

[REDACTED]

[REDACTED],

STUDENT

v.

MONTGOMERY COUNTY PUBLIC

SCHOOLS

BEFORE SUN E. CHOI,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-MONT-OT-23-28930

DECISION

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STATEMENT OF THE CASE

On November 9, 2023, [REDACTED] (Parent), on behalf of her child, [REDACTED] [REDACTED] (Student),¹ 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 Montgomery County Public Schools (MCPS) under the Individuals with Disabilities Education Act (IDEA).^{2 3 4 5}

The parties did not participate in mediation because MCPS declined to participate. On December 4, 2023, the parties participated in a resolution meeting. The thirty-day resolution period would have expired on December 9, 2023. However, on December 4, 2023, after their

¹ The Student’s correct full name is [REDACTED], not [REDACTED].

² 20 U.S.C.A. § 1415(f)(1)(A) (2017). “U.S.C.A.” is an abbreviation for the United States Code Annotated. Unless otherwise noted, all citations herein to the U.S.C.A. are to the 2017 bound volume.

³ 34 C.F.R. § 300.511(a) (2022). “C.F.R.” is an abbreviation for the Code of Federal Regulations. Unless otherwise noted, all citations herein to the C.F.R. are to the 2022 bound volume.

⁴ Md. Code Ann., Educ. § 8-413(d)(1) (Supp. 2023). Unless otherwise noted, all citations herein to the Education Article are to the 2022 Volume of the Maryland Annotated Code.

⁵ Code of Maryland Regulations (COMAR) 13A.05.01.15C(1).

unsuccessful resolution meeting, the parties notified the OAH in writing that it would not be possible for them to reach an agreement.

I held a remote prehearing conference on December 4, 2023. Edith Serrano, Esquire, participated on behalf of the Parent, who was present, and the Student, who was not present. Stacey Swain, Esquire, standing in for John Delaney, Esquire, participated on behalf of MCPS.

I held a remote hearing on January 22, 2024, and January 23, 2023.⁶ The Parent was self-represented.⁷ John Delaney, Esquire, represented MCPS.

Under the applicable law, a decision in this case would be due by January 18, 2023, forty-five days after December 4, 2023, the date the parties indicated in writing that after their resolution meeting, no agreement was possible and notified the OAH on the same date.⁸ However, the parties jointly requested that I grant an extension of the time for hearing dates outside of the timeframe.⁹

At the prehearing conference on December 4, 2023, the parties estimated ten days would be needed to present their case. At least three of the days were added to accommodate the services of a [REDACTED] interpreter for the Parent. After discussion concerning the time necessary to prepare and exchange documents in conformity with the five-business-day required disclosures, the intervening holiday and winter break, we collectively started looking at scheduling this matter onwards from the week of December 18, 2023. From December 18, 2023, through January 7, 2024, the Parent was out of the country. The Parent returned to the United States on January 8, 2024. Winter break for the holidays for MCPS was from December 25, 2023, through

⁶ The hearing was scheduled to begin on January 16, 2024, and continued on January 17 and January 19, 2024. However, due to inclement weather, the MCPS was closed on January 16, 17, and 19, 2024. The hearing began on January 22, 2024.

⁷ On December 26, 2023, Ms. Serrano filed a Motion for Leave to Withdraw as Counsel (Motion). On January 11, 2024, I granted the Motion in a written Ruling on Motion, and her appearance was stricken.

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

⁹ 34 C.F.R. § 300.515(c); Educ. § 8-413(h).

January 2, 2024. The following chart summarized which subsequent dates were available to all the parties, and which dates were not available, by whom, and the reason:

Monday	Tuesday	Wednesday	Thursday	Friday
January 8, 2024 MCPS Counsel in another OAH matter	January 9, 2024 MCPS Counsel in another OAH matter	January 10, 2024 MCPS Counsel in an IEP meeting	January 11, 2024 MCPS Counsel in an IEP meeting	January 12, 2024 MCPS Counsel in an IEP meeting
January 15, 2024 Holiday – no parties available	January 16, 2024 All available for Day 1	January 17, 2024 All available for Day 2	January 18, 2024 ALJ in specially set matter	January 19, 2024 All available for Day 3
January 22, 2024 All available for Day 4	January 23, 2024 All available for Day 5	January 24, 2024 ALJ in specially set matter	January 25, 2024 All available for Day 6	January 26, 2024 All available for Day 7
January 29, 2024 All available for Day 8	January 30, 2024 All available for Day 9	January 31, 2024 All available for Day 10		

For the reasons discussed above, and at the request of both parties, I granted an extension of time to hold the hearing as scheduled above. To properly adjudicate this matter by making detailed Findings of Fact, Conclusions of Law, and a decision, both parties indicated that I should have sufficient time after the close of the hearing to issue my decision within thirty days of the close of the record. The hearing concluded, and the record closed on January 23, 2024; therefore, my decision will be issued on or by February 22, 2024, thirty days from January 23, 2024.

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.¹⁰

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

ISSUES

1. Did MCPS substantively deny the Student a free appropriate public education (FAPE) for the 2023-2024 school year by failing to develop an appropriate Individualized Education Program (IEP) on October 6, 2023, that provides the proper services to address the Student's special education needs?
2. Did MCPS procedurally deny the Student a FAPE for the 2023-2024 school year by failing to provide the Parent an opportunity to participate meaningfully during the development of the October 6, 2023 IEP?
3. Did MCPS deny the Student a FAPE by failing to consider placement at [REDACTED] Middle School ([REDACTED] MS or [REDACTED]) or another MCPS middle school, in a general education setting, with appropriate supports and services, for the 2023-2024 school year?
4. Is the [REDACTED] School, to be paid for by MCPS, the least restrictive environment (LRE) for the Student for the 2023-2024 school year?
5. If the Student was denied a FAPE, what is the appropriate relief?

SUMMARY OF THE EVIDENCE

Exhibits¹¹

I admitted the following exhibits on behalf of MCPS:

MCPS Ex. 1 - Neuropsychological Consultation Confidential Report by [REDACTED], Psy.D. (Bates MCPS 001-026), October 27, 2021

MCPS Ex. 2 - Functional Behavioral Assessment (FBA) (*Id.* 027-052), January 6, 2023

MCPS Ex. 3 - Report of Bilingual Speech-Language Assessment (*Id.* 053-057), January 25, 2022

¹¹ As a preliminary matter, prior to the start of the Parent's case, the exhibits from the Parent and MCPS were admitted without objections. The MCPS exhibits are listed first rather than the Parent's exhibits because the index provided by Ms. Serrano before her motion to withdraw was granted included different Bates numbers from the actual exhibits she submitted, and the exhibits were lumped into groups that were not identified accurately. I disregarded the index submitted and listed the Parent's exhibits as they were provided and corrected the identification of exhibits. The majority of the Parent's exhibits were portions of the MCPS' exhibits.

- MCPS Ex. 4 - Speech-Language Status Report (*Id.* 058-063), June 26, 2023
- MCPS Ex. 5 - Educational Status Report by [REDACTED] (*Id.* 064-077), July 10, 2023
- MCPS Ex. 6 - Confidential Status Report of School Psychologist [REDACTED] (*Id.* 078-081), July 10, 2023
- MCPS Ex. 7 - Team Consideration of External Report (*Id.* 082), January 27, 2022
- MCPS Ex. 8 - Report of Bilingual Speech-Language Assessment (*Id.* 083-087), January 25, 2022¹²
- MCPS Ex. 9 - Confidential Evaluation Report of School Psychologist, by [REDACTED] (*Id.* 088-093), January 21, 2021
- MCPS Ex. 10 - IEP (*Id.* 094-143), January 20, 2023, amended on May 22, 2023
- MCPS Ex. 11 - IEP (*Id.* 144-191), January 20, 2023, amended on May 9, 2023
- MCPS Ex. 12 - IEP (*Id.* 192-239), January 20, 2023
- MCPS Ex. 13 - IEP (*Id.* 240-278), January 27, 2022, amended on August 1, 2022
- MCPS Ex. 14 - IEP (*Id.* 279-317), January 27, 2022, amended on May 9, 2022
- MCPS Ex. 15 - IEP (*Id.* 318-354), January 27, 2022
- MCPS Ex. 16 - IEP (*Id.* 355-406) June 13, 2023
- MCPS Ex. 17 - IEP (*Id.* 407-458), June 13, 2023, amended November 3, 2023
- MCPS Ex. 18 - IEP (*Id.* 459-510), June 13, 2023
- MCPS Ex. 19 - Ten-day Letter to [REDACTED], from [REDACTED] (*Id.* 511-512), December 7, 2023
- MCPS Ex. 20 - Letter for Inclusion Program Coordinator [REDACTED] (*Id.* 513), August 7, 2023
- MCPS Ex. 21 - [REDACTED] Acceptance Letter from [REDACTED] (*Id.* 514), November 2, 2023
- MCPS Ex. 22 - Emails between the Parent and School Counselor Cindy Garcia (*Id.* 515-518), various dates

¹² This exhibit is a duplicate of MCPS Ex. 3.

