp. 798, and 804-805.

### **DISCUSSION**

During the hearing, I addressed several motions on the record. Below is a list of the motions addressed and the rulings on those motions.

On January 5, 2024, the following written motions were resolved:

- MCPS's Motion to Quash Subpoena for Lack of Service/Notice and for Lack of Compliance with the OAH Rules Of Procedure – Moot

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<sup>30</sup> This was prior to the end of the 2022-2023 school year, and therefore, did not contain grades for the second half of the year.

<sup>31</sup> This is not an exhaustive list of all credits, but a representative list of his English, Math, Science, Social Studies and World Language courses.

- Parent’s Motion to Compel or Request for Sanctions – Denied
- MCPS’s Motion to Strike Claimant’s Privilege Log and Motion to Compel Production – Granted
- MCPS’s Motion to Quash Subpoena – Denied

On February 2, 2024, I denied MCPS’s oral Motion to Exclude the Testimony of [REDACTED]. On February 5, 2024, I denied MCPS’s oral Motion for Judgment. On February 7, 2024, I granted the Parent’s oral Motion to Open the Hearing to the Public and denied the Parent’s oral Motion to Allow the Testimony of [REDACTED] as a Rebuttal Witness, made on February 7, 2024 – Denied February 7, 2024.<sup>32</sup>

The reasons for the rulings described above were stated on the record and will not be restated herein.

#### 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 the MCPS did not meet the requirements of the law.

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<sup>32</sup> Mr. [REDACTED] was the Principal of [REDACTED] High School during the 2022-2023 school year. At the time of the hearing, he was still a MCPS employee but was on administrative leave. Mr. [REDACTED] was not disclosed on the Parent’s witness list prior to the start of the hearing. The Parent also had not subpoenaed Mr. [REDACTED] prior to February 7, 2024 and he was not available on February 7, 2024 to testify. After considering the proffer of his testimony, I did not find that the testimony was properly considered as rebuttal testimony, and therefore, denied the Parent’s motion to allow his testimony.

Analysis

1. *Did the MCPS fail to provide services and aids required in the Student's IEP for the 2022-2023 school year, including but not limited to a) co-teacher support, and b) accommodations?*

The identification, evaluation, and placement of students in special education are governed by the IDEA. 20 U.S.C.A. §§ 1400-1482; 34 C.F.R. pt. 300; Md. Code Ann., Educ. §§ 8-401 through 8-417; COMAR 13A.05.01. The IDEA requires “that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living.” 20 U.S.C.A. § 1400(d)(1)(A); *see also* Md. Code Ann., § 8-403(a). A FAPE is defined to mean:

(9) Free appropriate public education

The term “free appropriate public education” means 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 individualized education program required under section 1414(d) of this title.

20 U.S.C.A. § 1401(9).

In this case, the Parent presented evidence that the Student did not have a co-teacher in AP Government and Honors Algebra 2 during portions of the 2022-2023 school year at [REDACTED] and in Honors Algebra 2, and Chemistry during portions of the 2022-2023 school year at [REDACTED]. Testimony of the Parent; Testimony of the Student. The Parent and Student also provided testimony regarding the failure of the teachers at [REDACTED] to provide notes, chunking of assignments, graphic organizers, and advanced notice of testing. All of these items are

accommodations described in the Student's June 2022 IEP and the January 2023 Amended IEP. The Parent contends that the Student was not making progress and was receiving inflated grades during the 2022-2023 school year at [REDACTED].

The MCPS contended that the IEP required that the Student's academic classes be either supported or co-taught. Dr. [REDACTED] testified that while some of the classes were not co-taught, the classes were supported because the Student had access to a resource class to support him through these classes. As far as the other allegations, the School presented no direct testimony from any of the Student's teachers at [REDACTED], nor his special education case manager at [REDACTED] to describe what accommodations were specifically provided in any specific class at that school. The MCPS cross examined the Student and Parent regarding these allegations. Ms. [REDACTED] testified that all of the IEP accommodation and services were provided at [REDACTED].

As to the alleged failure to provide a co-teacher, I find that the June 2022 IEP (Parent Ex. A-4.8, p. 360), and the January 2023 Amended IEP (Parent Ex. A-4.10, p. 456) provided that the Student would receive supported or co-taught classes for English, Math, Science and AP Government or History.<sup>33</sup> For the May 2023 IEP, the Student was to receive supported/co-taught classes for Honors Math, English, Science Social Studies, and Resource. Parent Ex. A-4.1, p. 220. While the Parent relied solely on the phrase co-taught, the IEPs all specifically provide for either a co-taught class or a supported class. This begs the question, what does it mean to be "supported"?

During the hearing, the Parent provided no testimony or any exhibit to explain what it means to be a supported class, and whether [REDACTED] had provided a supported class. The MCPS, however, presented the testimony of Dr. [REDACTED] to state that the support could be

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<sup>33</sup> The June 2022 IEP specifically lists AP Government. Parent Ex. A-4.8, p. 360. The January 2023 IEP instead included History. Parent Ex. A-4.10, p. 456.

provided through a resource class and did not require a co-teacher. I found Dr. [REDACTED]'s testimony on this point unpersuasive. First, Dr. [REDACTED]'s testimony described general education classes as non-supported classes, which implied that supported classes would have a co-teacher. Second, Dr. [REDACTED] testified that as principal of [REDACTED] he had requested additional co-teacher support for the Student in AP Government, as the IEP required that the class be co-taught. Testimony of Dr. [REDACTED]. Finally, if the support could be provided solely through the resource class which was already on this Student's IEP, why would the IEP have the designation that the Student was going to receive "supported or co-taught classes" and specifically list certain subjects? Instead, it would have been logical to just state that the Student was going to receive supported classes through the resource class. I find it more persuasive that supported means the Student had actual support within each subject's class. Therefore, I find that MCPS failed to provide the Student with a co-teacher during the 2022-2023 school year. The credible testimony was unrefuted that for at least part of the year AP Government at [REDACTED], Honors Algebra 2 at [REDACTED] and at [REDACTED], and Chemistry at [REDACTED] did not have a co-teacher. Testimony of the Student and the Parent.

