

██████████,

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE ALECIA FRISBY TROUT,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH NO.: MSDE-MONT-OT-23-23394

DECISION

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ORDER

STATEMENT OF THE CASE

On September 6, 2023, ██████████ and ██████████ (collectively, Parents), on behalf of their child, ██████████ (Student), filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by the Montgomery County Public Schools (MCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017);¹ 34 C.F.R. § 300.511(a) (2021);² Md. Code Ann., Educ. § 8-413(d)(1) (2022);³ Code of Maryland Regulations (COMAR) 13A.05.01.15C(1). The Parties waived their obligation to attend a resolution session and mediation.

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

² “C.F.R.” is an abbreviation for the Code of Federal Regulations. All citations herein to the C.F.R. are to the 2021 bound volume.

³ All citations herein to the Education Article are to the 2022 Replacement Volume of the Maryland Annotated Code.

On October 25, 2023, I held a video prehearing conference in the captioned matter, remotely via Webex. COMAR 28.02.01.20B(1)(b). Manisha Kavadi, Esquire, participated on behalf of the MCPS. Paula Rosenstock, Esquire, participated on behalf of the Parents.

I held the hearing remotely via Webex on January 9, 10, 22, 25, 31, and February 7, 12, and 27, 2024. Ms. Rosenstock represented the Parents and Ms. Kavadi represented the MCPS.

Under the applicable law, and because the Parties waived the resolution period, a decision in this case normally would be due by October 20, 2023, which is forty-five days after the appeal was filed. 34 C.F.R. §§ 300.510(b)(2), (c), 300.515(a); Educ. § 8-413(h); COMAR 13A.05.01.15C(14). The Parties requested, given the unavailability of the Parties, counsel and witnesses, that the aforementioned timelines be extended to allow the case to be heard on the selected dates and allow sufficient time for me to consider the evidence, evaluate legal arguments and draft a decision. The parties also requested an extension of time to permit me thirty days in which to review the evidence and issue a written decision. 34 C.F.R. § 300.515(c); Educ. § 8-413(h). I granted the Parties' request for an extension. The Parties initially reported a need for a total of seven days for a hearing, with each party contemplating calling six to eight witnesses. To accommodate the witness's schedules, during the course of the hearing, we changed the schedule a bit and added an additional date of hearing.

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

ISSUES

1. Whether the MCPS failed to provide a free appropriate public education (FAPE) for the 2022-2023 and 2023-2024 school years by failing to propose an appropriate individualized education program (IEP) and placement, and specifically whether the Student requires full-time special education services outside of the general education setting?
2. If the MCPS did not provide a FAPE to the Student for the 2022-2023 and 2023-2024 school years, was the Parents' placement of the Student at [REDACTED] proper/appropriate?
3. If the placement by the Parents of the Student at [REDACTED] was proper/appropriate, should the MCPS reimburse the Parents for tuition and related expenses associated with the placement of the Student at [REDACTED] for the 2022-2023 and 2023-2024 school years? and
4. Should the Students placement be changed to [REDACTED] for the 2023-2024 school year?

SUMMARY OF THE EVIDENCE

The list of exhibits⁴ admitted into evidence is attached to this Decision as an Appendix.

Testimony⁵

The Parents presented the following witnesses:

- [REDACTED], Ed.D., admitted as an expert in special education;

⁴ Only the exhibits that were entered into evidence are included in this list. Additional documents were submitted, but either not offered or offered and not admitted. Those documents have been retained with the file.

⁵ All expert witnesses were qualified upon a satisfactory examination of the witnesses' education, credentialing, and experience. See COMAR 28.02.01.21D; see, e.g., *Univ. of Md. Med. Sys. Corp. v. Waldt*, 411 Md. 207, 237 (2009) (determination whether proposed expert has sufficient training, knowledge or skill to render expert opinion is committed to the sound discretion of the judge); *Massie v. State*, 349 Md. 834, 850-51 (1998) (citations omitted) (a judge may determine that a witness is sufficiently familiar with the subject matter to render an expert opinion based on "the witness's formal education, professional training, personal observations, and actual experience.").

- [REDACTED], admitted as an expert in speech language pathology;
- [REDACTED], admitted as an expert in special education; and
- [REDACTED], father

The MCPS presented the following witnesses:

- [REDACTED], admitted as an expert in special education and reading instruction;
- [REDACTED], admitted as an expert in special education;
- [REDACTED], admitted as an expert in special education; and [REDACTED], admitted as an expert in school psychology.

FINDINGS OF FACT⁶

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

Background

1. At the time of the hearing, the Student was an eleven-year-old student attending the 7th grade at [REDACTED] ([REDACTED]).⁷
2. The Student’s Parents first noticed that his development was slower than his siblings before the Student started Kindergarten. At that time, he was evaluated by the Montgomery County Infants and Toddlers Program and provided an IEP as a student with a Developmental Delay.
3. The Student started Kindergarten at [REDACTED] Elementary School⁸ ([REDACTED]) in the 2016-2017 school year. The Student received services pursuant to an IEP during his Kindergarten year. That IEP targeted articulation and math.

⁶ The record in this matter is extensive. The hearing included eight days of testimony and argument. Any citations to the record are for illustrative purposes only. My findings, analysis, and legal conclusions are based on consideration of the parties’ arguments and the credible evidence in the record. All admissible testimonial and documentary evidence was considered and given the weight it was due, regardless of whether it has been recited, cited, referenced, or expressly set forth in the Decision. *See, e.g., Mid-Atl. Power Supply Ass’n v. Md. Pub. Serv. Comm’n*, 143 Md. App. 419, 442 (2002) (emphasizing that “[t]he Commission was free to accept or reject any witness’s testimony” and “the mere failure of the Commission to mention a witness’s testimony” does not mean that the Commission “did not consider that witness’s testimony”).

⁷ [REDACTED].

⁸ [REDACTED] Elementary School, [REDACTED].

4. The Student attended [REDACTED] from 2016 through 2022 for all of his elementary education.
5. The Student received services pursuant to an IEP during all of his years at [REDACTED].
6. In or about the 2018-2019 school year, during the Student's 2nd grade year, the Student's disability code was changed to Other Health Impairment. Under that disability coding, the focus of the student's IEP was on his diagnosis of ADHD.⁹
7. At a time not clearly identified in this record, during the Student's 3rd grade year, he received reading instruction via the Orton-Gillingham methodology.
8. In or about mid-March 2020, during the Student's 4th grade year, all MCPS public schools, included [REDACTED], closed to in-person instruction due to the COVID 19 global pandemic. During the remainder of the 2019-2020 school year, and the first half of the 2020-2021 school year, the Student received instruction virtually. The Student participated in virtual education from his home with the constant assistance of his Parents.
9. Based on the tactile nature of the Orton-Gillingham methodology for reading instruction, it was discontinued during virtual learning. During that time, the Student received reading instruction utilizing the Really Great Reading methodology.
10. When the Student returned to school after virtual learning, the Student continued to receive his reading instruction through the Really Great Reading methodology.
11. Between Kindergarten and 4th grade, the Student took medication for ADHD. During that time, the Student's doctor(s) had prescribed several different medications to target ADHD, but all of the medications resulted in severe side-effects including increased blood

⁹ Attention-Deficit Hyperactivity Disorder

pressure, chronic migraines and increased heart rate. As a result, the Student discontinued all medications for ADHD as of the start of his 5th grade year.

12. At the end of the 2020-2021 school year, the Student had not mastered any of the goals on his 2020-2021 IEP.

13. In the Fall 2021, the Parents hired Dr. [REDACTED], an educational consultant, to evaluate the Student, provide guidance to the Parents, and participate in the IEP process along with the rest of the IEP team.

14. In October 2021, Dr. [REDACTED] administered a diagnostic evaluation of the Student. She detailed her observations to the IEP team at the October 8, 2021 IEP meeting, and included them in a report that was finalized on December 4, 2021.

15. Dr. [REDACTED] administered the Woodcock Johnson Tests of Academic Achievement, 4th Edition, and concluded that in the various tests of reading, writing and math, the student performed as high as the 20th percentile and as low as the 3rd percentile.

16. On October 8, 2021, the IEP team held an IEP meeting to address the Student's continued eligibility for special education, and to develop an IEP for the 2022-2023 school year.

17. Dr. [REDACTED] concluded that the Student's performance deficits were consistent with dyslexia. At the October 8, 2021 IEP meeting she encouraged the IEP team to change the Student's disability code to Specific Learning Disability and update his IEP with new goals and objectives in the areas of attention and executive functioning. She informed the IEP team of her conclusion that the Student's needed a full-time highly specialized program in a non-public setting.

18. At the October 8, 2021 IEP meeting, the Parents shared with the IEP team that the Student was struggling emotionally and mentally as a result of his learning deficits and lack of progress. The Parents and Dr. [REDACTED] stressed that their concerns were heightened by the

Student's impending transition from elementary school to middle school in the 2022-2023 school year.

19. At the October 8, 2021 IEP meeting, the MCPS proposed seventeen and one-half hours of supported instruction per week in the general education setting and four hours per week of specialized instruction outside of the general education classroom to address goals and objectives in the areas of reading phonics, reading comprehension, written language, math calculation, math problem solving, and executive functioning.

20. MCPS scheduled a second IEP meeting and made the following proposals:

- [MCPS] proposes to review the private educational evaluation submitted by [Parents] and completed by Dr. [REDACTED] on October 2, 2021.
- MCPS proposes to gather informal data regarding [the Student's] current levels of academic achievement and functional performance.
- MCPS proposes to complete psychological evaluations to gather further data regarding [the Student's] cognitive and executive functioning and social/emotional/behavioral needs.
- MCPS proposes to complete speech and language evaluations to determine [the Student's] current performance and needs in the areas of expressive and receptive language.
- MCPS proposes to add math calculation as an area affected by [the Student's] disability and to add a goal addressing this area.
- MCPS proposes to collect and document further data regarding [the Student's] present levels of academic achievement and functional performance in the areas of written language expression and written language mechanics.

21. In December 2021, [REDACTED], instructional specialist with the MCPS Department of Special Education,¹⁰ completed a speech/language evaluation of the Student. The Student performed poorly on the Goldman-Fristoe Test of Articulation, Third Edition. His score of 40 on the sounds in Words subtest placed him in the < 1 percentile and his score of 73 on the Sounds in Sentence subtest placed him in the 4th percentile. Further, during his language sample, the Student exhibited difficulty organizing his thoughts in a chronological

¹⁰ At the time of the hearing, Ms. [REDACTED] was the Assistant Principal at [REDACTED] Elementary School, an MCPS school.

manner. Ms. [REDACTED] concluded that these weaknesses had a negative impact on his educational performance and ability to functionally communicate with peers and adults within the classroom setting.

22. In December 2021, [REDACTED], MCPS school psychologist, completed a psychological evaluation of the Student. The evaluation showed that he was hard-working and his overall intellectual functioning was found to be in the average range. These scores indicated that the Student is capable of performing in the average range academically. His performance on the Comprehensive Test of Phonological Processing-Second Edition and his Phonological Awareness Composite score fell in the poor range leading Mr. [REDACTED] to conclude that those deficits were indicators of dyslexia. Mr. [REDACTED] concluded that the Student's inattention in both large and small group environments, and weakness in his executive functioning skills were areas of concern.

23. On February 2, 2022, [REDACTED], the Student's special education case manager at [REDACTED], completed an informal educational assessment report of the Student which analyzed the academic data from Dr. [REDACTED]'s report as well as the additional data collected by the MCPS. Her report detailed that, based on the Student's iReady reading diagnostic assessment administered in the Fall of the 2021-2022 school year, and the Benchmark Oral Reading Record, the Student scored in the 11th percentile, or second grade level in reading. In spelling, the Student was unable to correctly spell any of the grade 3-5 words and was given the grade K-2 list. On the iReady Math diagnostic assessment given during the Fall of the 2021-2022 school year, the Student was placed in the 6th percentile or second grade level. Ms. [REDACTED] concluded that the Student would benefit from instruction in evidence-based strategies for reading, writing, spelling and math. She also found that he would benefit from writing tools such as an electronic word processor.

24. On March 25, 2022, the Student's IEP team met to evaluate the various assessments completed between the Fall and Winter 2021-2022. The Parents continued to express concerns with the Student's lack of progress, and his declining emotional and mental health in relation to his self-esteem and enthusiasm for school. Specifically, the Student was expressing increasing anxiety surrounding being pulled-out of general education classes for specialized instruction. The Parents reported to the IEP team that the Student had asked to start attending therapy due to his anxiety and depression based on his school-performance and troubled peer relationships.