- MCPS Ex. 23 - Emails between the Parent and [REDACTED] (*Id.* 519-561), various dates
- MCPS Ex. 24 - Letter from [REDACTED], the [REDACTED] ([REDACTED]) to [REDACTED] (*Id.* 562), November 6, 2023
- MCPS Ex. 25 - [REDACTED] (the [REDACTED]) (*Id.* 563), October 13, 2023
- MCPS Ex. 26 - Emails between the Parent to [REDACTED] (*Id.* 564), June 23, 2023
- MCPS Ex. 27 - [REDACTED] Letter to [REDACTED] (*Id.* 565), October 25, 2023
- MCPS Ex. 28 - Prior Written Notice (PWN) (*Id.* 566-567), November 2, 2021
- MCPS Ex. 29 - PWN (*Id.* 568-569), January 27, 2022
- MCPS Ex. 30 - PWN (*Id.* 570), May 9, 2022
- MCPS Ex. 31 - PWN (*Id.* 571), January 20, 2023
- MCPS Ex. 32 - PWN (*Id.* 572), April 27, 2023
- MCPS Ex. 33 - PWN (*Id.* 573-574), June 14, 2023
- MCPS Ex. 34 - PWN (*Id.* 575-576), September 1, 2023
- MCPS Ex. 35 - [REDACTED] Resume (*Id.* 577), undated
- MCPS Ex. 36 - [REDACTED] Resume (*Id.* 578-581), undated
- MCPS Ex. 37 - [REDACTED] Resume (*Id.* 582-584), undated
- MCPS Ex. 38 - [REDACTED] Resume (*Id.* 585-586), undated
- MCPS Ex. 39 - [REDACTED] Resume (*Id.* 587), undated
- MCPS Ex. 40 - [REDACTED] Resume (*Id.* 588-589), undated

I admitted the following exhibits on behalf of the Parent:¹³

- Parent Ex. 1 - Five-Day Verification Notice of Documents Provided After an IEP Meeting [REDACTED] 001- 005), May 16, 2022; Notice of IEP Team Meeting, April 8, 2022; IEP Team Meeting Sign-In Sheet, May 9, 2022; PWN, May 9, 2022; IEP, (*Id.* 006-085), January 27, 2022, amended May 9, 2022; Referral to More Restrictive Checklist (*Id.* 086), July 10, 2023
- Parent Ex. 2 - [REDACTED]¹⁴ (*Id.* 87), June 16, 2023
- Parent Ex. 3 - Confidential Student Record Transmittal (*Id.* 088 – 089), received July 14, 2023
- Parent Ex. 4 - IEP Team Meeting Sign-In Sheet (*Id.* 090), June 13, 2023; PWN (*Id.* 091-092), June 14, 2023; IEP (*Id.* 093-138), June 13, 2023
- Parent Ex. 5 - Notice and Consent for Assessment (*Id.* 139-140), June 13, 2023; Email between the Parent and [REDACTED], rescinding consent (*Id.* 141), June 13, 2023
- Parent Ex. 6 - Report to Parent’s on Student Progress Grades 6-8 (*Id.* 142-143), June 22, 2023
- Parent Ex. 7 - Speech-Language Status Report (*Id.* 144-149), June 26, 2023; Confidential Status Report of School Psychologist [REDACTED], (*Id.* 150-154), July 10, 2023; Educational Status Report by [REDACTED] (*Id.* 154-167), July 10, 2023; Confidential Evaluation Report of School Psychologist by [REDACTED], Jr. (*Id.* 169-174), January 21, 2021; Report of Bilingual Speech-Language Assessment (*Id.* 175-179), January 25, 2022
- Parent Ex. 8 - Team Consideration of External Report (*Id.* 168),¹⁵ January 27, 2022; Neuropsychological Consultation Confidential Report (*Id.* 180-205), October 27, 2021; [REDACTED]¹⁶ (*Id.* 206), June 6, 2023
- Parent Ex. 9 - Letter from [REDACTED] (*Id.* 207-209), undated

¹³ See Footnote (FN) 11.

¹⁴ This exhibit was submitted without an English translation.

¹⁵ This exhibit ([REDACTED] 168) was erroneously included in this group of exhibits.

¹⁶ This exhibit was submitted without an English translation.

Testimony

The Parent testified¹⁷ and presented the testimony of [REDACTED], the Student's father.¹⁸ The MCPS presented the following witnesses: [REDACTED], Resource Teacher for Special Education (RTSE), [REDACTED] MS, who was admitted as an expert in special education; [REDACTED], Secondary Placement Specialist, MCPS, who was admitted as an expert in special education and placement; and [REDACTED], School Psychologist, MCPS, who was admitted as an expert in school psychology.

STIPULATIONS OF FACT

At the prehearing conference on December 4, 2023, the parties stipulated to the following facts:

1. The Student, who was born in [REDACTED], is thirteen years old.
2. The Student is eligible for special education and related services under the educational disability Multiple Disabilities (Specific Learning Disability (SLD) and Other Health Impairment (OHI)).
3. For the 2023-2024 school year, the Student is enrolled in the [REDACTED] [REDACTED] ([REDACTED]) program, in the seventh grade at [REDACTED] MS, a public general education middle school, in MCPS.

¹⁷ The Parent utilized the services of a [REDACTED] interpreter.

¹⁸ Mr. [REDACTED] utilized the services of a [REDACTED] interpreter.

FINDINGS OF FACT

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

Background

1. At sixteen months of age, the Student was referred to Montgomery County Infants and Toddlers Program (MCITP) because he did not meet age-expected milestones in the areas of language and fine/gross motor skills. Due to delays in these areas, he received speech-language and occupational therapy services through MCITP.

2. In November 2014, at three years of age, the Student was identified with an educational disability of developmental delay and remained with MCITP for service; in April 2015, he exited MCITP to receive school-based services at a separate class, preschool placement.

3. In the fall of 2016, the Student entered kindergarten and attended the [REDACTED] at [REDACTED] Elementary School until the first half of first grade. He then transferred to the [REDACTED] ([REDACTED]) for the second half of first grade and continued within that program through fifth grade.

4. In February 2018, the Student's primary educational disability was changed from developmental delay to an emotional disability. At that time, the Student qualified for special education services as a student with an emotional disability as well as autism. The emotional disability was considered to be the Student's primary disability impacting his ability to access the curriculum.

5. In March 2018, the Student participated in an evaluation at the [REDACTED] [REDACTED] at the [REDACTED] completed by [REDACTED] Ph.D.¹⁹

¹⁹ Doctor of Philosophy.

completed by [REDACTED] Ph.D.²⁰ He received a diagnosis of autism spectrum disorder and other specified disruptive impulsive control and conduct disorder. However, on the Autism Diagnostic Observation Schedule – Second Edition (ADOS-2), the Student exceeded the minimum cut-off for the classification of autism spectrum disorder.

6. In 2015 and 2019, the Student was evaluated by [REDACTED], Psy.D.,²¹ at [REDACTED] ([REDACTED]). The April 2019 evaluation of the Student revealed an overall cognitive ability in the low range, standard score (SS) seventy-six with scores ranging from extremely low (working memory index SS: fifty-nine) to low average (fluid reasoning index SS: eighty-two).

7. At that time, the Student met the criteria for diagnosis of borderline intellectual functioning, attention-deficit/hyperactivity disorder combined type (ADHD-C), specific learning disorder with impaired reading, and a language disorder. The family was advised to consult with the Student's pediatrician regarding medication to treat the Student's ADHD symptoms, in addition to behavioral therapy. It is not known if the Student was ever treated with medication for his ADHD symptoms.

8. In October 2019, the Parent requested a meeting with the [REDACTED]ndburg IEP team to discuss the Student's educational code. An IEP amendment occurred, and the IEP team reviewed the external neurological psychological report. The IEP team recommended that the Student receive special education services under the education code of multiple disabilities (SLD and OHI due to diagnosis of ADHD).²²

²¹ Doctor of Psychology.

²² MCPS Ex. 2, Bates MCPS 079.

9. The Student received and continues to receive Applied Behavior Analysis (ABA) therapy for aggression and noncompliant behavior since 2019. The ABA therapy has helped with managing the Student's behaviors.

10. In November 2020, the Student was administered a neuropsychological evaluation by [REDACTED], Psy.D., at [REDACTED]. Results from the WISC-V²³ indicated a full-scale IQ²⁴ of seventy-four, with index scores ranging from SS: seventy-four to eighty-four. On the WJ-IV-ACH,²⁵ the Student's overall academic skills fell within the very low range.

11. From April 2020 through June 2021, the Student attended school virtually.

12. In January 2022, the IEP team reviewed updated MCPS and external assessments²⁶ and confirmed eligibility of special education services under the disability code of Multiple Disabilities. The Student's SLD and OHI impacts the Student in the areas of math calculation, math problem solving, reading comprehension, reading phonics, expressive language, receptive language, written language expression, self-management, and social interaction skills.²⁷

13. In May 2022, during the Student's fifth grade year at [REDACTED], the IEP team determined that since the Student did not have autism,²⁸ the LRE for the Student for the sixth grade, 2022-2023 school year, was the [REDACTED] program at [REDACTED] MS, rather than a program dedicated to students who were diagnosed with autism. For the sixth grade, the Student transitioned to the [REDACTED] program at [REDACTED] MS, which is a general education comprehensive middle school of approximately 800 students.

²³ Wechsler Intelligence Scale for Children Fifth Edition.

²⁴ Intelligence quotient.

²⁵ Woodcock-Johnson IV Tests of Achievement.

²⁶ See MCPS Ex. 3, Bates MCPS 080.

²⁷ *Id.* 004-005.

²⁸ See Findings of Fact (FOF) No. 5.

2022-2023 Sixth Grade School Year

14. During 2022-2023 sixth grade school year, the Student advanced from the second grade level to the third grade level. However, academically, the Student was still significantly below the sixth grade level.

15. Despite the Student's academic progress that year, the Student's social and emotional issues became an impediment to his ability to access the curriculum.

16. The Student participates in a [REDACTED] Plan (Plan) to focus on three specific behaviors involving personal space, respectful communication, and safe hands and feet. With this Plan, the Student earns a reward at the end of the day for reaching a specific number of points.

17. The Student receives daily fifteen-minute sessions with the school counselor. The sessions focus on processing, social skills development, and general check-ins.²⁹

18. The Student receives social skills instruction with the RTSE, once a week, which began in November 2023. Topics include personal space, appropriate language, racial sensitivity, and hands to self. Despite the social skills instruction, the Student's behaviors persisted.

19. The Student has had difficulty adjusting to [REDACTED] MS. Prior to [REDACTED], the Student attended a small self-contained special education MCPS school with no typical same-age peers. However, in a general education setting, the Student's interactions with his peers in the cafeteria, hallways, and classrooms often lead to conflict. The Student requires monitoring in specific areas such as the hallways and the cafeteria due to his tendencies to make poor choices when adult supervision is not present.