The other alleged failures to provide accommodations were that various teachers at both [REDACTED] and [REDACTED] failed to provide notes, chunking of assignments, graphic organizers, frequent and immediate feedback, and advanced notice of testing. Testimony of the Parent; Testimony of the Student. The Parent described in both her emails to the staff at MCPS and her testimony that some of the notes were not in complete sentences or were classroom slides. Testimony of the Parent; MCPS Ex. 30, p. 202; and MCPS Ex. 31, pp. 209-210. To the extent that the Complaint concerns the format or content of the notes, the June 2022 IEP does not require any specific format for the notes. Parent Ex. A-4.8. Both the January 2023 Amended IEP and the

May 2023 Amended IEP added the following language “Format of the notes is to the discretion of the classroom teacher.” Parent Ex. A-4.10, p. 436; Parent Ex. A-4.1, p. 202. Similarly, there is no explanation in the IEPs for when these notes need to be provided. For example, should they be provided before the class on the topic, the day of the class, before any test or assignment of the topic, etc. One specific complaint was that the link for the electronic notes was not working and had to be fixed.<sup>34</sup> Parent Ex. C-13, p. 580. The testimony of the Parent and Student was unclear as to what each teacher provided (or failed to provide) in terms of notes. While there were repeated assertions in the testimony that notes were not provided, the emails indicate that teachers did provide what they considered notes, but the quality of the notes and the timing of receipt of the notes was at issue. Therefore, I do not find that there is credible evidence, by a preponderance of the evidence, that the teachers at the MCPS failed to provide notes.

While the Parent provided testimony regarding the lack of chunking, graphic organizers, frequent and immediate feedback, and advanced notice of testing, the testimony was generally not related to specific assignments. The Student testified he never received immediate and frequent feedback. However, at the hearing, the Parent presented feedback from the AP Government teacher for a specific assignment to show the feedback was insufficient. Parent Ex. B-5, p. 546. The teacher included the grading rubric and on the one category where the student lost points,<sup>35</sup> the teacher wrote “Connect evidence to the claim.” The teacher also underlined the section he was referring to and wrote next to it, “evidence.” Parent Ex. B-5, p. 546. The Parent contended this was not sufficient feedback and that the handwriting was illegible. The Student testified that he has had graphic organizers at both [REDACTED] and [REDACTED]. Sometimes his teachers provided

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<sup>34</sup> There is no evidence that the teacher did not fix the link after being notified of the problem.

<sup>35</sup> The total assignment was worth a possible ten points, the Student was given eight points for the assignment. Parent Ex. B-5.

chunking at both [REDACTED] and [REDACTED]. Testimony of the Student. However, the Parent testified chunking rarely happened. Testimony of the Parent.

Further, some of the exhibits show that the MCPS and the Parent disagreed about what certain terms of the IEP required and whether the accommodations were provided. Parent Ex. C-13, pp. 578-585. The MCPS also contended that the Student had refused certain accommodations, such as additional time for assignments and tests, use of a flash pass to see a trusted adult, and teacher notes, that were offered. Parent Ex. C-13, pp. 578-585; Testimony of Ms. [REDACTED].

The testimony presented by the Parent at the hearing was hyperbolic and vague and sometimes contradicted by the Student and the documentary evidence. The documentary evidence shows that there was a disconnect between what the Parent believed the Student was entitled to receive under the IEP and what the MCPS believed the Student was entitled to receive under the IEP. Neither party offered expert testimony regarding what each accommodation in the relevant IEPs required. Further, there was a lack of a connection to specific assignments and specific failures. The documentary evidence and the testimony of the Student support the assertion that, at least some chunking, graphic organizers, advanced notice of testing, and feedback was provided. Without more information about specific alleged failures, I do not find that the Parent has proven that the MCPS failed to provide chunking, graphic organizers, feedback, or advanced notice of testing that was required under the IEP, and more specifically that these alleged failures resulted in a denial of a FAPE.

By failing to provide special education and services in conformity with the Student's IEP, the MCPS failed to provide the Student a FAPE to the extent that he did not have co-teachers for multiple classes during the 2022-2023 school year. Where a school district has failed to provide

a FAPE, ““a court will evaluate the specific type of relief that is appropriate to ensure that a student is fully compensated for a school district’s past violations of his or her rights under the IDEA and develop an appropriate equitable award.”” *D.F. v. Collingswood Borough Bd. of Educ.*, 694 F.3d 488, 498–99 (3d Cir. 2012) (quoting *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 720 (3d Cir. 2010)). Compensatory education involves discretionary, prospective, injunctive relief crafted by a court to account for the period of time that a student was deprived of his right to a FAPE. Courts have held that to accomplish the IDEA’s purposes, a compensatory education award must be “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” *Reid ex rel Reid v. Dist. of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005).

Despite the MCPS’s failure to provide a FAPE in this manner, the Student made progress both academically and on his IEP goals. As of May 24, 2023, the Student had a cumulative 4.0 grade point average. Parent Ex. A-1, p. 3. Both the Student and the Parent testified that the Student was making mostly As with some Bs in all of his classes. In the 2022-2023 school year, the Student completed Honors Algebra 2, Honors English 10 and Honors NSL Government. He also was enrolled in AP Government and despite not having a co-teacher had a B in that class when he switched to Honors NSL Government. MCPS Ex. 33, p, 220. During closing argument, Parent’s counsel argued that the Student’s grades would be C, D, or Es until he received his accommodations and then once provided his accommodations the Student could achieve the As and Bs. The Student and the Parent asserted that the Student did not learn anything and/or that the grades were inflated.

All of these arguments were unconvincing. The Parent testified that she would see Ds or Es in the Student electronic gradebook during the marking period, and then see As or Bs on the report card. Therefore, she believed the grades were inflated by the MCPS. She further testified that grades were excused to artificially inflate the Student's grades. There was no evidence to show that grades were inflated, or otherwise unearned by the Student. To the contrary, both Ms. [REDACTED] and the Parent explained that once an assignment was due for the rest of the class, the Student's assignment would appear as missing in the electronic grade book, even though he still had additional time to complete the assignment due to his accommodations on his IEP. As one would expect, missing assignments appeared as zeroes and lowered the Student's grade in the electronic grade book. After the Student had turned in his assignments and they were graded, then the Student consistently earned As and Bs. There was no evidence presented that assignments or tests were excused by the MCPS in an effort to merely inflate the Student's grades. Further, there was no evidence that the Student had Ds and Es in his electronic grade book because he had not yet received accommodations and that once he received his accommodations, he raised his grades.

Progress reports for November 2022, January 2023, and March 2023 show the Student was making progress on all IEP goals. Parent Ex. A-4.10, pp. 446-455. The Parent and the Student provided no documentary evidence that these progress reports were inaccurate. While the Parent contended that she did not think the Student had made progress on some of the IEP goals, her only evidence was her self-serving testimony, which was unpersuasive. To the contrary, all of the MCPS witnesses testified that the Student was making progress on his IEP goals. Testimony of Dr. [REDACTED]; Testimony of Dr. [REDACTED]; Testimony of Ms. [REDACTED].