25. At the March 25, 2022 IEP meeting, the IEP team agreed to change the Student's disability code to Specific Learning Disability (dyslexia, dysgraphia, dyscalculia).

26. At the March 25, 2022 IEP meeting, the MCPS proposed six monthly thirty-minute sessions in speech and language; a change to the methodology for reading intervention and further assessment to explore concerns in phonological awareness.

27. After March 25, 2022, the MCPS implemented the amended IEP and the Student began receiving a reading intervention utilizing the Orton Gillingham methodology.

28. At the end of the 2021-2022 school year, the Student had not mastered any of the goals on his 2021-2022 IEP.

2022-2023 IEP for the Student's 6th grade school year

29. On June 1, 2022, the Student's IEP team met to develop the IEP for his transition to middle school.

30. At the June 1, 2022 meeting, the Parents and Dr. [REDACTED] referenced the Student's lack of progress, and his declining mental and emotional well-being in support of their position that the Student's placement be changed to a full-time, specialized non-public school.

31. At the June 1, 2022 meeting, the MCPS denied the Parents request to explore an alternative non-public placement, and proposed an IEP to be implemented at the Student's home school, [REDACTED] Middle School ([REDACTED]).¹¹ The team proposed 17.5 hours per week of supported instruction within the general education setting in the subjects of English, math, world studies and science; 45 minute daily specialized instruction in math and reading intervention; and six monthly thirty-minute sessions in speech and language. The team also proposed that the Student be eligible for Extended School Year services (ESY).¹²

32. The Student attended ESY at [REDACTED] for four weeks in July 2022. During ESY, the Student received six sessions of thirty minutes per week for reading and math intervention and support, and two hours of specialized instruction within the general education classroom for instruction in reading phonemic awareness, phonics, math calculation and executive functioning. During ESY, the Student received a reading intervention utilizing Orton Gillingham. He was usually the only student in the class as the other assigned student did not generally attend.

33. On August 8, 2022, the Parents informed the MCPS that the Student had been accepted at [REDACTED] and the Parents would be enrolling him there for his 6th grade year. The Parents requested public funding for the Student's placement at [REDACTED] for the 2022-2023 school year. On September 1, 2022, the MCPS declined the Parents' request.

34. The Student attended [REDACTED] for the 2022-2023 school year, his 6th grade year. At [REDACTED], the Student received forty-five minutes a week of one-on-one speech and language services, Orton Gillingham reading intervention in a class with one other student,

[REDACTED] Middle School, [REDACTED] [REDACTED].

¹² ESY is public school services and instruction provided during the summer months when the general public school is closed.

and other academic class sizes between four and eight students. The Student was enrolled in hands-on courses such as ceramics, Folklore¹³ and studio art.

35. At the end of the 2022-2023 school year, results of the Student's evaluation at [REDACTED] showed he had achieved an instructional grade level of 3rd to mid-4th grade level in reading, writing and math.

2023-2024 IEP for the Student's 7th grade school year

36. The Student's MCPS IEP team met on August 14, 2023 to update the Student's IEP for the 2023-2024 school year.

37. Based on the Student's progress at [REDACTED] evidenced by his work product, evaluations and Dr. [REDACTED]'s classroom observations, the Parents and Dr. [REDACTED] proposed that the Student's placement be changed to a full-time specialized, non-public placement at [REDACTED] for the 2023-2024 school year.

38. The MCPS denied the Parents request to change the Student's placement to a non-public placement, and proposed an IEP to be implemented at [REDACTED]. The team proposed a total of twenty-five and one-half hours a week in general education classes. That proposal included four courses per week of supported instruction within the general education setting in the subjects of English, math, history and science; and Physical Education in general education without support. The team proposed eight hours and fifteen-minutes outside the general education setting, fifty minutes daily in a specialized instruction in Orton Gillingham reading intervention, and fifty minutes daily in a specialized resource class. The proposal also included six monthly thirty-minute sessions in speech and language.

¹³ Folklore is an academic club model class that instructs humanities and social studies through dramatic play allowing the students to present their knowledge in alternative ways.

39. On August 24, 2023, the Parents formally provided notice to the MCPS and requested public funding for the Student's placement at [REDACTED] for the 2022-2023 and the 2023-2024 school year. The Notice informed the MCPS that the Parents would be re-enrolling him there for his 7th grade year.

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 Parents are seeking relief and bear the burden of proof to show that the challenged actions by the MCPS did not meet the requirements of the law.

Applicable Law and Legal Standard

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; Educ. §§ 8-401 through 8-417; and 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* Educ. § 8-403.

Forty-two years ago, the Supreme Court addressed the FAPE requirement in *Board of Education v. Rowley*, 458 U.S. 176 (1982). In *Rowley*, the Supreme Court held that FAPE is satisfied if a school district provides “specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.” *Rowley*, 458

U.S. at 201 (footnote omitted). To this end the Supreme Court set out a two-part inquiry to determine if a local education agency satisfied its obligation to provide FAPE: first, whether there has been compliance with the procedures set forth in the IDEA; and second, whether the IEP, as developed through the required procedures, is reasonably calculated to enable the child to receive some educational benefit. *Id.* at 206-07; *see also A.B. ex rel. D.B. v. Lawson*, 354 F. 3d 315, 319 (4th Cir. 2004) (“A FAPE requires the school district to provide instruction that suits the child’s needs as well as related services to ensure that the child receives some educational benefit from instruction”).

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

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 IEP must take into account:

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

20 U.S.C.A. § 1414(d)(3). Among other things, the IEP depicts a student’s current educational performance, explains how the student’s disability affects the student’s involvement and progress in the general curriculum, sets forth annual goals and short-term objectives for improvements in that performance, describes the specifically-designed instruction and services that will assist the student in meeting those objectives, describes program modifications and supports for school personnel that will be provided for the student to advance appropriately toward attaining the annual goals, and indicates the extent to which the child will be able to participate in regular

educational programs. § 1414(d)(1)(A)(i)(I)-(V); COMAR 13A.05.01.09A. IEP teams must consider the students' evolving needs when developing their educational programs.

To comply with the IDEA, an IEP must, among other things, allow a disabled child to advance toward measurable annual academic and functional goals that meet the needs resulting from the child's disability or disabilities, by providing appropriate special education and related services, supplementary aids, program modifications, supports, and accommodations. 20

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

In *Rowley*, the United States Supreme Court first addressed the FAPE requirement as follows:

Implicit in the congressional purpose of providing access to a [FAPE] is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child. It would do little good for Congress to spend millions of dollars in providing access to a public education only to have the handicapped child receive no benefit from that education. The statutory definition of [FAPE], in addition to requiring that States provide each child with "specially designed instruction," expressly requires the provision of "such . . . supportive services . . . as may be required to assist a handicapped child *to benefit* from special education." § 1401(17) (emphasis added). We therefore conclude that the "basic floor of opportunity" provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.

458 U.S. at 200-01 (footnote omitted). The Court explained that FAPE entitles a student to an IEP that is "reasonably calculated to enable the child to receive educational benefits" and that this requires that "the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child." *Id.* at 200, 207.

Absent more definitive direction regarding the standard to be employed to determine "when handicapped children are receiving sufficient educational benefits to satisfy the requirements of the Act," courts applied various interpretations of the level of benefit that is required. *Id.* at 202. The Fourth Circuit, taking its lead from the Tenth Circuit, formulated the test as whether the school system adopted an IEP calculated to confer "some" educational benefit

on the student, “meaning a benefit that is more than minimal or trivial, from special instruction and services.” *O.S. ex rel. Michael S. v. Fairfax Cty. Sch. Bd.*, 804 F.3d 354, 360 (4th Cir. 2015) (“In this circuit, the standard remains the same as it has been for decades: a school provides a FAPE so long as a child receives some educational benefit, meaning a benefit that is more than minimal or trivial, from special instruction and services.”).

Thirty-five years later, the parties in *Andrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988 (2017) asked the Supreme Court to go further than it did in *Rowley* and set forth a test for measuring whether a disabled student had attained sufficient educational benefit. The framework for the decision was the Tenth Circuit’s interpretation of the meaning of “some educational benefit,” which construed the level of benefit as “merely . . . ‘more than *de minimis*.’” *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 798 F.3d 1329, 1338 (10th Cir. 2015).

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 "*pecially 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. The Court expressly rejected the Tenth Circuit's interpretation of what constitutes "some benefit":

When all is said and done, a student offered an educational program providing "merely more than *de minimis*" progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to "sitting idly . . . awaiting the time when they were old enough to 'drop out.'" *Rowley*, 458 U.S., at 179[.] The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

Id. at 1001.

Directly adopting language from *Rowley*, and expressly stating that it was not making any "attempt to elaborate on what 'appropriate' progress will look like from case to case," the *Andrew F.* court instructs that the "absence of a bright-line rule . . . should not be mistaken for 'an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.'" *Andrew F.*, 137 S. Ct. at 1001 (citing *Rowley*, 458 U.S. at 206). At the same time, the *Andrew F.* court wrote that in determining the extent to which deference should be accorded to educational programming decisions made by public school authorities, "a reviewing court may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances." *Andrew F.*, 137 S. Ct. at 1002.

Notwithstanding the new 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). FAPE does not require “the best possible education that a school system could provide if given access to unlimited funds.” *Barnett v. Fairfax County Sch. Bd.*, 927 F.2d 146, 154 (4th Cir. 1991). It does, however, require the State to provide personalized instruction with sufficient support services to permit the child to benefit educationally.

In addition to the IDEA’s requirement that a disabled child receive educational benefit, the child must be placed in the “least restrictive environment” to achieve FAPE, meaning that, ordinarily, disabled and non-disabled students should, when feasible, be educated in the same classroom. 20 U.S.C.A. § 1412(a)(5) (2017); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117. Indeed, mainstreaming children with disabilities with nondisabled peers is generally preferred, if the disabled student can achieve educational benefit in the mainstreamed program. *DeVries v. Fairfax County Sch. Bd.*, 882 F.2d 876 (4th Cir. 1989). At a minimum, the statute calls for school systems to place children in the “least restrictive environment” consistent with their educational needs. 20 U.S.C.A. § 1412(a)(5)(A). Placing disabled children into regular school programs may not be appropriate for every disabled child and removal of a child from a regular educational environment may be necessary when the nature or severity of a child’s disability is such that education in a regular classroom cannot be achieved.

Because including children with disabilities in regular school programs may not be appropriate for every child with a disability, the IDEA requires public agencies like the MCPS to offer a continuum of alternative placements that meet the needs of children with disabilities. 34

C.F.R. § 300.115. The continuum must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, and make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement. 34 C.F.R. § 300.115(b); COMAR 13A.05.01.10B(1). Consequently, removal of a child from a regular educational environment may be necessary when the nature or severity of a child's disability is such that education in a regular classroom cannot be achieved. COMAR 13A.05.01.10A(2). In such a case, a FAPE might require placement of a child in a private school setting that would be fully funded by the child's public school district.

At the crux of this matter is the Student's contention that the MCPS failed to provide him with a FAPE during the 2022-2023 and 2023-2024 school years. As a result, the Parents unilaterally placed the Student at [REDACTED] during those school years. The ultimate issue is not whether [REDACTED] is better, or even as appropriate as the program offered by the MCPS, but whether the school district has offered a FAPE.

The Supreme Court has upheld the right of parents to unilaterally place a learning disabled child in a private school and to recover reimbursement from the local educational agency (LEA) when the educational program offered by school authorities is not reasonably calculated to provide a FAPE. *Burlington Sch. Comm. v. Dep't of Educ.*, 471 U.S. 359 (1985). However, the IDEA does not require a LEA to pay for the cost of private education if the agency has made a FAPE available to the child and the parents have nevertheless elected to place the child in a private school. 34 C.F.R. § 300.148(a). Parents who unilaterally place their child at a private school without the consent of school officials do so at their own financial risk. *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15 (1993) (citing *Burlington*, 471 U.S. at 373-74). Parents may recover the cost of private education only if they satisfy a two-pronged test: (1) the

proposed IEP was inadequate to offer the child a FAPE and (2) the private education services obtained by the parent were appropriate to the child's needs. *Burlington*, 471 U.S. at 370.

Positions of the Parties

The Parties agree on the following:

- The Student is currently an eleven-year old seventh grader who is properly identified as a student with a “specific learning disability (dyslexia, dysgraphia, dyscalculia).”
- The Student is social, communicates well with others, and has a good sense of humor.
- The Student's cognitive ability is in the average range.
- The Parties agree on the 2022-2023 and 2023-2024 MCPS IEP's goals, objectives, present levels of performance, supplemental aids and services, and provision of speech and language services.

The Parties disagree on whether the 2022-2023 and 2023-2024 MCPS IEPs can be implemented in the public school setting, or whether the Student requires an all-day specialized non-public school setting to successfully meet the goals and objectives as outlined in the two challenged IEPs.