20. The Student frequently invades others' personal space and moves around the room without respecting boundaries. His interactions, though intended as playful, often make his peers uncomfortable and put him at risk; he has been punched in the face twice, both resulting in

²⁹ MCPS Ex. 16, Bates MCPS 392.

bloody noses. Without staff intervention to safeguard the Student's well-being, he is at risk of being physically assaulted as his peers react to the Student's statements and behaviors.

21. In the cafeteria, the Student exhibits wandering behavior, attempting to join various groups and engaging in disruptive activities such as tapping students and trying to start chases. The Student is frequently reminded of the cafeteria rules and advised to take a seat.

22. In the cafeteria, the Student once recorded peers on his phone without consent and did not stop recording them despite repeated objections. When a teacher intervened, he deleted the recordings but responded with a tantrum. As a result, other students were removed from the situation, and the Parent was informed.³⁰

23. During transitions in the hallways, the Student seeks interaction with his peers, often receiving negative responses. An incident at the end of a school day resulted in a physical altercation when the Student pushed another student after being told to leave. Staff intervention was necessary.

24. The Student has put his hands on other students without provocation. In one incident, he hit a girl on her head, who was simply walking in the hallway. The Student was required to write an apology letter, however, all he could focus on was that he would miss physical education class and displayed a lack of remorse or understanding of the consequences of his action.

25. The Student resorts to physical aggression when his peers violate school rules or use inappropriate language, resulting in retaliatory violence.³¹

26. In another incident, the Student did not approve of what another student wrote on her own personal journal, which was a curse word. He grabbed her journal without permission

³⁰ MCPS Ex. 16, Bates MCPS 373.

³¹ MCPS Ex. 2, *Id.* 028.

and ripped it up. When spoken to about it, he could only focus on the fact that the student was writing curse words and could not acknowledge that what he did was wrong.

27. During the last quarter, the Student touched another student, prompting the completion of an incident report. Subsequently, the Student met with the Dean of Students to address safety concerns and improve communication strategies.³²

28. The Student becomes involved in physical altercations, most of which are triggered by his provocative remarks.

29. The Student is unaware that his efforts to interact with peers are not being returned. The Student will observe a group of African-American peers use the “N” word to each other. The Student will then try to use the “N” word or inquire about how to say the “N” word to get his peers to repeat it. In response, the Student has been hit by his peers who were offended.³³

30. The Student has made inappropriate remarks during African-American History Month, as well as comments encouraging people to attend church.

31. The Student mocked an Asian student by saying he is learning Chinese.

32. The Student has made sexual references such as “tickle my pickle” and has referred to female body parts as “watermelons.” These statements led to him being hit, in response, and having his hoodie torn.

33. The Student made remarks about sexuality or requested that a teacher correct another student’s behavior.³⁴

34. Despite receiving guidance on improving behavior related to specific issues, the Student appears to understand in the moment but struggles to apply what he has been taught when similar situations arise weeks later.³⁵

³² MCPS Ex. 16, Bates MCPS 392.

³³ MCPS Ex. 2, Bates MCPS 028.

³⁴ MCPS Ex. 16, Bates MCPS 392.

³⁵ *Id.*

35. The Student perseverates on issues and disrupts class if he perceives the adults are not adequately responding to his concerns.³⁶ He repeatedly expresses the concern, stands up, and interrupts teachers until he feels heard. Despite attempts to redirect him, the Student cannot move on until he feels his concerns are adequately addressed. This behavior upsets his classmates, leading to further disruptions in learning.

36. Staff frequently intervenes when the Student exhibits behavior that is considered annoying, disrespectful, or offensive towards his peers.

37. The Student does not respond to least restrictive universal interventions such as redirection, prompting, changing seats, proximity, check-in, conversation, and counseling.³⁷

38. The Student's behaviors negatively impact his safety, learning, peer interactions, and social relationships.³⁸

FBA/BIP³⁹

39. In response to the Student's behaviors, on December 15, 2022, a FBA was requested and completed on January 6, 2023. The reason for the FBA assessment was to address the Student's pattern of repeated and frequent challenging behaviors. A BIP was developed.⁴⁰

40. As of January 2023, the Student had the FBA/BIP in place. His [REDACTED] Plan included: engage in learning, refrain from calling out, refrain from being out of seat, make appropriate comments with peers and staff and keep safe hands/feet. Although he was doing well with keeping safe his hands and feet, he was continuing to struggle with other areas of behavior.

41. At an annual review meeting in January 2023, the team updated the IEP to include the FBA/BIP.

³⁶ MCPS Ex. 2, Bates MCPS 028.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Behavior Intervention Plan.

⁴⁰ See MCPS Ex. 2, Bates MCPS 027. The FBA and the BIP are collectively referred to as FBA/BIP.

42. The BIP and the supports in the IEP, however, were not enough to help the Student. The behaviors and situations would change and be different enough so that one strategy would work in a new situation, but not in another. The team called another IEP meeting in June 2023, to take another look to determine what else can be done to support the Student. In the fall of 2023-2024 seventh grade year, the Student was going to be enrolled in six general education classes.

43. At the June 13, 2023 IEP meeting, the following occurred:

- The Student's IEP team met to review and revise the Student's IEP. The Parent was present with the services of a [REDACTED] interpreter.
- The team developed an IEP to be implemented for the Student's seventh grade year.
- The team determined that the [REDACTED] program at [REDACTED] MS was no longer an appropriate placement. The Parent disagreed.
- When the IEP team could not find an alternative to the [REDACTED] program at [REDACTED] MS, it made a referral of the Student's case to the Comprehensive Individualized Education Program (CIEP) of MCPS to explore additional placement opportunities.
- The referral required updated testing and assessments within a year. The IEP team requested consent to update assessments in the areas of reading, mathematics, written language, pragmatics, intellectual/ cognitive functioning and emotional/ social/ behavior development due to continued concerns regarding the Student's personal safety and lack of progress within the areas of social skills and self-management.
- At the meeting, the Parent gave verbal consent for the formal assessments.
- The team developed a plan for the Student to receive special education and related services at [REDACTED] MS pending the completion of formal assessments and a placement determination at the CIEP meeting.

44. On June 23, 2023, the Parent revoked her consent in writing via email to have the Student formally assessed. As a result, a psychological status report was completed in lieu of formal assessments for the Student's referral to CIEP.

CIEP

45. On September 1, 2023, the CIEP team convened to review the updated assessments and discuss placement options for the Student. The CIEP team ran out of time at that meeting and continued it to October 6, 2023. The Parent participated with the services of a [REDACTED] interpreter.

46. At the October 6, 2023 CIEP meeting, the Parent attended with counsel and participated with the services of an interpreter. Rather than pick up where the CIEP team stopped during the September 1, 2023 meeting, the CIEP team re-started the discussion from the beginning because the Parent's counsel had not been retained and/or had not attended the September 1, 2023 CIEP meeting.

47. At the October 6, 2023 CIEP meeting, the [REDACTED] IEP team explained the challenges they faced and discussed how the [REDACTED] program at [REDACTED]MS could not appropriately support the Student and could not implement all of the special education and related services, accommodations, and supplementary aids that the Student needed. At the CIEP meeting, one hour of counseling was added to the Student's IEP to address social and emotional needs.

48. After a thorough review, the CIEP team determined that based on the data they had, the [REDACTED] program could not provide the amount of support that the Student needed to be successful. The CIEP team sought unsuccessfully to find other programs or public middle schools that would provide the Student all of the support and services that his IEP required.

49. The CIEP team determined that the Student needed a fully self-contained 100% special education environment with a small classroom, support from paraeducators, and access to counseling and therapy to address his social and self-management concerns in real time.

50. At the meeting, the Parent expressed wanting the Student to remain at [REDACTED] MS with a one-on-one staff member with the Student at all times in the Student's six general education classes. However, [REDACTED] MS does not have the staff to follow the Student all day and intervene when he engages in inappropriate social interactions to prevent physical altercations.

51. The CIEP team referred the Student's case to three non-public, private schools that were 100% special education classes with no general education classes and/or or peers. The Student's case was referred to the [REDACTED], [REDACTED], and the [REDACTED]. The CIEP team finalized the Student's IEP at the October 6, 2023 meeting.

LRE

52. [REDACTED] notified Mr. [REDACTED] that it made six unsuccessful attempts to schedule a student interview and closed out the file. [REDACTED] notified Mr. [REDACTED] that the Parent was not interested in starting the interview process, and it closed out the file.

53. The Student and the Parent visited the [REDACTED], and after the interview, the Student was accepted by the [REDACTED]. The projected start date was October 16, 2023, if approval was granted.

54. The [REDACTED] is a 100% non-public special education school without any general education classes or peers. It is a [REDACTED]-month program. MCPS will pay all of the costs associated with the Student's placement and will provide the Student with curb-to-curb transportation from his home to the [REDACTED] and back.

55. [REDACTED] can provide all of the services that the Student needs under his October 6, 2023 IEP which is reasonably calculated to provide the Student a FAPE, and the [REDACTED] is the LRE for the Student.

56. The Parent was provided all rights to which she is entitled under the IDEA and its Maryland state counterpart; the Parent filed a Due Process Complaint on November 9, 2023, and the Student has remained in the [REDACTED] program in the seventh grade under the stay put provision.

57. As of the dates of the hearing, the Student's behaviors have not changed or improved.

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.⁴¹ The burden of proof rests on the party seeking relief.⁴² The Parent is seeking relief and bears the burden of proof establish that MCPS substantively and procedurally denied the Student a FAPE for the 2023-2024 school year, and that the [REDACTED] is not the LRE for the Student's special education needs. For the following reasons, I find that the Parent has not met her burden of proof.

Legal Framework

FAPE

The identification, evaluation, and placement of students in special education are governed by the IDEA.⁴³ The IDEA requires "that all children with disabilities have available to

⁴¹ *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

⁴² *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005).