The Parent, Student and Ms. [REDACTED] testified regarding the Student's stress, anxiety, and trauma. However, the testimony did not link the stress, anxiety, and trauma to the failure to provide any services or accommodations under the Student's IEP. Instead, the testimony largely referenced stress and anxiety based on racial insensitivity, and the manner in which the transfer occurred in April 2023. I do not find a causal connection between the Student's stress, anxiety and trauma and any alleged failure of the MCPS to provide co-teachers in all class areas.

It is unclear from the record what educational benefit would have accrued if the MCPS had provided the co-teacher in all classes as stated in the IEP. The Student was receiving high marks in honors classes and was making progress on his IEP goals. The Parent and the Student testified as to how long the Student worked each night on school assignments but did not present any testimony as to whether that amount of time was due to any alleged failure by the MCPS to provide accommodations or whether that amount of time was consistent with what a non-disabled peer in the same classes as the Student would spend on homework. While the Parent presented evidence that she paid for tutoring for the Student for various subjects during the 2022-2023 school year, she did not present testimony that causally linked that tutoring to any specific progress made by the Student (i.e. the tutoring specifically improved the Student's grades) or that the tutoring was designed to provide services or accommodations that the MCPS failed to provide. I do not find that the Parent has shown that the Student is entitled to the equitable remedy of compensatory education as the Parent has not met her burden of proof that an educational benefit was lost due to the MCPS's failure to provide a co-teacher in all of the Student's core classes.

2. Was the transfer of the Student from [REDACTED] to [REDACTED] in the spring of 2023 a change in placement or a change in location under the IDEA?

There was no dispute that on April 11, 2023, the Student was told that he was no longer a student at [REDACTED], and he would now attend [REDACTED]. Further, there was no dispute that there was no IEP meeting prior to that change in schools. The Parent contends that the move to [REDACTED] was a change in placement as there was no [REDACTED] resource class at [REDACTED]. The MCPS contends that the move to [REDACTED] was merely a transfer from one general education school to another general education school, and the Student's IEP did not make this transfer a change in placement.

Under the IDEA, the local educational agency, such as the MCPS, must “ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.” 20 U.S.C.A. § 1414(e). The United States District Court for the District of Columbia in the case of *D.K. v. District of Columbia* discussed the issue of what educational placement means:

The IDEA does not define “educational placement,” and the interpretation of the phrase has been left to the courts. Courts have defined the term “educational placement” as meaning something “between the physical school attended by a child and the abstract goals of a child's IEP.” *Laster v. District of Columbia*, 394 F.Supp.2d 60, 64–65 (D.D.C.2005) (citing *Bd. of Educ. of Cmty. High Sch. Dist. No. 218 v. Ill. State Bd. of Educ.*, 103 F.3d 545, 548 (7th Cir.1996)). Implying that the term means more than the physical school building that a child attends, the D.C. Circuit has explained that if a parent cannot identify a “fundamental change in, or elimination of[,] a basic element of the education program,” there has been no change in “educational placement.” *Lunceford v. D.C. Bd. of Educ.*, 745 F.2d 1577, 1582 (D.C.Cir.1984); see also *Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities*, 71 Fed.Reg. 46, 540, 46, 588–89 (Aug. 14, 2006) (codified at 34 C.F.R. Pts. 300 and 301) (“[M]aintaining a child's placement in an educational program that is substantially and materially similar to the former placement is not a change in placement.” (emphasis added)). In other words, there is no a change in “educational placement” under the IDEA where a student is

placed in a new program where all the basic elements are fundamentally the same as the prior placement.

Furthermore, a change of location alone does not constitute a change in “educational placement” under the IDEA. “Educational placement” is a term of art. In *White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 379 (5th Cir.2003), the Fifth Circuit held that “educational placement” under the IDEA means the “educational program—not the particular institution where that program is implemented.” Similarly, the Second Circuit construed educational placement as “the classes, individualized attention and additional services a child will receive—rather than the ‘bricks and mortar’ of the specific school.” *T.Y. v. N.Y.C. Dep’t of Educ.*, 584 F.3d 412, 419 (2d Cir.2009); *see also A.W. ex rel. Wilson v. Fairfax Cnty. Sch. Bd.*, 372 F.3d 674, 682 (4th Cir.2004) (“educational placement” under the IDEA refers to the general education program and environment, not to a location); *Johnson v. District of Columbia*, 839 F.Supp.2d 173, 178 (D.D.C.2012) (physical placement and educational placement are not synonymous); *Spilsbury v. District of Columbia*, 307 F.Supp.2d 22, 26–27 (D.D.C.2004) (the phrase “educational placement” encompasses “the whole range of service that a child needs; the term “cannot be read to only indicate which physical school building a child attends”).

*D.K. v. D.C.*, 983 F. Supp. 2d 138, 145 (D.D.C. 2013).

The Parent had submitted COSA requests twice during the 2022-2023 school year. According to the unrefuted testimony, the COSA requests sought a change of the Student’s school assignment for the 2023-2024 school year. Both of the Parent’s requests were denied. Testimony of the Parent. [REDACTED] is an overcapacity school, meaning it has more students than it is designed to have. Therefore, requests for a COSA to [REDACTED] are often denied. Testimony of Dr. [REDACTED]. There was no written COSA request pending at the time of the Student’s change in schools. Testimony of the Parent. That being said, there is no evidence that either the Parent or the MCPS requested a COSA because the Student’s IEP could not be implemented at [REDACTED].

Ms. [REDACTED] explained that a change in placement requires the IEP team to meet and decide that there should be a change in placement and to solicit the MCPS staff outside of the current school to discuss what program could provide the services and accommodations required

to be provided by the Student's IEP. A change in placement is a discussion about matching the services needed by a student to the school. Testimony of Ms. [REDACTED]. Ms. [REDACTED] explained that a change in placement occurs because a student is not making progress on IEP goals and academic achievements. In this case, the Student was making progress on his IEP and his IEP could be successfully implemented at [REDACTED]. Ms. [REDACTED] testified that the change in location for the Student was for reasons other than the implementation of his IEP.

Similarly, Dr. [REDACTED] testified regarding three different ways that a Student could be transferred between schools (COSA requests, administrative placements and special education placements). A COSA is a transfer initiated by a parent. An administrative placement is when a student's school is changed due to either the MCPS or the school's concerns regarding the safety and security of that student or another student in the school. Both COSA requests and administrative placements are general education transfers. Dr. [REDACTED] testified that a special education placement is a different process altogether from either of these because a special education placement is a change of the type of program to meet the special education needs of a specific student.