The Parents' Case

Dr. [REDACTED]

Dr. [REDACTED] was accepted and testified as an expert in special education. She works as a special education consultant and has been in practice for forty-one years. In her capacity as a special education consultant, Dr. [REDACTED] meets with families, conducts diagnostic evaluations, works with schools to make IEPs, and makes recommendations for specialized services. Dr. [REDACTED] testified that she attends IEP meetings as often as 4 – 5 times a week. She also testified that she regularly observes students in their school environment including public and private school settings.

The Parents hired her as a special education consultant for the Student in 2021 when the Student was in fifth grade at [REDACTED]. Dr. [REDACTED] testified that the Parents hired her based

largely on their concern with the Student's lack of progress while at [REDACTED], and his decreasing self-esteem tied to his academic performance. After meeting with the Parents and the Student, and reviewing all of the Student's educational file, Dr. [REDACTED] conducted her evaluation with the Student on October 4, 2021. She then participated in an IEP meeting for the Student at [REDACTED] on October 8, 2021 where she shared her thoughts and recommendations.

Dr. [REDACTED] explained that the Student's cognitive ability falls within the average range, indicating that, with the appropriate supports, the Student should be able to access grade level material.

Dr. [REDACTED] explained that as of 5th grade, the Student was performing at a 2nd grade level in reading. She testified that he was reading at a level L instructionally, and a level N frustrationally. She explained that instructional level referred to texts that the Student had enough skills to access such that they could be used to build on, and frustrational texts referred to texts that were too advanced to be used for instruction.

To support this analysis, Dr. [REDACTED] referenced the Informal Educational Assessment Report completed by the Student's 5th grade special education teacher, [REDACTED] on or about December 17, 2021. P. Ex. 16. She specifically mentioned the results of the Student's iReady Reading diagnostic assessment in Fall 2021 that placed him in the 11th percentile among age peers and at an overall 2nd grade level. The Student's Benchmark Oral Reading Record completed on December 7, 2021 placed his independent reading level at a text level K, or a mid-second grade level.

Dr. [REDACTED] explained that, while she does not rely on grade level equivalency in her assessments, Ms. [REDACTED] had assessed the Student to be performing at a 2nd grade level in math during his 5th grade year. P. Ex. 16.

Dr. [REDACTED] testified that part of what instructed her conclusion that the Student's code should be changed from "other health impairment" to "specific learning disability (dyslexia, dysgraphia, dyscalculia)" was his deficits in executive functioning. She referenced the evaluation completed by the MCPS school psychologist, Mr. [REDACTED], on December 22, 2021, and pointed to the Comprehensive Executive Function Inventory¹⁴ which is a comprehensive behavior rating scale of executive function strengths and weaknesses. (P. Ex. 13). The Student's teacher scored him below a 90 in all areas including attention; emotional regulation; flexibility; inhibitory control; initiation; organization; planning; self-monitoring; and working memory. These scores indicate that the Student's teacher viewed those areas as weaknesses for the Student. Dr. [REDACTED] highlighted that on that rating scale, the Student's teacher and the Parents ratings placed him in the 4th percentile in organization. Additionally, Dr. [REDACTED] pointed to the Conner's 3¹⁵ rating scale also performed by Mr. [REDACTED] and analyzed in his report. (P. Ex. 13). Based on the Conner's 3, the Student, his teacher and parent all rated him as "very elevated" in the areas of inattention, hyperactivity, learning problems, and executive functioning.

Dr. [REDACTED] testified that after collecting and reviewing all of the data, she matched interventions and resources that were likely to be effective in helping the Student grow his skills. Dr. [REDACTED] compiled the data and her recommendations in a report dated December 4, 2021. P. Ex. 12.

¹⁴ The Comprehensive Executive Function Inventory uses a multi-rater model where the youth's parents and their teachers can rate executive function. The instrument measures nine main areas of executive function. A full scale, or overall representation of executive function is also provided. Results are reported in standard scores with a mean of 100 and a standard deviation of 15. High scores represent better executive function. Scores over 109 are considered as executive function strengths, while scores below 90 are considered a weakness. (P. Ex. 13).

¹⁵ The Connors 3rd Edition (Connors 3) is an assessment tool used to obtain the teacher's, parent's, and sometimes the student's observations about his/her behavior in the school and home settings. The instrument is designed to assess ADHD and its most common co-morbid problems in children and adolescents aged 6 to 18 years old. Scores are reported in T-scores. T-scores have a mean (average) of 50 and scores between 40 and 60 are in the average range. Scores between 65-69 are considered elevated, while scores over 70 are considered to be very elevated.

Dr. [REDACTED] utilized the following instruments and sources of information in completing her evaluation and recommendations:

Peabody Picture Vocabulary Test- Fifth Edition Form B (PPVT-5)
Expressive Vocabulary Test- Third Edition Form B (EVT-3)
Woodcock-Johnson Tests of Achievement- Fourth Edition Form B (WJ-4)
Gray Silent Reading Tests Form B (GSRT)
Interview with Parents
Interview with Student
Record Review including writing samples from school
Participation in IEP meetings with MCPS team

Dr. [REDACTED] testified that she conducted the Student's evaluation at her home office with a 1:1 adult to child ratio. In her report, Dr. [REDACTED] noted that the Student performed well in the evaluation but did require several breaks and redirection. In reference to school placement, her report recommends the following:

Regarding school placement, [the Student's] current special education program is not intensive enough to meet his needs. It is this examiner's opinion that he requires a full-time, highly specialized program such as are found in nonpublic schools in order to meet his needs. It is clear that a part-time special education program has not met [the Student's] needs and, as he is getting ready to transition to middle school, this increase in intervention intensity is all the more critical. In addition, [the Student] requires speech and language therapy individually, with services provided both in and out of the classroom. He requires assistive technology supports built into his school day.

It must be understood that there are no classes within [the Student's] school day during which his basic and other skills are not required. His program is not intensive enough and has not been intensive enough and this needs to be remedied. A referral to the Central IEP team of MCPS is requested on his behalf. Placement at schools such as the [REDACTED], the [REDACTED], and the [REDACTED] are recommended.

On March 25, 2022 and June 1, 2022, Dr. [REDACTED] attended two other IEP meetings for the Student. She testified that those meetings were held for the purpose of revising the IEP based on data collected during the 2021-2022 school year. Dr. [REDACTED] testified that the MCPS proposed the structure for the 2022-2023 school year which would be the Student's 6th grade year. The MCPS proposed the same structure as what the Student's IEP had provided in his fifth

grade year: 17.5 weekly hours in the general education setting and 4 weekly hours in a special education setting. Dr. [REDACTED] testified that she disagreed with the MCPS's conclusion because she believed the Student's needs required that he receive instruction in a different setting. She pointed to the fact that the student had not made progress with this service delivery evidenced by the fact that his academic levels had stagnated at the 2nd grade level for the previous three school years. She agreed with the addition of supports to accommodate the Student's move from elementary to middle school, but disagreed that a large portion of his day would be in general education as it had been during all of elementary school. Dr. [REDACTED] said:

I felt very strongly, and continue to feel very strongly, that [the Student] was not making progress. He was not making – certainly, not making meaningful progress. That doesn't mean a test score here or there might not have changed, because it might have. But he was still very delayed, most especially in reading and spelling. And that this proposal for middle school was really no different than the proposal that had been place for him for years in elementary school. ...I just didn't see it as being any different. I just couldn't understand the justification for more of the same when what had been provided to him wasn't working.

T. Vol. III. January 22, 2024. p. 301.

Dr. [REDACTED] pointed to the present levels of performance on the June 1, 2022 IEP that state that in reading phonics, and reading comprehension, the Student's instructional grade level performance in the 2019-2020 school year was 2nd grade; in the 2020-2021 school year was 2nd grade and in the 2021-2022 school year was "grade level 2.5." She opined that it was not reflective of meaningful progress. P. 21 p. 12, 17.

We expect children with good cognitive ability, which [the Student] has, to make approximately a year's progress in a year's time. We are not clever enough as educators and scientists to one-hundred percent exact on that. So some years, students might make a little more progress. They might make a little less progress, but we do expect them, with appropriate instruction, to continue to grow their skills. And [the Student] just wasn't.

T. Vol. III. January 22, 2024. p. 306.

Dr. [REDACTED] also pointed to the present levels of performance on the June 1, 2022 IEP that state that the Student was instructionally performing at the 2nd grade level in math calculation and the 3rd grade level in math problem solving. P. Ex. 21, p. 20, 22. In comparison, at the beginning of his 5th grade year, the October 2021 IEP stated that the Student was instructionally performing at the 2nd grade level in math calculation and the 3rd grade level in math problem solving. P. Ex. 10, p. 10. Noting that the student did not make progress in these areas during his 5th grade year, Dr. [REDACTED] opined that a change was warranted. She testified:

I felt really strongly, I continue to feel really strongly, that what [the Student] had been provided wasn't working, and that more of the same was not likely to yield a different outcome. So it solidified for me what I was requesting for [the Student] from MCPS, which was consideration of a more intensive non-public program for him so that he actually could learn and make progress. He has the capacity to learn.

T. Vol. III. January 22, 2024. p. 314.

While Dr. [REDACTED] agreed with much of the IEP, and testified that she assisted in drafting the majority of it, she disagreed with the ultimate conclusion of placement because what would be offered in the general education setting was not intensive enough. She explained that simply providing the Student a specialized reading intervention for 45 minutes a day was not going to be sufficient as those same reading skills are needed in every subject area except, perhaps, PE. Additionally, Dr. [REDACTED] based her conclusions on the Student's emotional state at the end of his 5th grade year. He expressed being sad and feeling bad about himself. He was a happy kid who loved school but was beginning to lose confidence.

Dr. [REDACTED] explained that goals in an IEP are meant to be crafted such that they are achievable in a year's time. She concluded that, at the MCPS, the Student had not mastered any of the goals on his 2020-2021 or 2021-2022 IEP. Dr. [REDACTED] opined that failure to master any IEP goals in a year's time equates to a failure to make meaningful progress.

Dr. [REDACTED] detailed her observations of the Student at [REDACTED] during his 6th grade year. She stated in the Fall, he was reading at an early 3rd grade level which she opined was “phenomenal improvement” based on his previous plateau at the 2nd grade level. T. Vol. III. January 22, 2024. p. 356.

Dr. [REDACTED] attended the August MCPS IEP meetings for the Student and provided that the MCPS proposed largely the same model for the 2023-2024 school year as it had for the 2022-2023 school year. She opined that it was not appropriate for the Student because he would be in large, general education classes. She pointed to the addition of a resource class as the one big change, but opined that the model was the same as the model that had not provided the Student an opportunity for meaningful progress. In contrast, the present levels of performance reported by [REDACTED] after the Student’s 6th grade year there, demonstrated progress. Specifically, in reading phonics, the Student’s instructional level was grade 3 – 4; reading fluency was mid-third grade; reading comprehension was 4th grade; math calculation was 3 – 4 grade; math problem solving was 3-4 grade; and written language mechanics and expression were grade 3. P. Ex. 44. Dr. [REDACTED] concluded that all of these levels demonstrate meaningful progress when compared to the Student’s three prior school years.

Dr. [REDACTED] concluded that the Student’s placement at [REDACTED] was successful because he received specialized instruction in very small classes across the school day. She stated that skills have to be taught and practiced throughout the school day and not just in one pull-out. She opined that this integration across the school day, coupled with very small class size, was what led to the Student’s success at [REDACTED]. She also addressed the schedule that the MCPS recommended that replaced the Student’s electives with interventions. She opined that the nature of the structure at [REDACTED] that integrates interventions throughout

the day allows the Student to take a broader range of courses rather than the very limited schedule required by the schedule recommended on the MCPS IEP.

I found Dr. [REDACTED]'s testimony to be credible and persuasive, and gave her opinions great weight. She was knowledgeable in both the public and private school models and did not demonstrate allegiance to either. At one point she stated that the Student's family "live across the street, the mother went to that school [REDACTED], it is all they wanted for him, and it just didn't work." T. Vol. IV. January 22, 2024. p. 614. Dr. [REDACTED] supported her testimony with documentary evidence and refrained from making unsupported assumptions. Dr. [REDACTED] demonstrated a desire to recommend the best model of instruction and placement for the Student. She demonstrated a desire to work with the MCPS team and attempt to work with the MCPS model to the greatest extent possible.