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

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.”⁴⁴ To be eligible for special education and related services under the IDEA, a student must meet the definition of a “child with a disability” as set forth in section 1401(3)(a) of the United States Code and the applicable federal regulations. The statute provides as follows:

(A) In General

The term “child with a disability” means a child –

- (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
- (ii) who, by reason thereof, needs special education and related services.^[45]

The Supreme Court addressed the FAPE requirement in *Board of Education of the Hendrick Hudson Central School District v. Rowley*,⁴⁶ holding 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.”⁴⁷ The Court identified a two-part inquiry to analyze whether 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.⁴⁸ The *Rowley* Court found that, because special education and related services must meet the state’s educational standards, the scope of the benefit required by the IDEA is an IEP reasonably calculated to permit the student to meet the state’s educational standards; that is, generally, to pass from grade to grade, on grade level.⁴⁹

⁴⁴ 20 U.S.C.A. § 1400(d)(1)(A); *see also* Educ. § 8-403.

⁴⁵ 20 U.S.C.A. § 1401(3)(A); *see also* Educ. § 8-401(a)(2); 34 C.F.R. § 300.8; COMAR 13A.05.01.03B(78).

⁴⁶ 458 U.S. 176 (1982).

⁴⁷ *Rowley*, 458 U.S. at 201 (footnote omitted).

⁴⁸ *Id.* at 206-07.

⁴⁹ *Rowley*, 458 U.S. at 204; 20 U.S.C. § 1401(9).

In 2017, the Supreme Court revisited the meaning of a FAPE in *Endrew F. v. Douglas Count School District*,⁵⁰ and held that for an educational agency to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a student to make progress appropriate in light of the student’s circumstances. Consideration of the student’s particular circumstances is key to this analysis; the Court emphasized in *Endrew F.* that the “adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.”⁵¹

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

[w]hile *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.^[52]

The “reasonably calculated” qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. The IDEA contemplates that this fact-intensive exercise will involve consideration not only of the expertise of school officials but also the input of the child’s parents or guardians. Any review of an IEP must include the recognition that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.⁵³ The Supreme Court stated:

[t]he 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. 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.’” A substantive standard not focused on student

⁵⁰ 137 S. Ct. 988 (2017).

⁵¹ *Endrew F.*, 137 S. Ct. at 1001.

⁵² *Endrew F.*, 137 S. Ct. at 998-99.

⁵³ *Id.*, at 999

progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act.⁵⁴

A focus on the particular student is at the core of the IDEA, and so it is unsurprising that the Court concluded that the progress contemplated by the IEP must be appropriate in light of the particular student's circumstances. "The instruction offered must be '*specially designed*' to meet a child's '*unique needs*' through an '*[i]ndividualized* education program.'"⁵⁵ The Court expressly rejected the Tenth Circuit's interpretation of what constitutes *some* benefit:

[w]hen 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.'" 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.⁵⁶

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.'"⁵⁷ At the same time, the *Andrew F.* Court observed 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."⁵⁸

⁵⁴ *Id.*, at 999 (quoting *Rowley*, 458 U.S. at 179).

⁵⁵ *Id.*, at 999 (citations omitted; emphasis in original).

⁵⁶ *Id.*, at 1001 (citation omitted).

⁵⁷ *Id.* (quoting *Rowley*, 458 U.S. at 206).

⁵⁸ *Id.* at 1002.

Ultimately, a disabled student’s “educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.”⁵⁹ Moreover, the IEP must be reasonably calculated to allow him to advance from grade to grade, if that is a “reasonable prospect.”⁶⁰

Regarding procedural violations, the IDEA⁶¹ states:

(ii) Procedural issues

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies--

(I) impeded the child’s right to a free appropriate public education;

(II) significantly impeded the parents’ opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents’ child; or

(III) caused a deprivation of educational benefits.

The existence of a procedural violation does not necessarily establish the presence of a substantive one. In *MM ex rel. DM v. School District of Greenville County*,⁶² the Fourth Circuit Court of Appeals explained:

It is clear that, under the IDEA, the failure of a school district to have a final IEP in place at the beginning of the school year is a procedural defect. When such a procedural defect exists, we are obliged to assess whether it resulted in the loss of an educational opportunity for the disabled child, or whether, on the other hand, it was a mere technical contravention of the IDEA. *Gadsby v. Grasmick*, 109 F.3d 940, 956 (4th Cir.1997) (“[T]o the extent that the procedural violations did not actually interfere with the provision of a free appropriate public education, these violations are not sufficient to support a finding that an agency failed to provide a free appropriate public education.”). If a disabled child received (or was offered) a FAPE in spite of a technical violation of the IDEA, the school district has fulfilled its statutory obligations.^[63]

⁵⁹ *Id.* at 1000.

⁶⁰ *Id.*

⁶¹ 20 U.S.C.A. Section 1415(f)(3)(E)(ii).

⁶² 303 F.3d 523 (4th Cir. 2002).

⁶³ *MM ex rel. DM*, 303 F.3d at 533-34; *T.B. Jr. by and through T.B., Sr. v. Prince George’s Cnty. Bd. of Educ.*, 897 F. 3d 566, 573 (4th Cir. 2018).

The IEP

COMAR 13A.05.01.09 defines an IEP and outlines the required content of it to include a written description of the student's special education needs 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.⁶⁴

Among other things, the IEP describes a student's current educational performance, explains how the student's disability affects a student's involvement and progress in the general curriculum, sets forth annual goals and short-term objectives for improvements in that performance, describes the specifically-designed instruction and services that will assist the student in meeting those objectives, describes program modifications and supports for school personnel that will be provided for the student to advance appropriately toward attaining the annual goals, and indicates the extent to which the child will be able to participate in regular educational programs.⁶⁵

IEP teams must consider the student's evolving needs when developing their educational programs. The student's IEP must include "[a] statement of the child's present levels of academic achievement and functional performance, including . . . [h]ow the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for non-disabled children)"⁶⁶ If a child's behavior impedes his or her learning or that of others, the IEP team must consider, if appropriate, the use of positive behavioral interventions, strategies, and supports to address that behavior.⁶⁷ To comply with the IDEA, an

⁶⁴ 20 U.S.C.A. § 1414(d)(3)(A).

⁶⁵ 20 U.S.C. § 1414(d)(1)(A)(i)(I)-(V); COMAR 13A.05.01.09A.

⁶⁶ 34 C.F.R. § 300.320(a)(1)(i).

⁶⁷ *Id.* § 300.324(a)(2)(i).

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.⁶⁸

A public agency is responsible for ensuring that the IEP is reviewed at least annually to determine whether the annual goals for the child are being achieved and to consider whether the IEP needs revision.⁶⁹ However, a "school district is only required to continue developing IEPs for a disabled child no longer attending its schools when a prior year's IEP for the child is under administrative or judicial review."⁷⁰

LRE

In addition to the IDEA's requirement that a disabled child receive educational benefit, the child must be placed in the least restrictive environment (LRE) to achieve a FAPE, meaning that, ordinarily, disabled and non-disabled students should, when feasible, be educated in the same classroom.⁷¹ Indeed, mainstreaming children with disabilities with non-disabled peers is generally preferred if the disabled student can achieve educational benefit in the mainstreamed program.⁷² At a minimum, the statute calls for school systems to place children in the "least restrictive environment" consistent with their educational needs.⁷³ 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.

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

⁶⁹ 34 C.F.R. § 300.324(b)(1).

⁷⁰ *MM ex rel. DM*, 303 F.3d 523, 536.

⁷¹ 20 U.S.C.A. § 1412(a)(5); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117.

⁷² *DeVries v. Fairfax Cnty. Sch. Bd.*, 882 F.2d 876, 878-79 (4th Cir. 1989).

⁷³ 20 U.S.C.A. § 1412(a)(5)(A).

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 MCPS to offer a continuum of alternative placements that meet the needs of children with disabilities.⁷⁴ The continuum must include instruction in regular classes, special classes, special schools, home instruction, hospitals, and institutions, and it must make provision for supplementary services to be provided in conjunction with regular class placement.⁷⁵

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.⁷⁶ In such a case, a FAPE might require placement of a child in a nonpublic school setting that would be fully funded by the child's public school district.

Notice

Section 1415 of title 20 of the United States Code is entitled "Procedural safeguards." Subsection (c)(1) sets forth notification requirements and dictates that the contents of a written notice, required to be issued by a LEA to parents, include:

- (A) a description of the action proposed or refused by the agency;
- (B) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- (C) a statement that the parents of a child with a disability have protection under the procedural safeguards of this subchapter and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- (D) sources for parents to contact to obtain assistance in understanding the provisions of this subchapter;
- (E) a description of other options considered by the IEP Team and the reason why those options were rejected; and
- (F) a description of the factors that are relevant to the agency's proposal or refusal.^[77]

⁷⁴ 34 C.F.R. § 300.115.

⁷⁵ *Id.* § 300.115(b); COMAR 13A.05.01.10B(1).

⁷⁶ COMAR 13A.05.01.10A(2).

⁷⁷ 20 U.S.C.A. § 1415(c)(1).

Section 300.503 of title 34 of the Code of Federal Regulations, entitled “Prior notice by the public agency; content of notice” states, in pertinent part:

- (a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency—
 - (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
 - (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.
- (b) Content of notice. The notice required under paragraph (a) of this section must include—
 - (1) A description of the action proposed or refused by the agency;
 - (2) An explanation of why the agency proposes or refuses to take the action;
 - (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
 - (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
 - (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;
 - (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and
 - (7) A description of other factors that are relevant to the agency’s proposal or refusal.

Deference

School officials should be afforded deference based on their expertise, and the IDEA “vests these officials with responsibility for decisions of critical importance to the life of a disabled child.”⁷⁸ Yet, this respect and deference is not limitless.⁷⁹ Therefore, “the fact-finder is not required to conclude that an IEP is appropriate simply because a teacher or other professional

⁷⁸ *Andrew F.*, 137 S. Ct. 988, 1001 (2017). *See also Lessard v. Wilton-Lyndeborough Coop. Sch. Dist. (Lessard II)*, 592 F.3d 267, 270 (1st Cir. 2010) (“The standard of review is thus deferential to the educational authorities, who have ‘primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child’s needs.’”).