Dr. [REDACTED] testified that the Parent had alleged that the Student was subjected to inequity in grading, racial insensitivity, and miseducation/neglect. MCPS Ex. 44, p. 245. He testified that when he talked to the Parent she was very upset about these issues, which he identified as general education issues. Dr. [REDACTED] denied talking to the Parent about any special education issues. Testimony of Dr. [REDACTED]. He further described conversations with the Parent in late March 2023 regarding transferring the Student from [REDACTED] to [REDACTED] due to the dissatisfaction of the Parent. Testimony of Dr. [REDACTED]. The emails from the Parent to Dr. [REDACTED] discussed allegations of racial insensitivity and grading inequities. MCPS Exs. 44 and 45. Both

the Parent and the Student testified regarding the assigning of the “██████████” video and their views regarding that video. The Parent does not deny that she had complained to Dr. ██████████, the Principal at N██████████, and Dr. ██████████ about a myriad of issues, but asserts that she had not requested a change of school assignment to occur in the manner it happened.

It is unclear what happened on or about April 11, 2023 regarding this COSA.<sup>36</sup> The evidence supports that the Parent first reached out to Dr. ██████████ about her concerns in January 2023, that the Parent and Dr. ██████████ had several phone conversations in late March 2023, and that on April 11, 2023, the Student was pulled out of class to be told of the transfer to ██████████. There is no evidence that the Parent was notified in writing prior to the Student being told during the school day that he no longer was enrolled at ██████████ and that he was supposed to be at ██████████. Also, no written evidence was provided during the hearing to confirm that the Parent requested a transfer to ██████████ between the second COSA denial in March 2023 and April 11, 2023 when the Student was notified about the change. While this process is concerning, if the COSA is not a change in educational placement, then there is no requirement for a meeting under the IDEA. 20 U.S.C.A. § 1414(e). Therefore, a failure to meet prior to the transfer cannot be a violation of the IDEA.

When the Student transferred to ██████████, the Parent presented evidence that two courses were not available: Honors Health B, and a ██████████ Resource class. Testimony of the Parent; Testimony of Ms. ██████████; Testimony of Dr. ██████████. Dr. ██████████ and the staff at ██████████ were able to enroll the Student into an Honors Health B class through the MCPS virtual academy and arrange a space for the Student to attend that class at ██████████. Testimony of Dr. ██████████. Therefore, the only remaining issue was the ██████████ Resource class. ██████████ had a resource

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<sup>36</sup> Both Dr. ██████████ and Dr. ██████████ testified that they are not involved with approving or denying COSA requests. Neither party offered any testimony or document to explain the process of what happened in late March or early April 2023 for this Student.

class, and the Student was enrolled in that class. Testimony of Ms. [REDACTED]; Testimony of the Parent. However, the [REDACTED] [REDACTED] Resource class was a self-contained resource class and the [REDACTED] resource class had students with IEPs as well as students without IEPs. Testimony of Ms. [REDACTED].

The June 2022 IEP, and the January 2023 Amended IEP, both discuss the Student's placement on the Least Restrictive Environment (LRE) pages and states the following in pertinent part:

What placement options did the IEP team consider?  
100% General Education, [REDACTED] program, [REDACTED] Program  
\*\*\*\*\*

If removed from the regular early childhood program/general education environment, explain reasons why services cannot be provided in that setting with the use of supplementary aids and services:

[REDACTED] will receive supports with his speech and language teacher as well as through a resource class.  
\*\*\*\*\*

Document basis for decision(s):  
[REDACTED] will receive a self-contained Resource class.  
\*\*\*\*\*

Are the services in the student's home school (the school the student would attend if not disabled)? No If no, document basis for decision(s):  
Services will be provided [at] [REDACTED] d through the [REDACTED] program.

Parent Ex. A-4.8, p. 362, and Parent Ex. A-4.10, p. 458. This bolsters the Parent's argument that a removal from a self-contained resource class is a change in placement.

The MCPS contends that while the resource class at [REDACTED] n was not self-contained, it provided the Student with substantially the same support as the self-contained resource class at [REDACTED]. There are fifteen to twenty students in the [REDACTED] resource class with two to three adults. Testimony of Ms. [REDACTED]. The resource class can be used to have additional time to complete assignments and tests. Testimony of Ms. [REDACTED]. The Student was allowed to work on his assignments and tests during the resource period at [REDACTED] and therefore, the change

from a self-contained resource class to a general education resource class had no effect on the Student's services. In addition, during the last marking period in the 2022-2023 school year, Ms. [REDACTED] worked with the Student on organization and prioritizing assignments and tests that were worth a larger percentage of his grade. This assistance was provided during the Student's school day as Ms. [REDACTED] was a co-teacher in one of the Student's classes. While Ms. [REDACTED] contends that the Student continued to receive all of his services and accommodations at [REDACTED], she encouraged the Student to take ownership of his IEP, to understand who he is as a learner and what he needs in the classroom. This will allow the Student to self-advocate as he transitions to college or other pursuits after high school. Further, the MCPS contends that the services described on the LRE pages in the June 2022 and January 2023 Amended IEPs were still being provided at [REDACTED], namely a speech-language teacher and a resource class.

After considering the entirety of the record, I do not find that the transfer to [REDACTED] was a change in educational placement. The Student was not transferred due to a specific IEP related issue, but instead due to various non-special education complaints, including racial insensitivity, and grading inequities. Further, the Student received substantially the same services at both schools. As this was not a change in educational placement, the MCPS's actions regarding the COSA to [REDACTED] did not violate the IDEA.<sup>37</sup>

3. *Did the transfer of the Student from [REDACTED] to [REDACTED] deny the Student a FAPE for the 2022-2023 school year?*

A FAPE is, in part, furnished through the development and implementation of an IEP for each disabled child. *Andrew F. v. Douglas County School District*, 137 S. Ct. 988, 999 (2017); *Bd. of Educ. of the Hendrik Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181-82 (1982).

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<sup>37</sup> As the COSA process is outside of the requirements of the IDEA, I make no findings with regard to the appropriateness of the transfer under MCPS policy or any other law or regulation.

COMAR 13A.05.01.09 defines an IEP and outlines the required content of an IEP as a written description of the special education needs of the student and the special education and related services to be provided to meet those needs. The goals, objectives, activities, and materials must be adapted to the needs, interests, and abilities of each student. 20 U.S.C.A. § 1414(d).

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

While Rowley declined to articulate an overarching standard to evaluate the adequacy of the education provided under the Act, the decision and the statutory language point to a general approach: To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.

The “reasonably calculated” qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. *Id.* at 207, 102 S. Ct. 3034. The Act contemplates that this fact-intensive exercise will be informed not only by the expertise of school officials, but also by the input of the child’s parents or guardians. *Id.* at 208-209, S. Ct. 3034. Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. *Id.* at 206-207, 102 S. Ct. 3034.

The IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement. See §§ 1414(d)(1)(A)(i)(I)-(IV). This reflects the broad purpose of the IDEA, an “ambitious” piece of legislation enacted in response to Congress’ perception that a majority of handicapped children in the United States ‘were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to “drop out.”’ *Rowley*, 458 U.S., at 179, 102 S. Ct. 3034 (quoting H.R. Rep. No. 94-332, p. 2 (1975)). A substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act.