The MCPS argued that Dr. [REDACTED]'s opinion was based on incomplete data because she did not observe the Student in a large classroom setting such as what would be provided at [REDACTED]. Dr. [REDACTED] testified that she attempted to observe a class at [REDACTED], but did not receive a response to her request. Despite not observing a class at [REDACTED], she has observed many similar classes and can make a credible opinion based on the Student's performance in that setting in comparison to his performance at [REDACTED].

The MCPS argued that the MCPS model was superior to that offered by [REDACTED] because the MCPS listed the supports and services in the format of an IEP. While Dr. [REDACTED] agreed that it was important to document supports and services that shall be provided to the Student, she did not agree that the IEP format was required. She opined:

I am not sure it has to be in this format. So for example, if pre-testing is done in any domain and it is clearly identified which skills a student has and what are the next set of skills that have to be worked on, as long as that is recorded somewhere and that – bear with me – that guides the intervention, targets the intervention, focuses the intervention, does it need to be in this physical paper format? I am not sure. This is the format. So to me, the work isn't what the paper looks like.

The work is what do we know? What does the child need and where are we going? Those are the pieces.

T. Vol. IV. January 22, 2024. p. 569-570.

The MCPS also argued that had the Student had more time to continue with Orton Gillingham at [REDACTED], he would have yielded success. Dr. [REDACTED] argued that a pull-out reading intervention was not what the Student needed because he needs access to practice those skills across the school day and the general education setting with large class sizes had not provided that, which is why it had not yielded success for him over the course of the MCPS implementing this structure over the course of his six years at [REDACTED].

[REDACTED] is the Director of Speech and Language at [REDACTED]. Ms. [REDACTED] has worked at [REDACTED] for seventeen years. She was accepted and testified as an expert in the field of speech language pathology. Ms. [REDACTED] testified that she was familiar with the Student who, at the time of the hearing, had attended [REDACTED] for one and a half years where he was in sixth and seventh grade. She testified that the Student received speech and language services during that time. She explained that she consults with the Student's teachers and the Director of the Middle School to provide support and determine next steps for how to best provide instruction to the Student. Ms. [REDACTED] detailed that when a student requires additional help beyond what is provided in the classroom in areas such as writing, those additional skills may be provided within speech and language therapy. This is different than what is provided at the MCPS.

Ms. [REDACTED] testified that, based on her experience observing the Student and gathering information from some of his teachers, she believes he performs best in a small class size setting with teachers well trained in understanding and using methods for instructing students with language based learning disabilities. Ms. [REDACTED] testified that the Student's needs related to his

ADHD diagnosis, and related executive functioning needs, require a classroom engrained in supports for students with similar learning deficits. Specifically, classrooms with ample graphic organizers, specific prompts and strategies being used for all students, fidgets, flexible seating, schedules specifically programmed for individual students, and the ability to express oneself in ways other than traditional forms of reading, written or oral communication.

Ms. [REDACTED] detailed the Student's speech and language objectives for the 2022 – 2023 school year at [REDACTED], and his progress on those objectives, in a Speech-Language Progress Summary. P. Ex. 37. She referenced that document in her testimony when detailing that during the 2022 – 2023 school year, [REDACTED] had outlined four speech and language objectives for the Student, and that by the end of the year, he had mastered and/or improved on each of those goals. Specifically, he had mastered the objective to produce vocalic *r* sounds in words and sentences. He made improvements in the objective to explain the meaning of idioms in sentences and paragraphs and was successful 60 – 80 percent of the time. He also made progress in the objective to tell and retell narratives containing all required elements. By the end of the 2022-2023 school year he was successful 65 – 80 percent of the time on that objective. Finally, he was continuing to work on the objective to combine 2-3 simple sentences into one grammatical, meaningful sentence, an objective that was added at the end of April 2023. Ms. [REDACTED] agreed that these objectives mirrored those proposed by the MCPS at the Student's March 2022 IEP meeting and confirmed that the Student continued to receive speech and language services for 45 minutes a week in the 2023-2024 school year at [REDACTED] and continues to make progress on outlined objectives including the following objectives: (1) Given a speaking task [the Student] will accurately demonstrate formulation skills in 80 percent of opportunities; (2) Given a written expression task, [the Student] will accurately demonstrate formulation skills in 80 percent of opportunities; and (3) [The Student] will use a completed graphic

organizer/outline to draft a structured paragraph using a variety of sentence structures and transitions in 80 percent of opportunities. P. Ex. 53.

Ms. [REDACTED] testified that the speech and language goals and objectives in expressive language that the MCPS included in the Student's August 2023 IEP were not included as goals and objectives for the 2023-2024 school year with [REDACTED] because the Student had mastered those goals and objectives in his 2022-2023 school year.

Ms. [REDACTED] detailed her observations of the Student in a Science class at [REDACTED] that had taken place on a date just prior to the start of the hearing. The Science class that Ms. [REDACTED] observed had 8 total students including the Student. Ms. [REDACTED] noted that the Student had conversed with his teacher at the start of the class and that there were no articulation difficulties impacting his communication. In that conversation, the Student was proactively scheduling a time to complete make-up work. During class, the Student was able to answer questions when he was called on. She noted that his longer responses were a bit disorganized, but were better understood with prompting to make connections between his thoughts. Ms. [REDACTED] noted that he fidgeted a bit in his chair and put his head down at one point, but was engaged, followed along and understood what was going on in the lesson. Ms. [REDACTED] testified that in her conversations with the Students' 2023-2024 school year speech and language teacher, [REDACTED], Ms. [REDACTED] noted that attention and distractibility were still issues in one-on-one sessions with the Student. Ms. [REDACTED] relayed to Ms. [REDACTED] that she utilizes a 10 minute timer signaling regular breaks, and games to break up the 45 minute class. Ms. [REDACTED] detailed that for success, the Student requires that learned strategies be cued back to him.

Prior to her testimony, Ms. [REDACTED] also spoke with the Student's current Reading teacher, [REDACTED]. During the 2023-2024 school year, the Student was in a Reading class with one other student. His class focuses specifically on decoding, reading fluency skills,

comprehension and spelling. Ms. [REDACTED] provided that Ms. [REDACTED] summarized that the Student was making progress in Reading, specifically that articulation is no longer a problem, that his ability to express himself is improving, and while summarizing academic material is difficult for him, he is continuing to make improvements in that area. Ms. [REDACTED] also told Ms. [REDACTED] that the Student's distractibility impacts his performance and his ability to complete work independently.

Overall, Ms. [REDACTED] summarized that the Student is making progress at [REDACTED]. Ms. [REDACTED] concluded the progress was largely due to the small class size and individual attention the Student receives.

I found Ms. [REDACTED]' testimony to be persuasive. Ms. [REDACTED]' testimony demonstrated her knowledge of [REDACTED], the Student's needs, and how [REDACTED] model could best address those needs. She testified about first learning about the Student in his early time at [REDACTED], and in tailoring the structure of his school day based on his needs. She detailed the large variety of options available to [REDACTED] in creating a successful school experience for the Student such as one-to-one and two-to-one class sizes.

The MCPS argued that the persuasiveness of Ms. [REDACTED]' testimony was somehow lessened because she had completed her classroom observation days prior to the start of the hearing. I disagree. By completing her classroom observation at that time, Ms. [REDACTED] had the most current information. The timing of Ms. [REDACTED]' observation did not change her conclusion that the Student continued to struggle with distractibility, even within one-to-one class sizes, but overall was making progress at [REDACTED].

The MCPS also argued that Ms. [REDACTED] was not able to determine whether [REDACTED] was the best placement for the Student because she did not have experience working in a public school, and had not observed [REDACTED] Middle School. I did not find that Ms. [REDACTED]' testimony was

meant to make that determination, but rather, to present some of the progress that the Student had made while at [REDACTED]. Ms. [REDACTED]' expertise clearly provided her the ability to present evidence and draw conclusions about the Student's progress while attending [REDACTED].

Ms. [REDACTED] agreed with the MCPS that [REDACTED] is a school comprised completely of students who have language-based learning disabilities. She testified that while at [REDACTED] during the school day, the Student does not interact with students who do not fall within that profile, but that he is building skills to better aid him in his interactions with a broad range of people outside of [REDACTED].

[REDACTED] is the Director of Jurisdictional Services at [REDACTED]. In that role, Ms. [REDACTED] testifies in hearings on behalf of [REDACTED], observes students at the school, attends meetings such as staffings¹⁶ regarding specific students, and IEP meetings, meets with teachers, and participates in cross-curricular collaboration. Prior to this position at [REDACTED], Ms. [REDACTED] worked in a variety of settings and roles including as a public school teacher in [REDACTED]. Ms. [REDACTED] was accepted and testified as an expert in special education.

Ms. [REDACTED] explained that [REDACTED] is a private school that specializes in providing support to one type of student profile, students with language-based learning differences, differing from a public school that is tasked with servicing all students based on their geographic zone of residence. [REDACTED] reviews students' profiles and only accepts students who have a profile [REDACTED] is best suited to support.

Ms. [REDACTED] testified that she knows the Student. Ms. [REDACTED] testified that since the Student's initial virtual visit and application, the staff believed the Student met the profile of students at [REDACTED] and [REDACTED] could program for his needs. Ms. [REDACTED]

¹⁶ Staffings are internal meetings of the entire teaching team to discuss the best way so support a specific student.

testified that she has observed him at [REDACTED] and has attended staffings and meetings specific to him. She detailed that, in relation to the Student, she has reviewed work samples, reports, and spoken to his teachers, social worker and the head of the intermediate school, [REDACTED]. In the Student's 6th grade year at [REDACTED], she observed him in reading class and writing class. In the Student's 7th grade year at [REDACTED], she observed him in PE, reading, design lab¹⁷ and science. Ms. [REDACTED] summarized that, in general, the Student is a very engaged, hard-working student, who is sweet, kind, and polite. She testified that he is eager to be successful and to show what he knows, but has a difficult time remaining focused and fully engaged. Ms. [REDACTED] provided, as an example, a time she observed the student move to the floor with a clipboard to better focus on a spelling task. She testified that the Student has internal and external distractions and often needs to remove himself from his peers in order to fully engage with the work. [REDACTED] is able to address the Student's needs with distractibility by ensuring there is structure to each class, clear expectations, consistent redirection, flexible environments and very small student to teacher ratios.

Ms. [REDACTED] testified that the Student has deficits in reading. She testified that [REDACTED] is addressing his needs by maintaining small class sizes. In his 7th grade year, the Student is enrolled in a reading class that has a 2:1 student to teacher ratio, a writing class that has a 3:1 student to teacher ratio, a math class with a 5:1 student to teacher ratio and an English class with a 5:1 student to teacher ratio. The Student's largest class is PE which has a 26:2 student to teacher ratio. [REDACTED] utilizes an arts-based structure that allows students to demonstrate their knowledge through methods other than reading, writing and oral communication that is traditionally the focus at other schools. The Student is enrolled in classes such as ceramics, visualizing math, and design lab.

¹⁷ Design lab is an architectural and art focused elective at [REDACTED].

Ms. [REDACTED] testified that [REDACTED] does diagnostic assessments of students at least three times a year. She testified that when the Student came to [REDACTED] in Fall 2022, he was reading at the 2nd grade level. In the Spring of his 2022-2023 school year, the Student was able to decode a 4th grade level passage. P. Ex. 36. Ms. [REDACTED] pointed to the August 14, 2023 MCPS IEP for the Student for the 2023-2024 school year. The IEP notes that as of August 2023, the Student's instructional grade level in reading as 3rd – 4th grade. P. 44, p. 8. The same IEP notes that as of August 2023, the Student's instructional grade level in math was also 3rd – 4th grade. P. 44, p. 16-17. These levels indicated an improvement. The MCPS IEP for the Student note that in the Student's 3rd, 4th and 5th grade years, his instructional grade level in reading and math was 2nd grade. MCPS Ex. 17, pgs. 10, 21; MCPS Ex. 15, pg. 11; MCPS Ex. 39, pg. 13.

Ms. [REDACTED] testified that the MCPS proposal for the Student in the 2023-2024 school year was incongruent with the Student's demonstrated success at [REDACTED]. She stated that the level of support proposed by the MCPS does not match his current programming despite the fact that his current programming is allowing for academic progress as well as social emotional wellbeing. Ms. [REDACTED] opined that the proposal would not allow the Student to fully engage with the curriculum and therefore not allow him to fully demonstrate what he knows. Ms. [REDACTED] testified that the Student requires academic classes with no more than ten students in order to fully engage with the curriculum, and receive consistent redirection. While Ms. [REDACTED] did not attend the 2023-2024 IEP meeting, she testified that Ms. [REDACTED] attended and expressed this position to the team.

I found Ms. [REDACTED]'s testimony to be persuasive. While her position as Director of Jurisdictional Services at [REDACTED] places her in the position to promote [REDACTED], her testimony was supported by credible reports, classwork samples and the present levels of

performance reported by [REDACTED] following the 2022 – 2023 school year that were adopted, and considered by the MCPS in its 2023-2024 IEP.