⁷⁹ *See Cnty. Sch. Bd. of Henrico Cnty. v. Z.P.*, 399 F.3d 298, 307 (4th Cir. 2005) (“Nor does the required deference to the opinions of the professional educators somehow relieve the [judge] of the obligation to determine as a factual matter whether a given IEP is appropriate.”).

testifies that the IEP is appropriate.”⁸⁰ “Indeed, if the views of school personnel regarding an appropriate educational placement for a disabled child were conclusive, then administrative hearings conducted by an impartial decisionmaker would be unnecessary”⁸¹ and “would render meaningless the entire process of administrative review.”⁸²

The Parties’ Positions

The Parent strongly prefers for the Student to stay at █████ MS or another public middle school with enhanced support and services, alongside general education peers. The Parent claims that the October 6, 2023 IEP is incomplete. The Parent opposes the █████, likening it to a mental institution that could impede the Student’s love of learning. The Parent wholeheartedly believes that the Student is being bullied, and █████ MS is attempting to expel him for behaviors the Parent perceives as not severe or disruptive.

MCPS contends that the Student’s IEP team has determined that the █████ program at █████ MS cannot provide the Student with a FAPE. The CIEP team concluded that the Student requires a 100% separate, non-public day school without general education classes or peers. Despite academic improvements, the Student remains significantly below grade level, currently performing at a third-grade level while in seventh grade. The Student’s behaviors frequently disrupt the general education classes, preventing the Student and his peers from accessing the curriculum. In addition, the Student’s behaviors and statements provoke his peers’ inappropriate and assaultive reactions that put the Student’s safety at risk. MCPS has proposed covering the costs for the Student to attend the █████, as it is the LRE for the Student, designed to provide the Student with a FAPE. There are no other programs within public or private schools that can adequately address the Student’s extensive needs, particularly concerning his

⁸⁰ *Id.*; see also *Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1476 (9th Cir. 1993).

⁸¹ *Id.*

⁸² *Sch. Bd. of Prince William Cnty., Va. v. Malone*, 762 F.2d 1210, 1217 (4th Cir. 1985) (citation omitted).

FBA and BIP

The Parent did not address the FBA/BIP or provide any testimony regarding them specifically. However, generally, the Parent expressed deep emotional distress regarding the situation, conveying that she and her husband “feel very bad about the situation.” During her testimony, the Parent exhibited strong emotions, including crying, underscoring the profound love she has for her child. The Parent revealed the psychological toll the situation has taken on her, expressing that she feels “psychologically destroyed.” In her testimony, the Parent stated she “left everything behind” to dedicate herself to helping the Student. She expressed immense pride in the Student’s achievements, describing him as brave and a source of pride for the family.

The Parent emphasized several positive attributes about the Student, highlighting that he has not committed any crimes, is sociable, humble, and “loves his school.” The Parent noted the Student’s successful participation in camps where he thrived as a helper and leader, aiding both children and adults. At camp, the Student actively contributes by organizing, writing songs, and performing them, with one song expressing the challenge of being ousted from a beloved school without reason, eliciting emotional reactions from the audience. The absence of behavioral issues in camp settings underscores his positive engagement with others.

In addition, the Student is deeply religious and does not condone the use profanity or engaging in negative behaviors due to “his fear of God.” The Parent explained that the Student holds a deep love for God and is profoundly religious, engaging in daily prayers. The Student’s fear of God serves as a deterrent for him to engage in any perceived wrongful behavior. She described her child as “incapable of intentionally committing harm.” She expressed that he is human and prone to mistakes; the Student has expressed remorse, apologized, and sought forgiveness from his peers and staff at ■■■ MS if his behaviors hurt them.

Throughout the testimony, the Parent emphasized the Student's innocence, stating that he has done nothing wrong. She revealed that the Student allowed his peers to beat him because if he reacted then he would have been expelled. An unspecified head injury incident resulted in the Student suffering a seizure, vomiting, and his subsequent absence from school for one to two days. The Parent described this incident "as an injustice that robbed [her] child of his childhood."

In her testimony, the Parent emphasized the Student's positive attitude towards school, with him stating, "I love the school, and I love the other students." The Parent highlighted the Student's genuine affection for school, his teachers, and classmates, indicating a strong motivation and desire to continue his education at ■■■ MS. The Parent underscored the Student's positive qualities, portraying him as a good and loved individual with numerous positive aspects.

The Parent expressed that the Student is being misunderstood. She believes that the staff at ■■■ MS do not truly "know the Student's heart." The Parent expressed dissatisfaction with the support received from ■■■ MS staff, alleging mistreatment and asserting that the Student is not accurately understood by the school. She reiterated concerns about potential regrets if the school had a deeper understanding of the Student's character. The Parent felt that ■■■ wants "to get rid of the Student and feels that it is discrimination." The Parent, her husband, and the Student's aunt felt that ■■■ has the services that can meet the Student's needs; however, they do not want to help the Student. The Parent believes that the Student's behaviors are the result of him being bullied at ■■■ MS. Despite that, he wants to stay at ■■■ MS. She concluded by relying on what psychologists have told her in the past: that the Student needs to be surrounded in general education. The Parent firmly believes that if there was more and better communication with the ■■■ MS staff, that the Student will do better and advance academically since she was not aware of the Student's teachers having any complaints about the Student.

[REDACTED]

The Parent provided testimony stating that she has personally observed the [REDACTED]. During her visit, she witnessed students engaging in fights, and some even spat at her. She vehemently opposes the Student's placement at the [REDACTED], citing references to students who may have dementia and serious drug problems. The Parent expressed apprehension about the potential impact on the Student, stating that he might react negatively and likening the atmosphere to that of a mental hospital. He will lose his love of learning and will no longer have the motivation to study. The Parent articulated her concerns, stating that the school is designed for children with serious behavioral problems. In unequivocal terms, the Parent characterized the environment as a "crazy hospital."

The Parent expressed a preference for homeschooling, asserting that the Student would be better off at home than at the [REDACTED]. She also suggested the [REDACTED] or [REDACTED]. However, she did not offer any testimony or evidence that these schools would be able to meet the Student's special education needs as required by the October 6, 2023 IEP.

The Student's Father's Testimony

[REDACTED] is the Student's father. He provided testimony regarding the Student's social-emotional behaviors and academic efforts. According to Mr. [REDACTED], he and the Parent have raised the Student with a considerable amount of "tender loving care." Describing the Student as steady, loving, and eager to share; he characterized his son as "a 100% good kid and a dedicated son." Mr. [REDACTED] revealed that if he uses inappropriate language, the Student promptly corrects him.

Mr. [REDACTED] detailed the Student's interactions with other children, citing normal behavior at the pool, during birthday parties, and at camps. Additionally, he emphasized

the Student's positive interactions with adults and family members, highlighting a strong relationship with a nineteen-year-old cousin who is also the Student's friend. It is unclear if Mr. [REDACTED] spoke directly to the Student's teachers or if he is repeating what the Parent has told him that the Student's teachers speak highly of his son.

Regarding academic performance at [REDACTED] MS, Mr. [REDACTED] expressed sadness and disbelief at the prospect of his son being expelled from [REDACTED]. He attested to the Student being a good student and expressed a desire for his son to remain at [REDACTED] while supporting his academic pursuits. The Student's concerns about potential expulsion and attending another school were highlighted, with Mr. [REDACTED] seeking a better solution for his son's future.

Mr. [REDACTED] did not provide specific details or highlight challenges related to the sufficiency of the Student's IEP or the Parent's ability to participate meaningfully during the IEP meetings and did not make any suggestions for alternative schools. Notably, Mr. [REDACTED] did not raise any concerns regarding the [REDACTED], and he did not provide any information about its suitability for the Student.

Mr. [REDACTED] concluded his testimony by earnestly requesting an opportunity for his son to attend a better school that would provide the necessary support. He implored from MCPS to help his son, emphasizing the Student's academic achievements and the potential for improvement with assistance.

The MCPS' Case

No Judgment and No Punishment

The MCPS presented the testimony of three witnesses who explicitly clarified that their proposal to place the Student at the [REDACTED] was not meant as a judgment or a punishment. The witnesses emphasized that the Student, in their assessment, lacks malicious intent and is not intentionally misbehaving. Their concerns lie in the negative outcomes resulting

from the Student's unintentional behaviors; specifically, the Student's perseverative behaviors hinder his access to the general education curriculum and cause disruption in the classroom setting of his current placement.

Ms. [REDACTED]

Ms. [REDACTED] was qualified and admitted as an expert in special education based on her extensive experience in special education, having served as a special education teacher in various programs.⁸³ Currently, she holds the position of RTSE at [REDACTED] MS and Department Chair for Special Education at the secondary level within MCPS.

As the RTSE, her responsibilities encompass overseeing all special education programs, including Learning for Independence, Autism, and [REDACTED] programs at [REDACTED] MS. In this capacity, she provides supervision to a team of twelve special educators and fourteen paraeducators. She chairs meetings related to special education processes such as annual reviews, reevaluations, continued eligibility, and manifestation meetings. Ms. [REDACTED] plays a crucial role in conducting Child Find Referrals and initial evaluation assessments, utilizing tools such as the Woodcock Johnson IV or Brigance CIBS II, along with classroom observations and informal measurements. She is actively involved in scoring formal educational assessments and reviewing reports completed by special educators. She works closely with the school psychologist, supervisors, and instructional specialists to determine appropriate services and placements for students. Additionally, she provides professional development sessions to the entire staff, covering topics such as co-teaching models, best practices, FBAs, BIPs, interventions, and the Child Find Referral process.

Conducting both informal and formal observations of teachers and paraeducators is part of her routine, allowing her to provide constructive feedback and support classroom instruction.

⁸³ See MCPS Ex. 37, Bates MCPS 582-586.

She also coordinates alternate assessments for students pursuing a certificate of completion, ensuring a comprehensive approach to special education services. Overall, her role as RTSE and Department Chair involves a multifaceted approach to special education leadership, encompassing supervision, collaboration, assessment, and professional development.

Ms. [REDACTED] testimony concerning the Student was based on her personal familiarity with him and a review of MCPS' and Parent' exhibits for this matter. As the Student's case manager at [REDACTED] MS, she collaborated with teachers and paraeducators, and attended all IEP meetings.