That the progress contemplated by the IEP must be appropriate in light of the child’s circumstances should come as no surprise. A focus on the particular child is at the core of the IDEA. The instruction offered must be “specially designed” to meet a child’s “unique needs” through an “[i]ndividualized education program.” §§ 1401(29), (14) (emphasis added).

*Andrew F.*, 137 S. Ct. at 998-99.

Notwithstanding the above language in *Andrew F.*, providing a student with access to specialized instruction and related services does not mean that a student is entitled to “[t]he best education, public or non-public, that money can buy” or all the services necessary to maximize educational benefits. *Hessler v. State Bd. of Educ. of Md.*, 700 F.2d 134, 139 (4th Cir. 1983) (citing *Rowley*, 458 U.S. at 176). Moreover, “once a FAPE is offered, the school district need not offer additional educational services.” *MM v. Sch. Dist. of Greenville Cnty.*, 303 F.3d 523, 537-38 (4th Cir. 2002).

Insofar as a State is required to provide a handicapped child with a “free appropriate public education,” we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP. In addition, the IEP, and therefore the personalized instruction, should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.

*Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176, 203–04 (1982).

After the Student was transferred to [REDACTED] for the remainder of the 2022-2023 school year, the Student continued to make academic progress, as shown by his grades. He consistently earned As and Bs in honors level coursework and he earned high school credits. Testimony of the Parent and Student. The Student not only proceeded on grade level with his peers but exceeded some of his peers by receiving high marks in honors classes.

While the Parent and the Student testified that he was not making progress in the 2022-2023 school year, none of the documents support this testimony. Further, the Parent did not present any testimony from an expert to provide an opinion as to whether the Student made

progress during the last marking period of the 2022-2023 school year. Considering the evidence presented, I do not find that the Parent and Student's self-serving testimony presents sufficient evidence to show that the MCPS failed to provide the Student with a FAPE based on the transfer from [REDACTED] to [REDACTED].

4. *Did the IEP team at [REDACTED] properly develop an IEP for the Student when he transferred to Wheaton?*

As I do not find that the transfer from [REDACTED] to [REDACTED] was a change in placement, I do not find that there was a requirement to have an IEP team meeting prior to the Student's transfer to [REDACTED]. Once the Student began at [REDACTED], there were two different IEPs, the April 2023 Amended IEP and the May 2023 IEP. I will address each process separately.

*April 2023 Amended IEP*

The April 2023 Amended IEP was amended without any IEP team meeting. The only change to this IEP was the change of the service school from [REDACTED] to [REDACTED].

Testimony of Ms. [REDACTED]. Parent's Exs. A-4.10, pp. 411-461, and A-4.11, pp. 462-512.

The IDEA discusses amendments to the IEP and states:

(D) Agreement

In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the local educational agency may agree not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the child's current IEP.

...

(F) Amendments

Changes to the IEP may be made either by the entire IEP Team or, as provided in subparagraph (D), by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.

20 U.S.C.A. § 1414(d)(3)(D) and (F). There is no argument that the April 2023 Amended IEP was a change made by the entire IEP team. The parties agree that there was no IEP meeting to address the change of the service school.

There could be an argument that this amendment was an agreement. As it appears that the Parent and the MCPS agreed that the Student should transfer from [REDACTED] to [REDACTED] and that was the only information changed in the IEP. Both Dr. [REDACTED] and Ms. [REDACTED] testified that generally when a COSA transfer occurs with a student with an IEP, there would be an intake meeting to review the IEP. However, neither of those individuals were present at any intake meeting for the Student. Dr. [REDACTED] and Ms. [REDACTED] could not state whether an intake meeting occurred or what was discussed at such a meeting, if it occurred. Further, there is no evidence of a written document that confirms an agreement not to convene an IEP meeting or exactly what the parties agreed to change. The Parent denies being aware of the existence of the April 2023 Amended IEP until June 2023. The MCPS did not present any evidence that this amendment was made after discussing it with the Parent and obtaining consent. Therefore, I do not find that the April 2023 Amended IEP met with the procedural requirements for an agreement under 20 U.S.C.A. section 1414(D).

The IDEA affords parents important procedural and substantive rights to ensure that their child receives a FAPE under the statute. Emphasizing the importance of the procedural safeguards embodied in title 20, section 1415 of the U.S.C.A., the Supreme Court, in *Rowley*, explained:

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,<sup>[38]</sup> we think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say

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<sup>38</sup> The Supreme Court in *Rowley* interpreted what was titled the Education for All Handicapped Children Act (EHA), the predecessor to the IDEA.

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. at 205–06 (citation omitted). As this passage explains, the purpose of the procedural safeguards afforded under the IDEA is to ensure full and meaningful participation of “concerned parties,” including the parents of a child, throughout the IEP development process.

With *Rowley*’s emphasis on procedural compliance, therefore, it is unsurprising that the IDEA was amended 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;
- (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).

In this case, as stated above, the Student was making academic progress throughout the 2022-2023 school year and was able to maintain As and Bs in honors classes during that year. While the Student testified that the classes at ██████████ were in more depth than the classes at ██████████, the Student continued to get mostly As and Bs. The amendments made in April 2023 did not change the services, accommodations, or goals of the Student’s IEP. Further, there is no evidence that the Parent or the Student disagreed with the transfer from ██████████ to ██████████. Therefore, I do not find that the Parent has shown that the procedural inadequacies

impeded the Student's rights to a FAPE, impeded the Parent's opportunity to participate in the decision-making process regarding provision of a FAPE, or caused a deprivation of educational benefits to the Student.

*May 2023 IEP*

The May 2023 IEP was proposed and discussed at two IEP team meetings in May and June 2023. There was no evidence that the MCPS did not properly notify the Parent of the meetings or provide the Parent with a copy of the proposed draft IEP, or the substantiating documents before the meeting. On the contrary, Ms. [REDACTED] testified as to what she had sent to the Parent prior to the meeting, including a copy of a draft IEP, unofficial transcripts, grade sheets, standardized test reports, and teacher reports. The Parent attended both meetings to discuss the May 2023 IEP.

Ms. [REDACTED] was assigned to be the Student's case manager upon his arrival at [REDACTED] on April 17, 2023 through the end of the 2022-2023 school year. Ms. [REDACTED] explained what she considered when she drafted the IEP, including prior evaluations, teacher reports, grades and assignments, and parental input. This draft was not merely an amendment to the 2022-2023 IEP, but an annual review, which required consideration of all areas of impact, current present level of performance, and determinations of how to address present levels with services, goals or both.