The MCPS spent a good deal of time during its cross examination of Ms. [REDACTED] establishing that some of the teachers on the Student's schedule at [REDACTED] are not special education certified, and that [REDACTED] did not complete an IEP for the Student in the same format as required of Maryland public schools. The MCPS then argued that those two facts contributed to the conclusion that [REDACTED] could not meet the Student's needs in the way the MCPS could. I find both of the arguments moot when, despite credentials and paperwork, [REDACTED] model was able to elicit progress when the MCPS model was not.

[REDACTED]

Mr. [REDACTED] is the Student's father. He lives with the Student, the Student's mother, [REDACTED], and their two other children: [REDACTED], who is 16 years old and attended [REDACTED] and [REDACTED]; and [REDACTED], who is younger than the Student and currently attends [REDACTED]. Mr. [REDACTED] is a [REDACTED] with the [REDACTED]. Mr. [REDACTED] testified that he first noticed that the Student exhibited deficits in language when he was a toddler. He noted that the Student had his first IEP with MCPS before he entered Kindergarten.

Mr. [REDACTED] testified that the Student started Ritalin for ADHD when he was 2-3 years old, but he developed some tics, headaches and migraines. His prescription was changed to Adderall but was stopped after his migraines worsened. He tried two more medications between then and 5th grade but experienced rapid heart rate, drops in his blood pressure and more migraines. At the start of 5th grade, the Student expressed that he no longer wanted to take medication and the Parents agreed. Mr. [REDACTED] testified that as of 5th grade, the Student no longer takes medication for ADHD.

Mr. [REDACTED] detailed that in 5th grade, the Student could not spell his last name. He testified that he spoke with the Student's 5th grade teacher, Ms. [REDACTED], who said she was going to try her best to teach the Student to write his last name but was ultimately unsuccessful. He testified that Dr. [REDACTED] had told him and Ms. [REDACTED] that she was concerned with his progress, and believed he had dyslexia, dysgraphia and dyscalculia. He stated that it was the first time anyone had mentioned those specific concerns.

Mr. [REDACTED] testified that the Student does not express emotion much in public, but that when he would return home from school, he would express sadness and say he did not want to go to school. Mr. [REDACTED] detailed that the Student had said he was teased at school, would be called "retarded" and teased because he could not read *Harry Potter* like his friends.

Mr. [REDACTED] testified that he did not agree with the MCPS proposal for the 2022-2023 school year. He expressed that it would require even more time pulled out of the general education classes than in 5th grade. He expressed that 6th grade would be harder than 5th grade because it involved a change in teachers and classrooms, harder work and a larger work load. He testified that the Student would be followed around by an adult all day and unable to take electives. He worried those conditions combined with large class sizes would not benefit the Student.

Mr. [REDACTED] testified that the Student has enjoyed [REDACTED], made friends and expresses happiness about going to school there. Shortly after starting at [REDACTED], the Student learned to spell his last name. He testified that within the first couple of months at [REDACTED], the Student's progress was tremendous, as compared to the last years at [REDACTED]. He testified that during the August 2023 IEP meeting:

It was shared that he was showing progress. I told them that I actually broke down during a Parent Teacher Conference. Sorry. He was supposed to – he had a test for his reading and writing. He had to form a paragraph or a story of some sort and he was able to do that and then had it recorded so that the teacher played

it for us. And when she did that I obviously lost it because it is the first time that I heard my son read.

T. Vol. IV. January 22, 2024. p. 666-667.

Mr. [REDACTED] testified that the student plays soccer recreationally after school. He is in a league with non-disabled peers and enjoys it, but needs constant redirection.

I found Mr. [REDACTED]' testimony credible. He testified about how the experience of accepting that the Student would do better off at a non-public school was a roller coaster of emotions. He testified that Ms. [REDACTED] and the Student's two siblings all attended or will attend [REDACTED] and [REDACTED] r. When Dr. [REDACTED] recommended a non-public school for the 2021-2022 school year, Mr. [REDACTED] testified that the Parents decided to continue with [REDACTED]. These facts supported the conclusion that the Parents carefully considered their decision to place the Student at [REDACTED]. Mr. [REDACTED]' belief that it is the right school for the Student is sincere and well-supported.

The MCPS' Case

[REDACTED]

[REDACTED] was accepted and testified as an expert in the field of special education and reading instruction. She is currently the Assistant School Administrator at [REDACTED] Elementary School in Montgomery County. Prior to this year, she was an instructional specialist with the Department of Special Education in Montgomery County for sixteen years. In that role, for the past ten years, she supported 144 elementary schools and was in charge of intensive reading instruction and intervention for students with a variety of disabilities. One of the critical pieces of that work was to help develop IEPs.

Ms. [REDACTED] testified that she is familiar with the Student. She testified that she was asked to provide a consultation regarding his reading instruction and became involved after the October 2021 IEP meeting, in the Student's 5th grade year. She testified that after October

2021, the IEP team decided to reconvene in March 2022 to make revisions based on updated assessments. Ms. [REDACTED] testified that at the March 2022 IEP meeting, she suggested adding a reading fluency goal to work on automaticity in reading; adding a sight word goal for irregular words; and adding speech and language services for articulation and expressive language. She also provided that the team agreed to move from the Really Great Reading methodology to the Orton Gillingham methodology as a reading intervention. Ms. [REDACTED] testified that she believed the Student was responding well to Orton Gillingham and making progress. Ms. [REDACTED] testified that the IEP Team decided to get together again in June 2022. She said:

Well, a lot of times, but in particular with [the Student], just based on the discussion, we wanted to ensure that once he started in sixth grade that the recommendations that were identified for him in the IEP, we just wanted to get back together to talk about progress, how the interventions were going, how speech and language services were going, the specially-designed instruction for him. So just ensuring that he was getting what he needed *and that he was making progress* with those recommendations.

T. Vol. V. January 31, 2024. p. 754 (emphasis added).

Ms. [REDACTED] highlighted the additional goals that were added to the Student's IEP following the June 2022 IEP. She detailed a number of supplemental aides and services described in the IEP and stated that they were best practices that any teacher would be expected to implement. These include things like chunking text into manageable parts; offering movement breaks; providing frequent eye contact; and preferential seating to minimize distractions. MCPS Ex. 17. Ms. [REDACTED] testified that the IEP team determined that the Student was eligible for ESY services during summer break in 2022. MCPS Ex. 17.

For the Student's 2022-2023 school year which would be his 6th grade year, the MCPS proposed that the Student attend [REDACTED] where he would receive 17.5 hours weekly in supported, general education classes; one forty-five minute reading intervention utilizing Orton Gillingham

and one forty-five minute math intervention, both outside of the general education classroom; and six thirty-minute speech and language therapy sessions provided as a “pull out” from his other classes. MCPS Ex. 17. Ms. [REDACTED] testified that with the addition of several new goals on the IEP, the addition of 180 minutes a month of speech and language therapy, and the implementation of Orton Gillingham reading intervention, she believed the Student would be able to make progress in the general education setting at [REDACTED]. She pointed to several areas where the Student showed some improvement on a variety of assessments (MCPS Exs. 25, 26, 28, 29, 50). She agreed that at the end of the 2021-2022 school year, the Student was instructionally at the 2nd grade level in reading, math and writing.

Ms. [REDACTED] stressed that the Student interacts well with his non-disabled peers at recess and should not be restricted from having the opportunity for that socialization. She testified that she would hate to minimize those opportunities for him to learn in an environment where he can be successful. She said:

He’s inquisitive, you know, you want him to be able to have those opportunities where he can have that discourse, and have that inquiry with other students that have similar interests, *similar skills*, that can engage in that conversation about content or about, about a topic.

T. Vol. V. January 31, 2024. p. 870 (emphasis added).

She also observed the Student at [REDACTED] on June 6, 2023 in his 6th grade year during his reading intervention. She testified that she observed him exhibiting some of the same behavioral concerns he showed at [REDACTED] such as spinning in his chair, responding to questions out of turn and requiring redirection. She testified that following the Student’s 6th grade year at [REDACTED], she still supported the Student’s placement at [REDACTED] with the proposed IEP. She said:

When I think back to some of the students that I consulted on and then the team recommended consideration for a more restrictive setting. You know, I certainly think about students that had more impacted with memory, impacted with

processing, impacted with being able to effectively communicate their wants and needs, have an impact in terms of their being able to advocate for their wants and needs or to – that had more needs in terms of, kind of daily functioning within a building, being able to navigate a building independently, being able to ask for help if they were stuck on something academically, or if they were lost, you know, within a building. Students who required someone sitting next to them on a consistent basis to redirect them back to, let’s say, the task at hand, or failure to gain skills after multiple, multiple exposures of instruction. And so that’s not [the Student], that’s not the profile of the student that I saw, during my time at [REDACTED] or in the data that I’ve reviewed.

T. Vol. V. January 31, 2024. pgs. 888-889.

Ms. [REDACTED] testified that the Student was able to show mastery of grade level standards in his classes during 5th grade. T. Volume VI, February 2, 2024, p. 1059. Later, she agreed that his report card reflected only periodic mastery of grade level standards in core classes. *Id.*, p. 1061. Ms. [REDACTED] also acknowledged that the Student’s case manager and special education teacher, Ms. [REDACTED], completed an Elementary Teacher Report at the end of the Student’s 5th grade year and on that report, she marked seventeen of twenty-four listed skills as a “concern,” and the remaining seven as “satisfactory.” No skill was marked as a “strength.” MCPS Ex. 27.

Ms. [REDACTED] opined that if the Student had more time with the Orton Gillingham reading intervention, he would have shown improvement. She agreed that the Student received 7 months of Orton Gillingham at [REDACTED] during his 3rd grade year and, similar to his 5th grade year, only showed periodic mastery in his core subjects. MCPS Ex. 2, 4. He likewise remained on a second grade reading level for 3rd and 4th grade, despite the Orton Gillingham intervention he received. Ms. [REDACTED] testified that students are expected to start 3rd grade at reading level M. She agreed that the Student had started and ended 5th grade reading instructionally at a level L. MCPS Ex. 50, p. 6.

Ms. [REDACTED] testified that the IEP proposed by the MCPS for the 2022-2023 school year was appropriate for the Student. She testified that the Student’s placement at [REDACTED] was the

least restrictive placement for him. She also testified that to be the least restrictive placement, the student must be able to make meaningful educational progress there.

Ms. [REDACTED] clearly has a wealth of knowledge and expertise. She testified about the data and reports in the exhibits, but unreasonably slanted her interpretation of the data to support her conclusion that [REDACTED] is the appropriate placement for the Student. She testified that progress is defined differently for every student, and testified that the Student is of average intelligence and has the capability of mastering grade level material. She also testified that the Student had remained at a second grade reading level over the course of at least three years of instruction at [REDACTED]. I found her testimony instructive and persuasive only on topics supported by documentary evidence as I found much of her testimony unreasonably calculated to support a position, rather than to present the facts. Ms. [REDACTED] did not give sufficient weight, or provide sufficient explanation, to the fact that the Student had failed to make meaningful progress under the methods already offered that were being duplicated in the subsequent IEPs.

[REDACTED]

[REDACTED] was accepted, and testified as an expert in the field of special education. Ms. [REDACTED] testified that she has been employed in education for fifteen years. She is currently a special education teacher at [REDACTED] serving in the home school model program. In that role, she serves students with varying disabilities who are being provided inclusion services inside and outside the general education classroom. Ms. [REDACTED] started working with the Student in his 5th grade year at [REDACTED]. She described the Student as humorous with a wealth of background knowledge. She stated that at the beginning of the year, the Student would be pulled out once a day for a reading intervention, but after October 2021, he would also be pulled out each day,

along with fifteen other students, for two fifteen minute math interventions. She described that there were approximately 24 students in the Student's general education courses.

Ms. [REDACTED] performed an informal assessment of the Student on December 17, 2021, and detailed the results of that assessment in an Informal Education Assessment Report that was later amended on February 2, 2022. MCPS Ex. 8. Ms. [REDACTED]'s report included the following results:

- iReady Reading diagnostic assessment
Overall: grade 2, 11th percentile among age peers
Phonics: Grade 1
Vocabulary: Grade 2
Comprehension, Literature: Grade 3
Comprehension, Informational Text: Grade 1
- Benchmark Oral Reading Record
Text level K
Mid-second grade level
- MAP-M
Assessment completed with a human reader
Overall score 195, 18th percentile
3rd grade level
- iReady Math diagnostic assessment
Overall: grade 2, 6th percentile among age peers

Ms. [REDACTED] testified that the Student was doing well at [REDACTED] with the 2021-2022 IEP, and making progress. She opined the grades on report cards would reflect if he was not doing well. She testified that the Student was excited about the change from the Really Great Reading methodology to the Orton Gillingham methodology for his reading intervention because he liked the tactile aspects of Orton Gillingham. She said that he performed well in the Orton Gillingham group, and was engaged in the material. She believed his confidence and output was improving. Ms. [REDACTED] also testified that she did not have concerns with the Student's social and emotional health. She stated that because the Student's house is [REDACTED] from [REDACTED], she sees him outside of school playing basketball with friends and riding his bike.