Ms. [REDACTED] provided an abbreviated summary of the Student's transition from [REDACTED] [REDACTED] to [REDACTED] MS. At the end of the Student's fifth grade academic year, the S [REDACTED] IEP team determined that the Student's LRE would be the [REDACTED] program at [REDACTED] MS since it was also the Student's home school. In the academic year 2022-2023, the Student enrolled in the [REDACTED] program at [REDACTED] MS for the sixth grade. The Student began his sixth grade year significantly below grade level. He was at the second-grade level but progressed to the third-grade level. Currently, in the 2023-2024 academic school year, the Student is in the seventh grade but his academic status and progress is at a third grade level.

The Student receives significant paraeducator support in his science and social studies classes, and he is currently enrolled in six general education classes. Currently, in Math, the Student has a "D." He is struggling with pre-algebraic concepts. The Student's math teacher reported that the Student has not engaged, he does not participate, he acts silly, disrupts class, and does not submit his work. In English, the Student has an "E." He is struggling with reading. He is having significant difficulty with the steps of the writing process. In his other classes, he has "C"s in Science, Social Studies, and Reading. Ms. [REDACTED] explained that those "C"s

are 70% to 71%, which is close to a “D.” In his resource class, where he gets extra help, support in the content classes, and social emotional lessons, he has an “A.”

The Student’s social-emotional struggles persisted according to Ms. [REDACTED]. She explained that the Student’s difficulty with social cues, inappropriate statements and behavior, and challenges with personal boundaries jeopardize his safety and disrupt the class environment. To address these challenges, Ms. F [REDACTED] and the IEP team implemented a FBA/BIP. Ms. [REDACTED] noted that the FBA serves the purpose of being a formal assessment designed to identify behaviors that are impeding the student’s learning. Its function is to determine the underlying reasons behind the identified behaviors. The BIP is the response to the FBA. Its goal is to respond effectively to targeted behaviors, with the ultimate objective of eliminating them. In the Student’s case, the FBA was completed on January 6, 2023, and the BIP was completed on January 13, 2023. The behaviors identified in the Student’s FBA included problem areas with personal space boundaries, racially charged language, creating racial tension, and perseveration behaviors.⁸⁴ The data was collected from the Student’s seven teachers.

The Student’s identified behaviors were aimed at receiving attention from others. As such, the BIP consisted of strategies to decrease the behaviors. The BIP outlined how the staff will respond to the Student’s behaviors. Additional support for the Student included social stories that are scripted narratives to guide appropriate responses when problems arise, cue cards to help the Student to stop interrupting, and a reward system that consisted of a daily plan where each teacher makes notations, earning rewards such as fidgets based on positive behavior.

The BIP was shared with all of the Student’s teachers. The Student received one-on-one support from a paraeducator. Additional staff support was provided during transitions in hallways, and a counselor monitored the Student in the cafeteria. Ms. [REDACTED] explained

⁸⁴ FOF Nos. 19-38.

that various methods and techniques were utilized to support the Student as they are comprehensively detailed in the IEP. ■■■ MS provided academic support, instructional assistance, testing accommodations, supplemental supports, and behavioral interventions.

■■■ MS implemented strategies such as having a staff person present during activities, supporting transitions in hallways, conducting regular check-ins, offering direct social skills instruction, and holding meetings for debriefing. Despite these efforts, the Student continued to struggle with social-emotional skills and self-management, prompting concerns about his progress and safety. All these support measures were thoroughly reviewed during the June 2023 meeting.

The June 2023 meeting was prompted by concerns that the Student was not making sufficient progress despite the intervention plan. The team, comprising of school representatives and the Parent, observed that while the Student showed academic improvement, his social skills, self-management, and safety were still at risk due to disruptive behaviors. The Student received support with smaller class sizes, accommodations, and supplementary aids. The team acknowledged that the ■■■ program at ■■■ MS could not meet the Student's needs. As such, the team determined that the ■■■ program at ■■■ MS was not the LRE for the Student. The team considered alternative programs within MCPS that could implement the services the Student needed. However, Ms. ■■■■ affirmed that there were no other programs capable of providing the required services that the Student needed. The decision was made to refer his case to the CIEP for further consideration. The team concluded that the Student required a smaller setting with a reduced teacher-to-student ratio, emphasizing his need for a self-contained special education program.

Ms. ■■■■ opined that the October 6, 2023 IEP was appropriate for the Student, and would provide the Student with a FAPE because the IEP reflects accurately the Student's present levels of performance, strengths, and needs. The ■■■ program in ■■■ MS cannot meet

those needs. Ms. [REDACTED] also opined that a non-public separate day school is the LRE for the Student, and the [REDACTED] is the LRE for the Student that would be able to implement the Student's IEP.

[REDACTED]

Ms. [REDACTED] qualification and admission as an expert in school psychology were established based on her extensive educational background and professional experience.⁸⁵ Ms. [REDACTED] is a school psychologist within MCPS. She visits [REDACTED] MS once per week. Her current assignment differs from previous years; unlike the prior practice of floating between various schools, for this academic year 2023-2024, Ms. [REDACTED] was specifically assigned to two distinct schools, [REDACTED] MS and [REDACTED] MS. Ms. [REDACTED] tenure at [REDACTED] MS is in the fourth consecutive year, reflecting a continuity of service and familiarity with the school's dynamics and community.

Ms. [REDACTED] actively participates in various essential functions to support the educational environment. Her responsibilities include attendance at Child Find meetings and participating in IEP meetings. At these meetings, she provides valuable insights and completes psychological evaluations to ascertain whether a student qualifies for an IEP, a 504 plan, or other necessary support services. Ms. [REDACTED] undertakes the critical role of diagnosing students and collaboratively crafting FBAs and BIPs alongside the school teams. These plans are specifically designed to address social skills development and crisis intervention strategies, ensuring a comprehensive approach to student well-being.

In the context of an IEP, Ms. [REDACTED] responsibilities include engaging with students who currently lack an established IEP. This initial encounter marks the commencement of her process, during which she gathers pertinent information through observations, examination of

⁸⁵ MCPS Ex. 36, Bates MCPS 578-581.

family history, and an in-depth review of the student's educational background. The primary objective at this stage is to discern distinctions between the student in question and their typically developing peers. Upon acquiring this foundational knowledge, Ms. [REDACTED] is tasked with making informed decisions regarding the necessity of a psychological assessment. This evaluation is particularly focused on identifying challenges in cognitive abilities, life functioning skills, and adaptive skills.

If a parent grants consent for the assessment, Ms. [REDACTED] proceeds to engage directly with the student. The assessment is tailored to the unique needs of the student. This typically involves observations conducted within the setting that poses the greatest challenges for the student. Additionally, cognitive assessments are administered in accordance with the student's age and capabilities. This comprehensive evaluation may extend to encompass behavioral difficulties, for which Ms. [REDACTED] integrates parental and teacher reports, as well as adaptive skills ratings. It is essential to note that there exists a sixty-day timeframe within which Ms. [REDACTED] aims to complete the assessment. Due to the variability in student functioning, Ms. [REDACTED] may meet with the student up to eight times, adapting the frequency of interactions to align with their specific requirements and challenges.

In the process of conducting observations, Ms. [REDACTED] focus is initially on the most challenging areas to understand the specific difficulties a student may be facing. The rationale behind prioritizing the most challenging areas, rather than the least challenging, is rooted in her goal to facilitate optimal access to the curriculum. By identifying and addressing challenges in the most demanding educational environments, Ms. [REDACTED] aims to implement strategies that can ultimately enhance the student's ability to navigate and succeed in those settings. This approach allows Ms. [REDACTED] to gain insights into why a particular class or setting may present more difficulty for the student compared to others. During observations, Ms. [REDACTED] engages with

teachers to discern the factors influencing the level of difficulty in the observed class and gather valuable information to inform future interventions.

Following observations and assessments, Ms. [REDACTED] meticulously collects data to compile a comprehensive report. This report is then shared with both parents and the school, setting the stage for a collaborative discussion at a subsequent meeting. During these meetings, Ms. [REDACTED] addresses any questions or concerns raised by parents and teachers, providing clarity, and ensuring that everyone is informed. In instances where parents provide external assessments, Ms. [REDACTED] role extends to conducting an external report form. This involves a thorough review of the evaluation, summarization of key findings, and verification that the parent has discussed the evaluation with their doctor. If the team accepts the external assessment, they proceed to implement the recommended strategies and interventions. In cases where the team identifies disparities in observed behaviors or deems the information insufficient, Ms. [REDACTED] works to reconcile any missing perspectives, often arising from the divergence between the parents' and school's viewpoints.

For students with an IEP, Ms. [REDACTED] involvement is contingent on re-evaluation or additional concerns prompting a planning meeting. In these situations, Ms. [REDACTED] consults with teachers to address academic and behavioral concerns, collaborating with adults to devise effective strategies and interventions tailored to the student's needs. During a re-evaluation planning meeting, Ms. [REDACTED] undertakes a comprehensive review that encompasses the student's file, the existing IEP, and relevant documentation. The key participants in this collaborative effort include the student's parents, teachers, and Ms. [REDACTED]. Ms. [REDACTED] role during this meeting involves evaluating the necessity for another psychological evaluation. This assessment aims to answer crucial questions such as whether the student requires additional

related services, necessitates a change in placement, or potentially exhibits a primary disability distinct from the one documented in the current IEP.

Ms. [REDACTED] became involved with the Student when it was reported that he was using his phone to record videos in the cafeteria and bathroom, causing discomfort among his peers. Although the school team assured Ms. [REDACTED] that the situation had been addressed, the incident led to a prompt comprehensive review of the Student's IEP, FBA, and BIP. Following this review, Ms. [REDACTED] collaborated with the counselor to implement strategies ensuring an adult presence near the Student for social support, the consistent application of social skills, and immediate debriefs after incidents. From that point until the June 2023 meeting, Ms. [REDACTED] provided ongoing consultation and pertinent information to the family to address his needs effectively. Ms. [REDACTED] role primarily involved a consultative approach without providing direct services to the Student.