There were some objections to the IEP, which according to Ms. [REDACTED], were noted in a Prior Written Notice. Ms. J. [REDACTED] described the areas of contention during the IEP meetings, including the approximate grade level for reading, the goals not being updated, and the updates to the areas of impact including ADHD. The Parent adamantly denies that the Student was diagnosed with ADHD and draws a distinction between meeting the criteria for ADHD and being diagnosed with ADHD. Ms. [REDACTED] testified that testing from 2019 reflected that the

Student had ADHD. Neither side presented either the test results from 2019, or any other diagnosis or testing to support or refute that the Student has ADHD. The May 2023 IEP reflects that the Parent raised issues regarding the speech language goal during the May 2023 meeting, which were addressed prior to the June 2023 meeting. Parent Ex. A-4.1, p. 189. Similarly, the Parent's concerns regarding the Student's comfort at [REDACTED] was reflected in the May 2023 IEP. Parent Ex. A-4.1, p. 190. The Parent's concerns regarding sufficient feedback, and communications from the teachers, particularly Algebra 2, were contained in the May 2023 IEP. Parent Ex. A-4.1, p. 194.

School staff must consider parental feedback, or parental participation would not be meaningful. Thus, “[a] school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification.” *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003), *superseded by statute on other grounds*, 20 U.S.C.A. § 1414(d)(1)(B), *as recognized in G.M. ex rel. Marchese v. Dry Creek Joint Elementary Sch. Dist.*, 595 F. App'x 698, 699 (9th Cir. 2014).

Ultimately, in light of such disagreements between school staff and parents, the United States Department of Education's Office of Special Education and Rehabilitative Services has provided guidance stating, “If the team cannot reach consensus, the public agency must provide the parents with prior written notice of the agency's proposals or refusals, or both, regarding the child's educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing.” Assistance to States for the Education of Children With Disabilities and the Early Intervention Program for Infants and Toddlers With Disabilities, 64 Fed. Reg. 12406, 12473–74 (Mar. 12, 1999) (providing answer to question number nine in section II of the Appendix); *see* 34 C.F.R. § 300.148(b)

(“Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures . . .”).

In this case, the MCPS considered the Parent’s input, as it updated and revised the speech language goal prior to the June 2023 IEP meeting. While neither party offered a prior written notice from the May 2023 and June 2023 IEP meetings, neither party asserted that such a document was not issued.<sup>39</sup> Based on the evidence presented, the Parent has not shown that the MCPS engaged in any procedural violations in preparing the May 2023 IEP.

5. *Whether the IEP created by the ██████’n IEP team denied the Student a FAPE?*

The Parent did not present any testimony or evidence to support different goals, accommodations, or services on the Student’s May 2023 IEP. The MCPS presented the testimony of Ms. ██████, who explained what the IEP team considered in drafting the May 2023 IEP. She also explained that there were two meetings to discuss this IEP and revisions were made to it after these discussions. Based on the evidence, the May 2023 IEP was reasonably calculated to enable the Student to make progress appropriate in light of his circumstances. Therefore, I find that MCPS provided a FAPE to the Student through the May 2023 IEP.

**CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the MCPS denied the Student a FAPE by failing to provide co-teacher support as required under the June 2022 IEP, January 2023 Amended IEP and April 2023 Amended IEP to the

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<sup>39</sup> Ms. ██████ testified that a prior written notice was issued. Further, in the exhibit list from the Parent, there was a premarked exhibit that was not offered, nor admitted titled “05.31.23 and cont. on 06.09.23 PWN.” See Parent’s Exhibit List with Batestamps, Ex. A-4.5. As it was not offered nor admitted, the document was not reviewed or considered for this decision.

Student in multiple classes during the 2022-2023 school year. 20 U.S.C.A. § 1401(9). However, the Student is not entitled to compensatory services as he continued to make progress on both his academic and IEP goals. *Reid ex rel Reid v. Dist. of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005).

Further, I conclude as a matter of law that the MCPS did not change the educational placement of the Student from [REDACTED] to [REDACTED] in spring of 2023. 20 U.S.C.A. § 1414(e); see also, *D.K. v. District of Columbia*, 983 F. Supp. 2d 138, 145 (D.D.C. 2013). The transfer of the Student from [REDACTED] to [REDACTED] in the spring of 2023 did not violate the IDEA. 20 U.S.C.A. § 1414(e).

Further, I conclude as a matter of law that the MCPS did not deny the Student a FAPE when he was transferred from [REDACTED] to [REDACTED]. *Andrew F. v. Douglas County School District*, 137 S. Ct. 988, 999 (2017); *Bd. of Educ. of the Hendrik Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181-82 (1982).

Further, I conclude as a matter of law that the [REDACTED] IEP team did not follow all required procedural guidelines when creating the April 2023 Amended IEP. 20 U.S.C.A. § 1414(d)(3)(D) and (F). While the procedural guidelines were not met, I conclude as a matter of law that the MCPS did not deny the Student a FAPE when the April 2023 Amended IEP was created. 20 U.S.C.A. § 1415(f)(3)(E)(ii) (emphasis added); see also 34 C.F.R. § 300.513(a)(2).

Further, I conclude as a matter of law that the [REDACTED] IEP team followed all procedural safeguards when it created the May 2023 IEP. *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003), *superseded by statute on other grounds*, 20 U.S.C.A. § 1414(d)(1)(B), as recognized in *G.M. ex rel. Marchese v. Dry Creek Joint Elementary Sch. Dist.*, 595 F. App'x 698, 699 (9th Cir. 2014).

Finally, I conclude as a matter of law that the May 2023 IEP provided the Student a FAPE. *Andrew F. v. Douglas County School District*, 137 S. Ct. 988, 999 (2017); *Bd. of Educ. of the Hendrik Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181-82 (1982).

### **ORDER**

I **ORDER** that the due process complaint filed by the Parent on August 25, 2023 and amended on November 3, 2023 is **DENIED** and **DISMISSED**.