She testified that she believes children learn the best from each other, and the Student would benefit from remaining in general education classes where he can interact with his peers.

Ms. [REDACTED] opined that the Student would be successful at [REDACTED] with the IEP that the MCPS proposed for the 2022-2023 school year. She testified that the IEP had adult support built in throughout the day due, in part, to the major transition of moving from elementary to middle school. She testified that the Student's executive functioning deficits would require that he have additional help navigating the hallways and managing the extra expectations. Ms. [REDACTED] addressed the Parents' concern that the Student would be unable to take any elective courses at [REDACTED] due to his reading and math interventions. She said that [REDACTED] offers opportunities for extra-curricular activities during lunch and after school.

During the course of her testimony, Ms. [REDACTED]'s descriptions of the Student differed from that of the other witnesses and were not supported by the documentary evidence. Ms. [REDACTED] referenced his good grades as indicative of his progress, yet drafted a report that showed that, in most areas of math and reading, he remained at the second grade level where he had been since second grade. Ms. [REDACTED] testified that the Student did not require constant adult support in his general education classes at [REDACTED]. In contrast, in a report she authored at the end of the 2021-2022 school year, Ms. [REDACTED] stated:

[The Student] requires scaffolds and supports in all academic areas. He lacks sufficient decoding strategies to access 5th grade text without support. He requires constant reminders and adult supports to focus and complete tasks. His lack of basic knowledge hinders his ability to complete more complex 5th grade math skills.

MCPS Ex. 27, p. 3.

Ms. [REDACTED] referenced the Student's report card as evidence of his success, but during cross examination agreed that by the end of the 2021-2022 school year, the Student was only periodically meeting grade level standards in core academic areas. T. Volume VI, February 2,

2024, p. 963. In her direct testimony, Ms. [REDACTED] referenced improvements the Student had made in reading as evidenced by the MAP-R assessment she administered in December 2021 that showed his score correlated to a mid-third to early fourth-grade performance level (MCPS Ex. 8, p. 2). I found her testimony about this improvement a bit disingenuous because that test of reading was completed with a human reader accommodation. While it could be argued that it tested the Student's reading comprehension, it could not be held out as a true assessment of his reading ability. In contrast, in her same report, Ms. [REDACTED] reported assessment results placing the Student at an overall 2nd grade reading level.

Ms. [REDACTED] testified that the hope is that a student will master the goals on an IEP within one school year. She testified that she did not see any period where the Student mastered any of his IEP goals. T. Volume VI, February 2, 2024, p. 982.

Ms. [REDACTED] testified that she believed the Student should receive instruction in general education classes so that he could maintain social relationships with his peers. On the March 2022 IEP, Ms. [REDACTED] and Ms. [REDACTED] described the Student's social nature as a hinderance to his learning.

In a note dated October 8, 2021 and included as an "Annual Review" on the March 25, 2022 IEP, Ms. [REDACTED] stated:

[The Student] is always willing to participate and engage during learning. He is respectful and kind to adults and peers. He is friendly and likes to interact with peers. This often causes him to become distracted during instruction and independent tasks.

Ms. [REDACTED] stated:

[The Student] works very hard and participates meaningfully during instruction. However, he is often distracted by himself and others. This greatly impacts his ability to complete learning tasks independently.

MCPS Ex. 17, p. 33.

Ms. [REDACTED] also testified that she was aware that the Parents had concerns with the Student's social and emotional well-being during 5th grade. She testified that the Parents had talked with her about their concerns, and had reported that the Student told them that other students were teasing him because he was being pulled out for interventions. She testified that the Parents reported that the Student had asked to see a therapist due to his anxiety about school.

Overall, I found that the inconsistencies and contradictions in Ms. [REDACTED]'s testimony to lessen her persuasiveness. In addition to the inconsistencies noted above, Ms. [REDACTED] testified that the Student would need adult support to navigate the hallways of [REDACTED], struggled with inattention during general education courses and during smaller specialized groups and was not meeting any of his IEP goals, but also recommended that he participate in extra-curricular activities during lunch and after school while also adjusting to the "extra expectations" of middle school. T. Volume VI, February 2, 2024, p. 955. It is difficult to reconcile Ms. [REDACTED]'s conclusion that the Student take on additional commitments outside of the regular school day to make up for the time lost to his interventions and specialized instruction with the evidence that the Student was not keeping up with basic expectations of a 5th grader, let alone as a first-year middle school student in a new school. I did not afford Ms. [REDACTED]'s testimony, outside what was supported by documentary evidence, much weight.

[REDACTED]

[REDACTED] was accepted and testified as an expert in special education. Ms. [REDACTED] is currently a resource teacher at [REDACTED] where she has been a special education teacher for thirteen years. In that role, she assists teachers in writing IEPs and implementing instruction consistent with IEPs. She observes classes and provides meaningful feedback to teachers.

Ms. [REDACTED] is familiar with the Student. She observed him at [REDACTED] and assisted in drafting the IEP for his 2023-2024 school year. She also attended the IEP meetings for the

Student in June and August 2023. Ms. [REDACTED] testified that she lives in the Student's community and sees him at events, playing basketball and riding bikes with friends.

Ms. [REDACTED] testified that had the Student attended [REDACTED] for 6th grade, he would have been enrolled in six 45 minute general education classes of approximately 28 students. These classes would be taught by a general education teacher and two additional adults. In his reading and math classes, one of the additional adults would be a special educator. His PE class would have approximately 34 students and would be taught by a general education teacher and a paraeducator. The Student would also have had a math intervention with approximately 10 students, a teacher and one paraeducator; and a reading intervention with approximately 8 students, a teacher and two paraeducators.

In June 2023, Ms. [REDACTED] observed the Student at [REDACTED] for 45 minutes in an English class. She stated that there were 8 students and 2 teachers in the class. The Student required prompting at the start of the lesson, but then worked independently on the assignment. He asked some clarifying questions, used his voice to text device and worked directly with the teacher to complete his assignment. He required redirection at times during the class-period, but was easily redirectable. Ms. [REDACTED] stated that at the end of the class, the Student's peers suggested that the Student read a story he had written. Ms. [REDACTED] opined that his story was "phenomenal."

Ms. [REDACTED] testified that she attended the Student's IEP meetings during June and August 2023 when the IEP was drafted for his 2023-2024 school year. Ms. [REDACTED] testified that in the 2023-2024 school year, the team made a change to remove the math intervention, and replace it with a resource class. She explained that the resource class could assist the Student with his deficits in executive functioning. The resource class would be outside of the general education classroom and contain approximately 10-15 students. The Student would also have a 20 minute

advisory period every day to meet with his case manager. Ms. [REDACTED] explained that the math interventions could be implemented during the advisory period, or as a pull-out during his general education classes. She also explained that the resource and advisory time would be utilized for front-loading of material and pre-work before content is presented in the general education classes. Ms. [REDACTED] stated that [REDACTED] also offers some extracurricular activities during lunch and advisory time. Ms. [REDACTED] opined that [REDACTED] would have been able to implement the IEPs created for the Student for the 2022-2023 and 2023-2024 school years.

The Student's IEP calls for "adult support." Ms. [REDACTED] explained that the paraeducator in the room for adult support would be assisting all of the students in the class, and circulating through the classroom, so the Student would not be singled out as needing the support. She testified that there would be 7-8 students in the classroom with IEPs calling for adult support and that adult would be there to support all of them. She testified that the model is similar to that used in elementary schools in the MCPS.

Ms. [REDACTED] testified from her experience, and her testimony was backed up by documentary evidence. I found her testimony to be persuasive. Ms. [REDACTED] talked about the strengths and weaknesses she observed at both [REDACTED] and [REDACTED]. She clearly explained what the Student's experience would have been like if he had attended [REDACTED]. She stated that the general setting and structure was similar to [REDACTED], although the class sizes would be larger. Ms. [REDACTED] detailed that the MCPS IEP aimed to put all of the additional support the Student would require to participate in a general education classroom into a 45 minute resource class and a 15 minute advisory period.

Ms. [REDACTED] detailed that during his resource class, advisory period and lunch, the Student could, among other things, do two 15 minute math interventions, complete front-loading and pre-work for upcoming assignments, participate in extra-curricular activities, eat lunch, meet with his

case manager, improve deficits in executive functioning, socialize with his peers, and fill in gaps to adjust for pacing. This plan does not adequately address the needs of a student who, through the testimony of all of the witnesses, requires regular breaks, physical activity, slowed down pacing of instruction and constant redirection.

██████████ was accepted and testified as an expert in the field of school psychology. Mr. ██████████ is a school psychologist for the MCPS and is currently assigned to three schools including ██████████. As a school psychologist, Mr. ██████████ provides students with a number of services including support services and crisis intervention. Mr. ██████████ also conducts assessments and attends IEP meetings. He testified that he is familiar with the Student and has conducted two assessments of him. Mr. ██████████ also attended three of the Student's IEP meetings in the 2021-2022 school year.

Mr. ██████████ most recently conducted an updated assessment of the Student in November and December 2021. Mr. ██████████ detailed the results of the assessment in a Psychological Report dated December 22, 2021. MCPS Ex. 7. Mr. ██████████ relied on the following sources in his assessment:

- Review of school records
- Staff information
- Observations
- Clinical interview and observation of student
- Weschler Intelligence Scale for Children – 5th Edition (WISC-V)
- Comprehensive Test of Phonological Processing – 2 (CTOPP-2)
- Comprehensive Executive Functioning Inventory (CEFI)
- Conners 3 – Parent, Self, and Teacher forms
- Beck Depression Inventory (BDI) Self Report Form
- Beck Anxiety Inventory (BAI) Self Report Form

Mr. ██████ testified that the Student's intelligence falls in the average range. Mr.

█████ assessed the Student's executive functioning skills. He said:

Executive function is important for problem solving and reasoning. Difficulties with executive function can often make simple tasks challenging.

MCPS Ex. 7, pg. 10.

Mr. ██████ completed the CEFI in reference to executive functioning. Based on that inventory, the Student's teacher considered all of the listed skills as weaknesses for the Student including attention; emotional regulation; flexibility; inhibitory control; initiation; organization; planning; self-monitoring; and working memory. MCPS Ex. 7, pg. 10. Mr. ██████ also completed the Connor's 3, an assessment tool designed to assess ADHD and its most common co-morbid problems in children and adolescents aged six to eighteen years old. On the Connor's 3, the Student, Parents and his teacher all rated the Student as "very elevated" in inattention; hyperactivity; learning problems and executive functioning.¹⁸ MCPS Ex. 7, p. 12. Mr. ██████ testified that the Student meets the criteria for ADHD combined type with aspects of inattention and hyperactivity. He states that his symptoms of ADHD affect his performance in school.

During the assessment, Mr. ██████ observed the Student during reading class, at recess and during lunch. He detailed that the Student was very personable, humorous and friendly. He described that during the Reading class he observed, the Student initially appeared to be on task. When the teacher used small cards to randomly assign pairs, the teacher changed the Student's pairing from a male peer to a female peer because she did not feel it was a good match. Mr. ██████ stated that the Student appeared to work well together. He explained

¹⁸ The Student did not rate himself in executive functioning.

that he believed his proximity to the Student helped him to stay on task. Mr. [REDACTED] testified that he has never been to [REDACTED].

Mr. [REDACTED] testified that he participated in the Student's IEP meeting in June 2022 and was part of the IEP team that made that proposal. He testified that he believed the Student's inattention and hyperactivity needs were addressed through supplementary aides and services such as small groups, organizational aides, movement, and preferential seating. MCPS Ex. 17, p. 43. He also referenced, as requisite support, adult redirection providing frequent eye contact and remaining in proximity of the Student to keep him on task. He testified that he believed the placement at [REDACTED] was best for the Student for the 2022-2023 school year because it would allow him to continue to interact with his non-disabled peers which Mr. [REDACTED] defined as his "neighborhood." Mr. [REDACTED] testified that he placed the Student's interaction with his peers, in general education classes, above the Student's ability to take a variety of classes and electives. He stated, "To say that losing an elective is worse than losing your neighborhood is absurd." T. Vol. VIII, February 9, 2024, p. 1312.