In May 2023, a subsequent incident prompted a team discussion on the efficacy of existing supports. Recognizing the need for a meeting in June 2023, Ms. [REDACTED] extensively prepared by examining the Student's educational and confidential records, prior psychological evaluations, and consulting with teachers to understand the challenges he faced. The June 2023 IEP meeting was Ms. [REDACTED] first attendance concerning the Student. The team revisited and updated the IEP, identifying as primary issues safety concerns and academic performance well below grade level. After discussion, the team determined that the Student should be transitioned to a self-contained environment across all areas. The Parent disagreed.

During the meeting, the Parent expressed concerns that the school supports were inadequate for the Student's safety and his behaviors. Given Ms. [REDACTED] limited direct interaction with the Student, Ms. [REDACTED] sought a well-rounded assessment of his present levels. Despite having access to prior assessments up to 2021, Ms. [REDACTED] requested verbal consent for

a full psychological assessment during the meeting, which was initially granted by the Parent but later rescinded via email.

Without consent for a formal assessment, Ms. ██████ completed a status report, which detailed the Student's educational history and summarized the psychological assessments conducted on him.⁸⁶ Ms. ██████ attended the September 1, 2023, and October 6, 2023 CIEP meetings. She actively participated and presented the status report she compiled. During these CIEP meetings, the school team expressed challenges in implementing necessary supports for the Student, while the Parent voiced concerns and disagreed with the proposed approach.

Since attending the CIEP meetings, Ms. ██████ has consistently followed the Student's case during his time at ██████ MS. While Ms. ██████ does not have parental permission to work directly with the Student, her involvement has been instrumental in supporting the team on a day-to-day basis, prioritizing the safety of the Student and others. This role has been ongoing until the present time. Despite Ms. ██████ continuous involvement, she has not gained parental consent to work directly with the Student. Nonetheless, her focus has been on contributing to the team's efforts to ensure the Student's safety and the safety of others. To date, Ms. ██████ has not learned anything new that would warrant a change in her opinion regarding the appropriateness of the Student's IEP. Her assessment remains consistent, affirming that the current IEP effectively addresses his needs and provides an appropriate educational framework.

Addressing the sufficiency of the Student's October 6, 2023 IEP, Ms. ██████ opined that the support and services outlined are appropriate and provide him with a FAPE. This judgment is based on a thorough assessment of the Student's requirements and the corresponding provisions within his IEP, which Ms. ██████ considered to be well-aligned with his educational needs.

⁸⁶ MCPS Ex. 6, Bates MCPS 078-081.

Addressing the LRE for the Student, ██████ opined that the LRE for the Student at this point is a non-public, fully self-contained, separate day program school. This opinion was based on her carefully considered available information and circumstances, leading to the conclusion that a non-public environment is the most suitable placement for the Student's current needs. Specifically, her rationale is based on two primary considerations: firstly, the Student's academic and cognitive levels are significantly below those of his same-age peers, affecting his access to the general education curriculum. Secondly, his current difficulties with boundaries, social cues, and perseverative behaviors pose safety concerns for both him and his peers. In a self-contained environment, he can receive more direct support tailored to address these specific challenges.

██████

Mr. ██████ was admitted as an expert in placement based on his extensive background.⁸⁷ From 1996 to 2007, Mr. ██████ served as a Special Education Instructional Assistant. He mentored and trained new instructional assistants, assisted students with coursework, documented critical incidents and student behavior, created alternative learning environments for disruptive students, helped set behavioral goals, and maintained classroom control. He was responsible for conducting yearly safety restraint presentations.

Mr. ██████ highlighted his former position at the ██████ ██████ (██████), a partnership between MCPS and the ██████. ██████ provided clinical services and therapy to students, including a residential component. The goal was to help students integrate back into a comprehensive school. ██████ serves students with a wide range of disabilities, and the residential component is available for those who need additional support. Describing ██████ school portion, Mr. ██████ emphasized that it is a separate, public day school with small class sizes, each led by a teacher and a paraprofessional.

⁸⁷ MCPS Ex. 39, Bates MCPS 587.

All students at [REDACTED] have disabilities and IEPs, and it is considered fully self-contained, meaning there are no general education classes. The typical day at [REDACTED] is 100% special education focused.

During his tenure as a Special Education Teacher from 2007 to 2012, he developed and implemented strategies to meet the emotional and educational needs of students with serious emotional disabilities in high school. He created individualized behavior goals, counseled students in crisis, communicated with the treatment team through documentation, oriented new students to school rules, provided one-on-one tutoring, and coordinated parent-teacher meetings. Additionally, he served as a Certified Crisis Prevention Institute (CPI) Trainer for MCPS.

In his current role as the Resource Teacher for Secondary Programs Specialist since 2012, Mr. [REDACTED] oversees high school teachers, ensuring collaboration among special educators to develop appropriate IEPs for students. He conducts teacher observations, provides feedback, chairs IEP meetings, and facilitates parental involvement. He reviews IEPs before meetings, creates and implements testing scheduling, and actively contributes to the Instructional Leadership Team (ILT) to develop and implement the School Improvement Plan (SIP). He continuously reviews student data with teachers to ensure success, to coach high school teachers on best practices at the social-emotional level, and to maintain ongoing compliance.

As a Placement Specialist working in the placement office, Mr. [REDACTED] responsibilities involve case management for private schools and coordinating IEP meetings. When a public school determines it cannot meet a student's needs, a referral is sent to the placement office. Mr. [REDACTED] ensures that all necessary documentation is in order before scheduling a CIEP meeting. Following the meeting, he oversees the necessary follow-up procedures. Mr. [REDACTED] assists schools in finding suitable placements when their resources are insufficient to meet a student's needs. This process involves an extensive exploration of potential private schools that adhere to

the MSDE guidelines, emphasizing a comprehensive curriculum. These private schools focus on academics and behavior management to help students overcome challenges and access the curriculum effectively.

Mr. [REDACTED] became acquainted with the Student's case file and thoroughly reviewed his educational records. His involvement commenced when the Student's file was referred for placement by the [REDACTED] MS IEP team. The school made the referral to the CIEP team, expressing the belief that it was unable to adequately address the Student's educational needs.

The CIEP meetings involving the Student began on September 1, 2023, and continued into October 6, 2023. During these meetings, the school team highlighted concerns about class size and safety issues,⁸⁸ ultimately determining that the Student needed 100% special education classes and counseling. The Parent objected to this recommendation, expressing concerns about alleged racism at [REDACTED] MS, and preferred that the Student continue attending a public school within MCPS.

Mr. [REDACTED] testified that he agreed with the determination that the Student needed a 100% special education school. The basis for his agreement was the review of the Student's file, reports from the [REDACTED] school staff, and listening to the Parent. The CIEP team subsequently made referrals to three non-public school placements, with two of the schools closing their case files due to non-cooperation from the Parent to schedule an interview, and the [REDACTED], accepting the Student after an interview was scheduled.⁸⁹ Mr. [REDACTED] explained that the [REDACTED] was deemed appropriate for the Student due to its focus on disruptive behavior, social skills development, small class sizes, and therapeutic services. He added that the MCPS would cover the costs, including curb-to-curb transportation.

⁸⁸ See FOF Nos. 19-38.

⁸⁹ FOF Nos. 51-53.

Mr. [REDACTED] opined that the Student's IEP developed on October 6, 2023, was appropriate and reasonably calculated provide the Student a FAPE. He confirmed that the Student needed a private, separate day school to receive the required services under the October 6, 2023 IEP and that the [REDACTED] would be able to implement the Student's IEP requirements. Finally, Mr. [REDACTED] opined that a private separate day school, featuring 100% special education classes, which in this case is the [REDACTED], constitutes the LRE for the Student. Notably, the Parent did not present any evidence to counter Mr. [REDACTED] opinions regarding the October 6, 2023 IEP and the [REDACTED] as the LRE for the Student.

Addressing the Parent's proposal for [REDACTED] ([REDACTED]), Mr. [REDACTED] highlighted that, while [REDACTED] provides similar academic services, it lacks the necessary behavior services to effectively address the Student's challenges. Mr. [REDACTED] explained that he is knowledgeable about what various schools can provide, and he asserted that [REDACTED] cannot offer the required social skills, services, and classes that the Student needs. The Student has remained at [REDACTED] MS under stay-put provisions since the Parent filed a Due Process Complaint. Mr. [REDACTED] concluded that since October 6, 2023, the Student's situation has not changed, and there is no new information that would alter his opinion.

Analysis

Based on the evidence before me, I find that the October 6, 2023 IEP is reasonably calculated to provide the Student a FAPE, which will enable the Student to make progress appropriate in light of the Student's circumstances, focusing on academics, social skills, and self-management. The IEP offers a cogent and responsible explanation for the team's decisions. The IEP provides detailed examples of those explanations. The Parent could not identify any part of the IEP that was not reasonably calculated to provide the Student a FAPE. The Parent wanted more services and support but could not itemize what they were. The MCPS witnesses testified

thoroughly and credibly concerning the October 6, 2023 IEP, the Parent's meaningful participation, and the reasons why the [REDACTED] is the LRE for the Student.

Even though MCPS has no burden in this matter and the Parents did not present expert testimony for which rebuttal was needed, the MCPS witnesses diligently presented the facts, circumstances, and efforts of the [REDACTED] MS IEP team. They acknowledged the limitations in addressing the Student's needs and emphasized that their actions were not meant to judge or punish him. The MCPS witnesses all recognized that the Student's behaviors are unintentional and not malicious., They focused on the fact that the Student's behaviors have not improved despite their best efforts and his educational progress has stagnated.

During the Student's sixth-grade school year, the team implemented an IEP that facilitated the Student's advancement by a full grade level, from second to third. It is evident that the Student responded to the support and services provided to help him access the general curriculum and make functional progress. However, the team acknowledged their limitations in addressing the Student's persistent behavioral challenges in the three key areas of personal space, respectful communication, and safe hands and feet. The team felt they needed a higher level of intervention to address the Student's needs as he progressed to the seventh grade. Therefore, the team sought assistance from the CIEP to determine the most appropriate course of action. Mr. [REDACTED], a specialist in special education and placement, along with experts Ms. [REDACTED] and Ms. [REDACTED] convened on October 6, 2024, to reassess the situation. They dedicated two and a half hours to comprehensive discussions, opting to start anew rather than simply resume discussions from the previous year, in consideration of the Parent's counsel.