March 7, 2024  
Date Decision Issued

Erin H. Cancienne  
Administrative Law Judge

EHC/emh  
#209678

### **REVIEW RIGHTS**

A party aggrieved by this final decision may file an appeal within 120 days of the issuance of this decision with the Circuit Court for Baltimore City, if the Student resides in Baltimore City; with the circuit court for the county where the Student resides; or with the United States District Court for the District of Maryland. Md. Code Ann., Educ. § 8-413(j) (Supp. 2023). A petition may be filed with the appropriate court to waive filing fees and costs on the 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 and Emailed to:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**CALVIN THOMAS ESTERS, III,**

**STUDENT**

**v.**

**MONTGOMERY COUNTY**

**PUBLIC SCHOOLS**

**BEFORE ERIN H. CINCIENNE,**

**AN ADMINISTRATIVE LAW JUDGE**

**OF THE MARYLAND OFFICE**

**OF ADMINISTRATIVE HEARINGS**

**OAH No.: MSDE-MONT-OT-23-22267**

**APPENDIX I – EXHIBITS**

I admitted the following exhibits on behalf of the Parents:<sup>40</sup>

Parent Ex. A-1	May 24, IEP Meeting – Pre Meeting Documents for Student (Quarterly Progress Report – Wheaton), 0001-0058
Parent Ex. A-2.1	Secondary Teacher Reports – Northwood, 0059-0086 <sup>41</sup>
Parent Ex. A-2.2	Not offered or admitted.
Parent Ex. A-2.3	Not offered or admitted.
Parent Ex. A-3.1	Not offered or admitted.
Parent Ex. A-3.2	Not offered or admitted.
Parent Ex. A-3.3	Not offered or admitted.
Parent Ex. A-3.4	Not offered or admitted.
Parent Ex. A-3.5	January 11, 2023 Prior Written Notice, 0174-0175 <sup>42</sup>
Parent Ex. A-3.6	Not offered or admitted.
Parent Ex. A-4.1	May 31, 2023 IEP, 0177-0224

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<sup>40</sup> Prior to the hearing, the Parent submitted proposed exhibits premarked with exhibit numbers. In order to avoid confusion during the remote hearing, and in the record, I have maintained the exhibit numbers used by the Parent's counsel. However, in the future, it would be useful for counsel to number exhibits sequentially 1, 2, 3, etc. and not use letters, numbers and decimals in numbering exhibits.

<sup>41</sup> Despite being premarked by the Parent, this was offered by MCPS and admitted.

<sup>42</sup> Despite being premarked by the Parent, this was offered by MCPS and admitted.

Parent Ex. A-4.2	Not offered or admitted.
Parent Ex. A-4.3	Not offered or admitted.
Parent Ex. A-4.4	Not offered or admitted.
Parent Ex. A-4.5	Not offered or admitted.
Parent Ex. A-4.6	Not offered or admitted.
Parent Ex. A-4.7	Not offered or admitted.
Parent Ex. A-4.8	June 3, 2022 IEP, 0324-0365
Parent Ex. A-4.9	Not offered or admitted.
Parent Ex. A-4.10	June 3, 2022 IEP amended on January 11, 2023, 0411-0461 <sup>43</sup>
Parent Ex. A-4.11	June 3, 2022 IEP amended on April 17, 2023, 0462-0512 <sup>44</sup>
Parent Ex. A-4.12	Not offered or admitted.
Parent Ex. A-4.13	January 11, 2023 Amendment Changes, 0514-0520
Parent Ex. A-4.14	Not offered or admitted.
Parent Ex. A-4.15	Not offered or admitted.
Parent Ex. A-4.16	Not offered or admitted.
Parent Ex. B-1	January 11, 2023, Esters January 11, Compensatory Services, 0526-0527
Parent Ex. B-2	Not offered or admitted.
Parent Ex. B-3	November 10, 2022, AP Government – Grading policy violation and IEP supports withheld, 0541-0543
Parent Ex. B-4	Not offered or admitted.
Parent Ex. B-5	September 9, 2022, AP Government – No frequent immediate feedback – teacher provided the November 4, 2022, 0546

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<sup>43</sup> Despite being premarked by the Parent, this was offered by MCPS and admitted.

<sup>44</sup> Despite being premarked by the Parent, this was offered by MCPS and admitted.

Parent Ex. B-6	November 6, 2022, AP Government – Fourth Parent Request for IEP Accommodations, 0547-0550
Parent Ex. B-7	November 10, 2022, Forced to Drop College Program Due to IEP Supports Withheld, 0551-0552
Parent Ex. B-8	Record of AP Government Contact August – November 2022, 0553-0554
Parent Ex. B-9	September 13, 2023, Parent Advised MCPS No Support Teacher in AP Government, 0555
Parent Ex. B-10	January 15, 2023 email to MCPS Webb and Garrick – Follow-Up to January 11 Compensatory Services Request, 0556
Parent Ex. C-1	January 3, 2023, NSL Government IEP Violations, 0557-0559
Parent Ex. C-2	January 13, 2023, NSL Government – No IEP support – chunking sentence starters, 0560-0563
Parent Ex. C-3	Not offered or admitted.
Parent Ex. C-4	Not offered or admitted.
Parent Ex. C-5	Offered, but not admitted. <sup>45</sup>
Parent Ex. C-6	Not offered or admitted.
Parent Ex. C-7	Not offered or admitted.
Parent Ex. C-8	Not offered or admitted.
Parent Ex. C-9	January 15, 2023 – IEP Supports Withheld – NSL Government – Boorstein, Assignment Friday, January 13, 0573
Parent Ex. C-10	January 8, 2023 – Email Attachment – Screen Shot January 1, 2023 at 9:42.28 p.m., 0574
Parent Ex. C-11	January 8, 2023 Attachment 2 – Screen Shot, January 1, 2023 at 9:42.02 p.m., 0575
Parent Ex. C-12	Not offered or admitted.

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<sup>45</sup> This exhibit is duplicate of an email, which had already been admitted as MCPS Ex. 42.

Parent Ex. C-13	January 6, 2023 – NSL Government – IEP Supports Withheld – Hazelwood School District – Synergy Notes – FAPE IEP Violation – NSL Government, 0578-0585
Parent Ex. C-14	January 24, 2023 – Inequity in Grading – No IEP Support – No response from MCPS, Re: Inequity in Grading – FW: Hazelwood School District v. Kuhlmeier, 0586-0588
Parent Ex. D-1	Not offered or admitted.
Parent Ex. D-2	Not offered or admitted.
Parent Ex. D-3	Not offered or admitted.
Parent Ex. E-1	Not offered or admitted.
Parent Ex. F-1	Not offered or admitted.
Parent Ex. F-2	Not offered or admitted.
Parent Ex. F-3	Not offered or admitted.
Parent Ex. F-4	Not offered or admitted.
Parent Ex. G-1	Not offered or admitted.
Parent Ex. G-2	Not offered or admitted.
Parent Ex. G-3	Not offered or admitted.
Parent Ex. G-4	Not offered or admitted.
Parent Ex. G-5	Not offered or admitted.
Parent Ex. G-6 <sup>46</sup>	Not offered or admitted.
Parent Ex. I-1	Not offered or admitted.
Parent Ex. I-2	Not offered or admitted.
Parent Ex. I-3	Not offered or admitted.
Parent Ex. I-4	Not offered or admitted.

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<sup>46</sup> When the Student premarked exhibits, none of the exhibits were labeled “H”.