Mr. [REDACTED] testified that he did not have any concerns about the Student's social or emotional health in reference to school, and did not recall the Student ever having negative interactions with peers at school. Mr. [REDACTED] also testified that he recalled the Parents expressing their concerns about the Student's declining self-esteem. The June 2022 IEP states:

[The Parents] continue to have significant concerns of [the Student's] lack of progress, despite years of intervention ... They expressed that [the Student] does not like school and that it is a struggle to get him to come to school each day.

MCPS Ex. 17, p. 34.

During Mr. [REDACTED]'s classroom observation, he noted that the Student was switched from one peer to another when the class was randomly assigned peers for an assignment. During cross examination, Mr. [REDACTED] acknowledged that the change was made because the first

peer had scratched the Student during an altercation the previous day. He then testified that he remembered some verbal bullying and slapping involving the Student. He testified that the student had done well on the assignment he had observed. On cross examination, Mr. [REDACTED] testified that he was not close enough to hear the Student as he was reading aloud, or to see what he wrote on his paper. He stated that the Student participated in the group activity, but also explained that the Student's partner answered the questions while the Student listened. In his interview with the Student, the Student stated, "work is often difficult for him." MCPS Ex. 7, p. 3.

Mr. [REDACTED]'s testimony was not always supported by the documentary evidence and was at times internally inconsistent. Mr. [REDACTED] testified that the purpose of an IEP is for a child to make progress, to support the child, and to make progress in the areas that are identified on the IEP. T. Vol. VIII, February 9, 2024, p. 1338. The Student did not make progress in the areas identified on the MCPS IEPs during his 3rd, 4th or 5th grade years. I found his testimony to be largely biased by his strong opinion that maintaining the Student's "neighborhood" was paramount, and seemingly trumped his social-emotional well-being and academic progress. I cannot reconcile Mr. [REDACTED]'s agreement that the purpose of an IEP is for a child to make progress with his statement that replication of the Student's IEP that had not produced progress in at least three school years, was reasonable. I found the evidence elicited from Mr. [REDACTED]'s assessments persuasive, but not his analysis of that data.

Analysis

I will first address the issue of the shift to virtual learning caused by the COVID 19 pandemic largely during the Student's 3rd grade school year. Both the Student and the MCPS raised the fact that the tail end of the Student's third grade year, the 2019-2020 school year, and the first half of the Student's fourth grade year, 2020-2021 school year, were virtual due to the

COVID 19 pandemic. Without question, the shift to virtual had an impact on all students. The MCPS provided evidence that the Student had started the Orton Gillingham reading intervention during third grade, but was changed back to Really Great Reading because it was better suited to virtual learning. During testimony, the MCPS witnesses pointed many times to COVID 19, and virtual learning as a cause for the Student's stagnation. The Parent pointed to the virtual learning as an eye-opening experience for them that shed light on how much behind his peers the Student was, how much he struggled to focus during instruction and the impact this had on his mental well-being. Their experience with virtual learning was what encouraged the Parents to seek out additional help through Dr. [REDACTED]. Dr. [REDACTED]'s participation then led to the change in the Student's coding, the MCPS's closer evaluation involving Ms. [REDACTED] and additional goals added to his IEP.

The MCPS presented testimony that the IEP team met to discuss any regression that had occurred for the Student due to virtual instruction. The team determined that virtual learning had an impact on the Student's performance and recommended thirty hours of compensatory services to recoup that loss. That thirty hours was to be divided evenly between math, reading and writing. MCPS. Ex. 6. The MCPS presented testimony that the Parents did not take advantage of these thirty hours of compensatory instruction.

In summary, based on the present levels of performance, the Student was performing at essentially the same level for approximately the full year prior to COVID 19 and the full year after COVID 19. It is unclear from this record why the Student did not receive the proposed thirty hours of compensatory instruction. It is clear, however, that an additional ten hours in each of reading, writing and math was neither to blame for the Student's stagnation that had lasted through almost four years of schooling nor the missing piece for how to correct it. Every student was impacted by virtual learning, some more than others, but that cannot be used to

explain a scenario that existed prior to and long after virtual learning took place. I do not find any facts or argument regarding COVID 19 virtual learning or compensatory services to be persuasive.

Both parties agree with the IEP's goals and objectives, present levels of performance, and accommodations. The parties disagree with placement. The MCPS believes the Student should be placed in an MCPS public school. They argue that [REDACTED] could have implemented the 2022-2023 and 2023-2024 IEPs and afford the Student the opportunity to interact with non-disabled peers. The Parents believe that the Student's needs require a non-public, self-contained special education placement, and claim that the MCPS' failure to provide FAPE requires it to pay for the Student's placement at [REDACTED].

In determining whether MCPS denied the Student a FAPE, I am not required to compare the programs at [REDACTED] and [REDACTED] to determine which best serves the needs of the Student. *See Hessler*, 700 F.2d at 139 (citing *Rowley*, 458 U.S. at 176) (stating that 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"). Even if I were to find that [REDACTED] is a better program than [REDACTED], I could not order that the placement be changed on that basis. The question is whether placement at [REDACTED] provides the Student a FAPE in the least restrictive environment.

Not only am I not required to compare the two programs to determine which is "better," I am also not required to determine what would be the "ideal" for the Student. *Andrew F.*, 137 S. Ct. at 999 (citing *Rowley*, 458 U.S. at 206-207). The Student is entitled to an IEP that is reasonably calculated to ensure he makes progress in light of his unique circumstances. I am aware that *Andrew F.* rejected the standard of "merely more than *de minimis*." Even allowing that the standard is significantly higher than "merely more than *de minimis*," and encompasses

the ideas of appropriate progress, significant progress, and reasonable progress, the Student is not guaranteed under the law an IEP that gives the very “best.”

I believe that the Parents greatly wanted the Student to attend school at [REDACTED] and [REDACTED]. The Student’s two siblings attend [REDACTED] and [REDACTED] as did the Student’s mother. The Parents worked with the IEP team and kept the Student at [REDACTED] from Kindergarten to 5th grade, despite their disappointment and uncertainty about his progress there. They continued to work with the IEP team in an effort to send him to [REDACTED]. Dr. [REDACTED] testified that the Parents wanted nothing more than for the Student to attend [REDACTED] and [REDACTED].

The Supreme Court in *Andrew F.* made clear it would not attempt to state what appropriate progress in each unique case would look like. It also made clear that the “absence of a bright-line rule ... should not be mistaken for ‘an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.’” *Andrew F.*, 137 S. Ct. at 1001 (citing *Rowley*, 458 U.S. at 206). At the same time, the *Andrew F.* Court wrote that in determining the extent to which deference should be accorded to educational programming decisions made by public school authorities, “a reviewing court may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” *Andrew F.*, 137 S. Ct. at 1002. While I am not a “reviewing court,” I am the first level fact finder in this case. I do not conclude that the IEPs were reasonably calculated to enable the Student to make progress in light of his circumstances. The MCPS has not provided a cogent and responsive explanation for its placement decisions in light of the evidence showing that the Student did not make meaningful progress over the course of at least his last three years at [REDACTED] utilizing a relatively uniform model and IEP.

The Student did not achieve any of the goals on the IEPs for at least his 4th and 5th grade years at [REDACTED]. An IEP is “a statement of measurable annual goals, including academic and functional goals, designed to . . . meet the child’s needs that result from the child’s disability to enable the child . . . to make progress.” 34 C.F.R. § 300.320. Maryland’s regulations provide that IEP goals are “measurable, academic and functional,” “annual,” and achievable “within [one academic] year.” COMAR 13A.05.01.09. Also, the school system must “address any lack of expected progress in the annual goals.” COMAR 13A.05.01.08. The regulations mandate that a school system “shall make a good faith effort to achieve the goals of a student’s IEP.” COMAR 13A.05.01.09.

While there is nothing in the IDEA or federal or Maryland regulations that requires a guarantee that the Student achieve his IEP goals, a lack of progress should signal a problem and require a wholesale change. The MCPS did further analysis and assessments, but did little to act upon the results. The largest change was the shift to Orton Gillingham during the 2021-2022 school year, but this change was not something novel to the Student. The MCPS had first moved the Student to Orton Gillingham during his 3rd grade year when he received 7 months of Orton Gillingham reading instruction and yet did not make any improvement. I do not find that more time with Orton Gillingham alone would have made the difference for the Student under the IEP proposed by MCPS for 2022-2023 and 2023-2024. It is clear that the Student needed something more, and that something more was a change in setting.

I cannot conclude that the Student made any meaningful educational progress in 3rd through 5th grade at [REDACTED]. He met no goals or objectives during those school years. Based on the fact that in 3rd, 4th and 5th grades he was reading at a 2nd grade level, I cannot conclude that he made meaningful progress utilizing the methodology of the MCPS IEPs. While his IEPs during those years are not before me, his performance within their framework is

instructive as to his needs. The Parents and Dr. [REDACTED] believe the Student is in need of a much more intensive program than that available at [REDACTED]. He needs different strategies and a different setting in order to learn. In contrast, what he got at the MCPS were cookie-cutter IEPs year after year. If the IEP is not designed to provide meaningful educational benefit, FAPE cannot be provided. In 2022-2023 and 2023-2024, the MCPS did not provide FAPE.

The Parents have shown that the mainstream setting is not meeting his needs. Additionally, when he attends the mainstream setting, his special education needs are being satisfied in a way that diminishes any benefit of being mainstream. The MCPS touted the benefits of socialization with non-disabled peers, but based on his needs and the structure of the proposed IEPs, the Student would lose access times such as lunch and electives which are essential to socialization with peers. This argument also seemed to lose sight of the fact that [REDACTED] does not service a population of students who are not just as social and capable of appropriate peer interaction as the Student is. Finally, the Student has plenty of opportunities to socialize with non-disabled peers outside of school. [REDACTED] is the least restrictive placement that can meet the Student's needs.

The Supreme Court has upheld the right of parents to unilaterally place a learning disabled child in a private school and to recover reimbursement from the LEA when the educational program offered by school authorities is not reasonably calculated to provide a FAPE. *Burlington Sch. Comm. v. Dep't of Educ.*, 471 U.S. 359 (1985). However, the IDEA does not require an LEA to pay for the cost of private education if the agency has made a FAPE available to the child and the parents have nevertheless elected to place the child in a private school. 34 C.F.R. § 300.148(a). Parents who unilaterally place their child at a private school without the consent of school officials do so at their own financial risk. *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15 (1993) (citing *Burlington*, 471 U.S. at 373-74). Parents may

recover the cost of private education only if they satisfy a two-pronged test: (1) the proposed IEP was inadequate to offer the child a FAPE and (2) the private education services obtained by the parent were appropriate to the child's needs. *Burlington*, 471 U.S. at 370.

I have found that the MCPS failed to create an IEP designed to provide meaningful educational benefit for the 2022-2023 and 2023-2024 school years. The IEPs proposed by the MCPS for those school years was inadequate to offer the Student a FAPE. The Parents have shown that the IEPs proposed by the MCPS for the 2022-2023 and 2023-2024 school years were not tailored to provide him with meaningful educational progress.

The next question is whether the services the Parents obtained for the Student at [REDACTED] were appropriate for the Student's needs. I find that they were. The services offered at [REDACTED] were very similar to those proposed by the MCPS, but the environment was different. The Student received instruction in very small classrooms. The Student was with similarly situated peers such that instruction was tailored to his learning style, pace and special needs throughout the day, rather than in one or two pull-out sessions. The Student received reminders and instruction on applying what he learned in his specialized reading and math instruction, within other subjects, allowing him to generalize those skills across all areas. The Student made progress on his goals which led to an improvement of his self-esteem and attitude about school. Ms. [REDACTED] said that the Student "is a [REDACTED] student" meaning he was a model of the profile that [REDACTED] serves. Likewise, [REDACTED] is the appropriate school for the Student.

Remedy

Having found that the MCPS failed to create an IEP designed to provide meaningful educational benefit for the 2022-2023 and 2023-2024 school years, I must next determine the appropriate relief for the Student.

The IDEA’s procedural safeguards direct district courts to “grant such relief as the court determines is appropriate.” 20 U.S.C.A. § 1415(i)(2)(C)(iii). 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)). The equitable relief authorized by 20 U.S.C.A., § 1415(i)(2)(C)(iii) most commonly results in reimbursement for private placement when the child was denied a FAPE, or prospective compensatory education. *G. ex rel R.G. v. Fort Bragg Dependent Sch.*, 343 F.3d. 295, 308 (4th Cir. 2003).