In seventh grade, the Student's behaviors hinder his ability to engage with the curriculum and pose risks to both himself and classmates. His academic performance is notably below grade level, equivalent to third grade, and significantly lagging behind peers in general education.

Despite claims of bullying, there was no evidence presented that supported this assertion; rather, it is the Student's provocative statements and actions that create potentially hazardous situations. Peers' reactions to these behaviors necessitate staff intervention to prevent harm, yet delays in such intervention have led to the Student sustaining injuries. Without behavioral changes, the evidence has demonstrated that he will continue to struggle academically and remain vulnerable to unintended conflicts with peers, jeopardizing his safety and academic progress.

Regarding the procedural denial of a FAPE for the Student, there is no evidence to suggest that the Parent was deprived of the opportunity to meaningfully participate in the decision-making process regarding the Student's IEP. Although this allegation was initially raised in the Due Process Complaint, it was subsequently abandoned during the hearing. The Parent received all prior written notices⁹⁰ and actively participated in the IEP meetings. Notably, while she attended the CIEP meeting of September 1, 2023, without representation, the Parent was accompanied by counsel at the October 6, 2023 CIEP meeting, and [REDACTED] interpreters were consistently present at the IEP meetings to facilitate the Parent's participation.

The evidence unequivocally supports the conclusion that the Student's IEP may best be implemented at a non-public, 100% special education school, and that such a program would offer him a FAPE. Specifically, the [REDACTED] was identified as the LRE capable of implementing the Student's IEP requirements and offering him a FAPE. MCPS will cover his attendance costs and provide curb-to-curb transportation from his home to the [REDACTED]. The Parent provided no alternative placement for implementing the Student's IEP. MCPS demonstrated that no other schools, whether public or private, could adequately meet the Student's needs.

⁹⁰ MCPS Exs. 28-34, Bates MCPS 566-576.

Based on the evidence before me, I find that the current IEP is reasonably calculated and designed to meet this Student's unique needs, providing him a FAPE. I further find that the Parent did participate meaningfully in the development of the October 6, 2023 IEP and the [REDACTED] is the LRE for the Student, where the October 6, 2023 IEP can be implemented.

CONCLUSIONS OF LAW

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

1. The MCPS' October 6, 2023 IEP provided the Student with a FAPE in the least restrictive environment based on the referral to the [REDACTED].⁹¹
2. The MCPS did not commit a procedural violation: the Parent was not impeded from the opportunity to participate meaningfully at the October 6, 2023 IEP meeting.⁹²

ORDER

I **ORDER** that the Parent's November 9, 2023 Due Process Complaint is without merit and is hereby **DISMISSED**.

February 22, 2024
Date Decision Issued

Sun E. Choi
Administrative Law Judge

SEC/emh
#209624

⁹¹ *Board of Educ. of the Hendrick Hudson Central School Distr. v. Rowley*, 458 U.S. 176 (1982); *Endrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988 (2017); *Burke County Board of Educ. v. Denton*, 895 F.2d 973 (4th Cir. 1990).

⁹² *See* 20 U.S.C.A. § 1415(f)(3)(E)(ii) (2017); 34 C.F.R. § 300.513(a)(2) (2021).

REVIEW RIGHTS

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

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

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

Copies Mailed and Emailed To:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED],

STUDENT

v.

MONTGOMERY COUNTY PUBLIC

SCHOOLS

BEFORE SUN E. CHOI,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-MONT-OT-23-28930

FILE EXHIBIT LIST

I admitted the following exhibits on behalf of MCPS:

MCPS Ex. 1 - Neuropsychological Consultation Confidential Report by [REDACTED],
Psy.D. (Bates MCPS 001-026), October 27, 2021

MCPS Ex. 2 - Functional Behavioral Assessment (FBA) (*Id.* 027-052), January 6, 2023

MCPS Ex. 3 - Report of Bilingual Speech-Language Assessment (*Id.* 053-057), January 25,
2022

MCPS Ex. 4 - Speech-Language Status Report (*Id.* 058-063), June 26, 2023

MCPS Ex. 5 - Educational Status Report by [REDACTED] (*Id.* 064-077), July 10, 2023

MCPS Ex. 6 - Confidential Status Report of School Psychologist [REDACTED] (*Id.* 078-081),
July 10, 2023

MCPS Ex. 7 - Team Consideration of External Report (*Id.* 082), January 27, 2022

MCPS Ex. 8 - Report of Bilingual Speech-Language Assessment (*Id.* 083-087), January 25,
2022

MCPS Ex. 9 - Confidential Evaluation Report of School Psychologist, by [REDACTED]. (*Id.*
088-093), January 21, 2021

MCPS Ex. 10 - IEP (*Id.* 094-143), January 20, 2023, amended on May 22, 2023

MCPS Ex. 11 - IEP (*Id.* 144-191), January 20, 2023, amended on May 9, 2023

MCPS Ex. 12 - IEP (*Id.* 192-239), January 20, 2023

MCPS Ex. 13 - IEP (*Id.* 240-278), January 27, 2022, amended on August 1, 2022

- MCPS Ex. 14 - IEP (*Id.* 279-317), January 27, 2022, amended on May 9, 2022
- MCPS Ex. 15 - IEP (*Id.* 318-354), January 27, 2022
- MCPS Ex. 16 - IEP (*Id.* 355-406) June 13, 2023
- MCPS Ex. 17 - IEP (*Id.* 407-458), June 13, 2023, amended November 3, 2023
- MCPS Ex. 18 - IEP (*Id.* 459-510), June 13, 2023
- MCPS Ex. 19 - Ten-day Letter to Edith Serrano, Esq., from [REDACTED], Esq. (*Id.* 511-512), December 7, 2023
- MCPS Ex. 20 - Letter for Inclusion Program Coordinator [REDACTED] (*Id.* 513), August 7, 2023
- MCPS Ex. 21 - [REDACTED] Acceptance Letter from [REDACTED] (*Id.* 514), November 2, 2023
- MCPS Ex. 22 - Emails between the Parent and School Counselor [REDACTED] (*Id.* 515-518), various dates
- MCPS Ex. 23 - Emails between the Parent and [REDACTED] (*Id.* 519-561), various dates
- MCPS Ex. 24 - Letter from [REDACTED], the [REDACTED] ([REDACTED]) to [REDACTED] (*Id.* 562), November 6, 2023
- MCPS Ex. 25 - [REDACTED] ([REDACTED]) (*Id.* 563), October 13, 2023
- MCPS Ex. 26 - Emails between the Parent to [REDACTED] (*Id.* 564), June 23, 2023
- MCPS Ex. 27 - [REDACTED] School Letter to [REDACTED] (*Id.* 565), October 25, 2023
- MCPS Ex. 28 - Prior Written Notice (PWN) (*Id.* 566-567), November 2, 2021
- MCPS Ex. 29 - PWN (*Id.* 568-569), January 27, 2022
- MCPS Ex. 30 - PWN (*Id.* 570), May 9, 2022
- MCPS Ex. 31 - PWN (*Id.* 571), January 20, 2023
- MCPS Ex. 32 - PWN (*Id.* 572), April 27, 2023
- MCPS Ex. 33 - PWN (*Id.* 573-574), June 14, 2023
- MCPS Ex. 34 - PWN (*Id.* 575-576), September 1, 2023

- MCPS Ex. 35 - [REDACTED] Resume (*Id.* 577), undated
- MCPS Ex. 36 - [REDACTED] Resume (*Id.* 578-581), undated
- MCPS Ex. 37 - [REDACTED] Resume (*Id.* 582-584), undated
- MCPS Ex. 38 - [REDACTED] Resume (*Id.* 585-586), undated
- MCPS Ex. 39 - [REDACTED] Resume (*Id.* 587), undated
- MCPS Ex. 40 - [REDACTED] Resume (*Id.* 588-589), undated

I admitted the following exhibits on behalf of the Parent:

- Parent Ex. 1 - Five-Day Verification Notice of Documents Provided After an IEP Meeting ([REDACTED] 001- 005), May 16, 2022; Notice of IEP Team Meeting, April 8, 2022; IEP Team Meeting Sign-In Sheet, May 9, 2022; PWN, May 9, 2022; IEP, (*Id.* 006-085), January 27, 2022, amended May 9, 2022; Referral to More Restrictive Checklist (*Id.* 086), July 10, 2023
- Parent Ex. 2 - [REDACTED] (*Id.* 87), June 16, 2023
- Parent Ex. 3 - Confidential Student Record Transmittal (*Id.* 088 – 089), received July 14, 2023
- Parent Ex. 4 - IEP Team Meeting Sign-In Sheet (*Id.* 090), June 13, 2023; PWN (*Id.* 091-092), June 14, 2023; IEP (*Id.* 093-138), June 13, 2023
- Parent Ex. 5 - Notice and Consent for Assessment (*Id.* 139-140), June 13, 2023; Email between the Parent and [REDACTED], rescinding consent (*Id.* 141), June 13, 2023
- Parent Ex. 6 - Report to Parent’s on Student Progress Grades 6-8 (*Id.* 142-143), June 22, 2023
- Parent Ex. 7 - Speech-Language Status Report (*Id.* 144-149), June 26, 2023; Confidential Status Report of School Psychologist [REDACTED], (*Id.* 150-154), July 10, 2023; Educational Status Report by [REDACTED] (*Id.* 154-167), July 10, 2023; Confidential Evaluation Report of School Psychologist by [REDACTED], Jr. (*Id.* 169-174), January 21, 2021; Report of Bilingual Speech-Language Assessment (*Id.* 175-179), January 25, 2022
- Parent Ex. 8 - Team Consideration of External Report (*Id.* 168), January 27, 2022; Neuropsychological Consultation Confidential Report (*Id.* 180-205), October 27, 2021; [REDACTED] (*Id.* 206), June 6, 2023
- Parent Ex. 9 - Letter from [REDACTED] (*Id.* 207-209), undated