Parent Ex. I-5	April 11, 2023, Forced Transfer to Wheaton – Re: Wheaton HS, 0681-0682
Parent Ex. J-1	April 25, 2023, Second Request – Re: Urgent – Fwd: Wheaton Transfer Request, 0683-0684
Parent Ex. K-1	Not offered or admitted.
Parent Ex. K-2	Not offered or admitted.
Parent Ex. K-3	Not offered or admitted.
Parent Ex. K-4	Not offered or admitted.
Parent Ex. K-5	Not offered or admitted.
Parent Ex. K-6	Not offered or admitted.
Parent Ex. K-7	Not offered or admitted.
Parent Ex. K-8	Not offered or admitted.
Parent Ex. L-1	Not offered or admitted.
Parent Ex. L-2	Not offered or admitted.
Parent Ex. M-1	May 3, 2023, Joachim email attachment, IEP Current C. Esters, 0714-0764
Parent Ex. M-2	May 3, 2023, Joachim email with current, IEP Weekly Check-In, 0765-0766
Parent Ex. M-3	Not offered or admitted.
Parent Ex. N-1	Not offered or admitted.
Parent Ex. N-2	Not offered or admitted.
Parent Ex. N-3	Not offered or admitted.
Parent Ex. N-4	Not offered or admitted.
Parent Ex. O-1	Not offered or admitted.
Parent Ex. O-2	Not offered or admitted.

Parent Ex. O-3	Not offered or admitted.
Parent Ex. O-4	Not offered or admitted.
Parent Ex. P-1	Not offered or admitted.
Parent Ex. P-2	Not offered or admitted.
Parent Ex. Q-1	Dr. Kimberly's Resume, 0791-0795
Parent Ex. Q-2	Wyzant Tutoring Statements, only pages 0798, 0804-0805

I admitted the following exhibits on behalf of MCPS:<sup>47</sup>

MCPS Ex. 1	Not offered or admitted.
MCPS Ex. 1a	Not offered or admitted.
MCPS Ex. 1b	Not offered or admitted.
MCPS Ex. 2	230411 <sup>48</sup> Wheaton HS, 016
MCPS Ex. 3	Not offered or admitted.
MCPS Ex. 4	230418 Wheaton Transfer Request, 018
MCPS Ex. 5	Not offered or admitted.
MCPS Ex. 6	Not offered or admitted.
MCPS Ex. 7	Not offered or admitted.
MCPS Ex. 8	Not offered or admitted.
MCPS Ex. 8a	Not offered or admitted.
MCPS Ex. 8b	Not offered or admitted.
MCPS Ex. 8c	Not offered or admitted.

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<sup>47</sup> Prior to the hearing, the MCPS submitted proposed exhibits premarked with exhibit numbers. In order to avoid confusion during the remote hearing, and in the record, I have maintained the exhibit numbers used by the MCPS's counsel. However, in the future, it would be useful for counsel to number exhibits sequentially 1, 2, 3, etc. and not use both numbers and letters. At the end of each exhibit description is the Bates stamp on the first page of that exhibit.

<sup>48</sup> MCPS exhibit names start with a date in the year month date order (i.e. 230418 refers to April 18, 2023).

MCPS Ex. 8d	Not offered or admitted.
MCPS Ex. 8e	Not offered or admitted.
MCPS Ex. 8f	Not offered or admitted.
MCS Ex. 9	Not offered or admitted.
MCPS Ex. 10	Not offered or admitted.
MCPS Ex. 11	Not offered or admitted.
MCPS Ex. 12	Not offered or admitted.
MCPS Ex. 13	Not offered or admitted.
MCPS Ex. 14	Not offered or admitted.
MCPS Ex. 15	Not offered or admitted.
MCPS Ex. 16	Not offered or admitted.
MCPS Ex. 17	Peter Moran Resume, 189
MCPS Ex. 18	Not offered or admitted.
MCPS Ex. 19	Not offered or admitted.
MCPS Ex. 20	Jonathan Garrick Resume, 197
MCPS Ex. 21	Not offered or admitted.
MCPS Ex. 30 <sup>49</sup>	221013 Esters to Garrick, 202
MCPS Ex. 31	221016 Esters to Garrick, 209 <sup>50</sup>
MCPS Ex. 32	Not offered or admitted.

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<sup>49</sup> MCPS had initially disclosed exhibits 1-21 (including sub-parts) prior to the first day of the hearing. After receiving additional discovery, MCPS premarked exhibits 30-50. These exhibits were added to the original binder submitted by MCPS. There were no MCPS exhibits pre-marked 22-29.

<sup>50</sup> Despite being premarked by MCPS, this was offered by the Parent and admitted.

MCPS Ex. 33	221104 Esters to Wachter, 219 <sup>51</sup>
MCPS Ex. 34	Not offered or admitted.
MCPS Ex. 35	221107 Esters to Garrick, 222
MCPS Ex. 36	Not offered or admitted.
MCPS Ex. 37	221215 Esters to Garrick, 227
MCPS Ex. 38	221220 Esters to Garrick, 228
MCPS Ex. 39	Not offered or admitted.
MCPS Ex. 40	230115 Esters to Garrick, 238
MCPS Ex. 41	Not offered or admitted.
MCPS Ex. 42	230122 Esters to Amador, 240
MCPS Ex. 43	Not offered or admitted.
MCPS Ex. 44	230125 Esters to Moran, 245
MCPS Ex. 45	230201 Esters to Moran, 246
MCPS Ex. 46	Not offered or admitted.
MCPS Ex. 47	Not offered or admitted.
MCPS Ex. 48	Not offered or admitted.
MCPS Ex. 49	230308 Esters to Garrick, 259
MCPS Ex. 50	230411 Esters to Garrick, 262

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<sup>51</sup> In MCPS's premarked exhibits, exhibits 33 and 34 were in the wrong order. Exhibit 33 is pages 219-221. Exhibit 34 is pages 217-218.

Per the request of the parties, I took judicial notice of Board of Education of Montgomery County Policy JEE,<sup>52</sup> last revised October 6, 2020.<sup>53</sup> A copy of this policy was obtained from <https://ww2.montgomeryschoolsmd.org/departments/policy/pdf/jee.pdf>, and was printed on February 5, 2024. It is maintained with the file.

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<sup>52</sup> The acronym JEE was not explained in the record.

<sup>53</sup> The Parent also requested that I take judicial notice of Board of Education of Montgomery County Policy JEE-RA. A copy of that policy was located at <https://ww2.montgomeryschoolsmd.org/departments/policy/pdf/jeera.pdf> and reviewed by all parties on February 5, 2024. However, policy JEE-RA had been revised on September 28, 2023, and the Parent did not provide a copy of policy JEE-RA that would have been in effect at the relevant time for this matter. Therefore, I declined to take judicial notice of policy JEE-RA.