As a remedy, the Parents seek reimbursement for the Student’s tuition and related services for the Student’s placement at [REDACTED] for the 2022-2023 and 2023-2024 school years. They also seek an order placing the Student at [REDACTED] for the 2023-2024 school year.

The MCPS argues that [REDACTED] is not the least restrictive placement because it does not afford the Student the opportunity to interact with non-disabled peers. I do not reach this argument because I have found that the placement offered by MCPS does not offer the Student the opportunity to make meaningful progress. Additionally, witnesses for both the Parent and MCPS testified that the Student regularly interacts with non-disabled peers outside of school. He is regularly seen playing with neighborhood friends outside, riding bikes, and playing basketball. The Student also participates in after-school sports with non-disabled peers. [REDACTED] offers the Student the ability to make meaningful progress in school, and continue to interact with non-disabled peers outside of school. [REDACTED] is a certified school meaning it is able to administer services to students who are eligible for IEPs in the public school system. Based on the totality of the record before me, I find that it would be equitable

and appropriate for the Student to be awarded reimbursement for [REDACTED] tuition and related services for the 2022-2023 and 2023-2024 school years, and a prospective placement at [REDACTED] [REDACTED] for the remainder of the 2023-2024 school year.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the IEPs and placement proposed by MCPS for the 2022-2023 and 2023-2024 school years were not reasonably calculated to offer the Student a FAPE. 20 U.S.C.A. §§ 1412(a)(5), 1414 (2017); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117 (2016). *Andrew F. v. Douglas Cty. Sch. Dist. RE-I*, 137 S. Ct. 988 (2017); *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982).

I further conclude that the Parents are entitled to receive reimbursement as a result of their unilateral placement of the Student at [REDACTED] for the 2022-2023 and 2023-2024 school years. 34 C.F.R. § 300.148 (2019).

I further conclude that the Parents are entitled to placement of the Student at [REDACTED] [REDACTED] for the 2023-2024 school year. 20 U.S.C.A. §§ 1412(a)(5), 1414 (2017); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117 (2019). *Andrew F. v. Douglas Cty. Sch. Dist. RE-I*, 137 S. Ct. 988 (2017); *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982).

ORDER

I **ORDER** that:

1. The Montgomery County Public Schools shall **FUND** placement of the Student at [REDACTED] [REDACTED] for the 2022-2023 school year;
2. The Montgomery County Public Schools shall **FUND** placement of the Student at [REDACTED] [REDACTED] for the 2023-2024 school year; and

3. The Montgomery County Public Schools shall, within thirty (30) days of the date of this decision, provide proof of compliance with this Order to the Chief of the Complaint Investigation and Due Process Branch, Division of Special Education and Early Intervention Services, Maryland State Department of Education.

March 28, 2024
Date Decision Issued

Alecia Frisby Trout
Administrative Law Judge

AFT/ja
#210652

REVIEW RIGHTS

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

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

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

Copies Mailed To:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

██████████,

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE ALECIA FRISBY TROUT,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH NO.: MSDE-MONT-OT-23-23394

APPENDIX: FILE EXHIBIT LIST

I admitted the following exhibits on behalf of the Parents:

- Parent Ex. 1 Amended Request for Due Process, August 24, 2023
- Parent Ex. 2 MCPS IEP and Prior Written Notice, October 16, 2019
- Parent Ex. 3 MCPS Prior Written Notice and Student Compass, April 28, 2020
- Parent Ex. 4 MCPS Fourth Quarter Report Card, June 2020
- Parent Ex. 5 MCPS IEP Progress Reports, November 9, 2020; January 29, 2021; April 16, 2021; and June 16, 2021
- Parent Ex. 6 MCPS Elementary Teacher Report, September 28, 2021
- Parent Ex. 7 MCPS Math Score Report, September 28, 2021
- Parent Ex. 8 MCPS iReady Reading Score Report, September 29, 2021
- Parent Ex. 9 MCPS Really Great Reading Progress Report, September 30, 2021
- Parent Ex. 10 MCPS Prior Written Notice and IEP, November 3, 2021; October 8, 2021
- Parent Ex. 11 MCPS ELA/Literacy Assessment and Mathematics Score Report, Fall 2021
- Parent Ex. 12 Diagnostic Educational Evaluation, Dr. ██████████, December 4, 2021
- Parent Ex. 13 MCPS Psychological Evaluation, December 10, 2021
- Parent Ex. 14 MCPS Psychological Evaluation, December 10, 2021
- Parent Ex. 15 MCPS Team Consideration of External Report, December 12, 2021
- Parent Ex. 16 MCPS Speech and Language Evaluation, December 20, 2021

- Parent Ex. 17 MCPS Amended Educational Evaluation, February 2, 2022
- Parent Ex. 18 MCPS Specific Learning Disability Team Report, February 2, 2022
- Parent Ex. 19 MCPS MAP Score Report, Winter 2017 – Winter 2022
- Parent Ex. 20 MCPS Third Quarter Report Card, April 2022
- Parent Ex. 21 MCPS Prior Written Notice and IEP, June 6, 2022; June 1, 2022
- Parent Ex. 22 MCPS IEP Progress Report, April 1, 2022; June 17, 2022
- Parent Ex. 23 Letter serving notice and MCPS response letter, August 8, 2022; September 1, 2021
- Parent Ex. 24 ██████████ Assessment Summary, September 13, 2022
- Parent Ex. 25 ██████████ student schedule and math work sample, September 2022
- Parent Ex. 26 ██████████ Related Services Treatment Summary, October 17, 2022
- Parent Ex. 27 ██████████ reading and writing work samples, November 2022
- Parent Ex. 28 ██████████ First Quarter report card, November 2022
- Parent Ex. 29 ██████████ Winter Assessment Summary, January 23, 2023
- Parent Ex. 30 ██████████ Oral Fluency Rubric, middle-of-year writing prompt, reading work samples, and math work samples, January – February 2023
- Parent Ex. 31 ██████████ Related Services Treatment Summary, February 9, 2023
- Parent Ex. 32 Observation and Special Education Consultation Report, Dr. ██████████, February 28, 2023¹
- Parent Ex. 33 ██████████ writing prompt and math work sample, March – April 2023
- Parent Ex. 34 MCPS consent form signed by parents, May 8, 2023
- Parent Ex. 35 ██████████ reading and writing work samples, May 2023
- Parent Ex. 36 ██████████ Assessment Summary, May 17, 2023
- Parent Ex. 37 ██████████ Speech Language Progress Summary, May 2023
- Parent Ex. 38 MCPS Classroom Observation Report, June 6, 2023

¹ Admitted for the limited purpose of determining whether ██████████ is an appropriate placement.

- Parent Ex. 39 [REDACTED] Teacher Reports for MCPS, June 2023
- Parent Ex. 40 [REDACTED] Math Student Tracker and IXL Diagnostic Report, June 2023
- Parent Ex. 41 [REDACTED] 4th Quarter report card, June 2023
- Parent Ex. 42 Notice letter from the Parent to MCPS with MCPS response letter attached, August 4, 2023, September 11, 2023
- Parent Ex. 43 MCPS Draft IEP feedback, Dr. [REDACTED], August 10, 2023
- Parent Ex. 44 MCPS IEP, August 14, 2023
- Parent Ex. 45 [REDACTED] Literature Assessment Summary, September 22, 2023
- Parent Ex. 46 [REDACTED] student schedule and beginning-of-year writing and reading assessments, September 2023
- Parent Ex. 47 [REDACTED] spelling and math work samples, October 2023
- Parent Ex. 48 [REDACTED] MAP Score Report, Spring – Fall 2023
- Parent Ex. 49 [REDACTED] 1st Quarter report card, November 2023
- Parent Ex. 50 Resume, Dr. [REDACTED]
- Parent Ex. 51 Resume, [REDACTED]
- Parent Ex. 52 Resume, [REDACTED]
- Parent Ex. 53 [REDACTED] Related Services Treatment Summary, October 2023
- Parent Ex. 54 Video of Student²
- Parent Ex. 55 MCPS Draft IEP markup, Dr. [REDACTED], March 21, 2022
- Parent Ex. 56 [REDACTED] 4th Quarter report card, June 2023
- Parent Ex. 57 MCPS IEP meeting notes, Dr. [REDACTED], June 1, 2022
- Parent Ex. 58 MCPS IEP meeting notes, Dr. [REDACTED], August 14, 2023
- Parent Ex. 59 MCPS IEP meeting notes, Dr. [REDACTED], August 30, 2023

² Contained on USB drive included in the file

I admitted the following exhibits on behalf of the MCPS:

- MCPS Ex. 1 MCPS Prior Written Notice, October 8, 2021
- MCPS Ex. 2 MCPS Prior Written Notice, October 27, 2021
- MCPS Ex 3 IEP, October 8, 2021
- MCPS Ex 4 MCPS Prior Written Notice, February 2, 2021
- MCPS Ex 5 Specific Learning Disability Team Report, February 2, 2022
- MCPS Ex 6 MCPS Prior Written Notice, February 2, 2021
- MCPS Ex 7 MCPS Report of School Psychologist, December 22, 2021
- MCPS Ex 8 MCPS Educational Assessment Report, Amended February 2, 2022
- MCPS Ex 9 MCPS Speech and Language Assessment Report, 12/20/2021
- MCPS Ex 10 Team Consideration of External Report, December 12, 2021
- MCPS Ex. 11 Diagnostic Educational Evaluation, December 4, 2021
- MCPS Ex. 12 MCPS HIAT Assistive Technology Consideration, November 15, 2021
- MCPS Ex. 13 CRS-Appendix B Individualized Decision Making Tool, February 2, 2022
- MCPS Ex. 14 MCPS Prior Written Notice, March 30, 2022
- MCPS Ex. 15 IEP, March 25, 2022
- MCPS Ex. 16 MCPS Prior Written Notice, June 1, 2022
- MCPS Ex. 17 IEP, Amended June 1, 2022
- MCPS Ex. 18 Letter from Paula Rosenstock, Esquire, to MCPS, August 8, 2022, encl. General Authorization
- MCPS Ex. 19 Letter to Paula Rosenstock, Esquire from MCPS, September 1, 2022
- MCPS Ex. 20 Report Card, 2021-2022 school year
- MCPS Ex. 21 IEP Progress Report, Quarter 1 and Quarter 2, 2021-2022 school year
- MCPS Ex. 22 IEP Progress Report, Quarter 3 and Quarter 4, 2021-2022 school year
- MCPS Ex. 23 Orton Gillingham Data, March 21, 2022 – May 10, 2022

- MCPS Ex. 24 Math Fluency Data, October 20, 2021, March 31, 2022
- MCPS Ex. 25 Really Great Reading Grouping Matrix, September 30, 2021
- MCPS Ex. 26 Really Great Reading Grouping Matrix, January 6, 2022, November 1, 2021
- MCPS Ex. 27 Teacher Report, May 20, 2022
- MCPS Ex. 28 Read Naturally Live, May 17, 2022
- MCPS Ex. 29 iReady Diagnostic Results, September 29, 2021
- MCPS Ex. 30 MAP-Mathematics, October 1, 2020 – May 16, 2022
- MCPS Ex. 31 MAP-Reading, September 25, 2019 – January 25, 2022
- MCPS Ex. 32 MAP Math and Reading, Fall 2021-2022
- MCPS Ex. 33 Email from Ms. [REDACTED] to Ms. [REDACTED] with Phonological Awareness Screening Test Scores, April 19, 2022
- MCPS Ex. 34 Authorization for Release/Exchange of Confidential Information, May 8, 2023
- MCPS Ex. 35 Emails between MCPS and Parent Counsel, June 7, 2023
- MCPS Ex. 36 Classroom Observation, Ms. [REDACTED], June 6, 2023
- MCPS Ex. 37 Classroom Observation, Ms. [REDACTED], June 6, 2023
- MCPS Ex. 38 MCPS Prior Written Notice, August 24, 2023
- MCPS Ex. 39 IEP, August 24, 2023
- MCPS Ex. 40 Student Essay, from [REDACTED], May 20, 2023
- MCPS Ex. 41 [REDACTED] Assessment Summary, 2022 - 2023
- MCPS Ex. 42 Feedback on IEP Draft from Dr. [REDACTED], undated
- MCPS Ex. 43 [REDACTED] Speech-Language Progress Summary, May 2023
- MCPS Ex. 44 Resume, [REDACTED]
- MCPS Ex. 45 Resume, [REDACTED]
- MCPS Ex. 46 Resume, [REDACTED]

MCPS Ex. 47 Resume, [REDACTED]

MCPS Ex. 48 Resume, [REDACTED]

MCPS Ex. 49 Resume, [REDACTED]

MCPS Ex. 50 Benchmark Reading Records, undated

MCPS Ex. 51 MCPS Prior Written Notice, August 30, 2023