

██████████,
STUDENT
v.
BALTIMORE COUNTY
PUBLIC SCHOOLS

BEFORE JOCELYN L. WILLIAMS,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-BCNY-OT-23-20934

DECISION

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STATEMENT OF THE CASE

On August 14, 2023, ██████████ and ██████████ (Parents), on behalf of their child, ██████████ ██████████ (Student), filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by Baltimore County Public Schools (BCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017);¹ 34 C.F.R. § 300.511(a) (2022);² Md. Code Ann., Educ. § 8-413(d)(1) (Supp. 2023);³ Code of Maryland Regulations (COMAR) 13A.05.01.15C(1).

I held remote prehearing conferences utilizing the Webex videoconferencing platform (Webex) on September 28, 2023, and December 4, 2023. Code of Maryland Regulations

¹ “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.

² “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.

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

(COMAR) 28.02.01.17; COMAR 28.02.01.20B. The Parents were present and represented by Mark Martin, Esquire. Pamela Foresman, Staff Attorney, Office of Law, represented BCPS.

I held the due process hearing remotely via Webex on January 9-12, 17-18, 22-25, March 19-21, and April 8, 2024.⁴ Mr. Martin represented the Parents. Ms. Foresman represented BCPS.

Under the applicable law, a decision in this case normally would be due by October 27, 2023,⁵ forty-five days after the mediation session.⁶ 34 C.F.R. §§ 300.510(b)(3), (c), 300.515(a); Educ. § 8-413(h); COMAR 13A.05.01.15C(14). However, the parties requested hearing dates outside that timeframe. 34 C.F.R. § 300.515(c); Educ. § 8-413(h).

Everyone reviewed their calendars and multiple conflicts were noted.⁷ Mr. Martin was unavailable because of other scheduled hearings on October 30 – November 7, 2023, November 13 – 17, 2023, November 22 – December 4, 2023.⁸ He was also unavailable December 13 – 15, 2023, because he was out of state for his son’s graduation.

Ms. Foresman was unavailable because of other hearings scheduled October 23 – 24, 2023, November 2 – 3 and 6 - 8, 2023, November 16 – 17, 2023, November 20 – 21, 2023, November 27 – 29, 2023, and December 6 – 8, 11 - 12, 2023. Ms. Foresman was on approved leave October 26 – 27 and October 30 - November 1, 2023, and

⁴ By agreement of the parties, the hearing originally was scheduled to conclude on January 25, 2024, but at that time the parties requested that it continue on March 19, 2024, and conclude on March 21, 2024. Mr. Martin then requested additional time to call rebuttal witnesses, and the parties requested additional dates of April 8-10, 2024. On April 8, 2024, Mr. Martin indicated he would not be calling rebuttal witnesses and the hearing concluded that day following closing arguments.

⁵ Forty-five days from September 14, 2023, is Sunday, October 29, 2023. Policy requires issuing the decision on the business day before Saturday or Sunday.

⁶ The mediation session was held on September 28, 2023, outside of the thirty-day resolution period and in lieu of a resolution session.

⁷ We first began looking at dates beginning the week of October 23, 2023, because of a miscalculation of the due date, which did not include the thirty-day resolution period.

⁸ These dates including the Thanksgiving Holiday.

December 22, 2023 – January 5, 2024.⁹ It was also noted that BCPS was closed for Winter Recess December 22, 2023 – January 1, 2024,¹⁰ during which time none of the BCPS witnesses were available.

For the record we also discussed my availability. I was unavailable October 26 – 27 and October 30 - November 2, 2023, and November 28, 2023, due to specially assigned dockets. I was on approved leave December 20, 2023 – January 5, 2024.¹¹

For the reasons discussed above, and at the request of the parties, I found good cause to extend the regulatory timeframe. The parties agreed to allow me thirty days after the close of the record to issue a decision in this matter.

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

ISSUES

Did the challenged actions by the BCPS fail to meet the requirements of the law?

Specifically:

1. Did BCPS offer the Student a free appropriate public education (FAPE) for the 2023-24 school year?
2. Did BCPS develop an appropriate Individualized Education Program (IEP) for the Student for the 2023-24 school year?

⁹ These dates include the Christmas and New Years Day Holidays and weekend days.

¹⁰ *Id.*

¹¹ *Id.*

3. Did BCPS recommend an appropriate placement for the Student for the 2023-24 school year?

4. Is the Student making reasonable progress in his current placement at the [REDACTED] [REDACTED] ([REDACTED] [REDACTED])?

SUMMARY OF THE EVIDENCE

Exhibits

A full list of exhibits is attached to this decision as an appendix.

Testimony

The Parent testified and presented the following witnesses:

- [REDACTED], [REDACTED],¹² admitted as an expert in special education, special education in self-contained and general education classrooms, assessing students and developing IEPs;
- [REDACTED], [REDACTED],¹³ [REDACTED],¹⁴ admitted as an expert in neuropsychology, neuropsychological assessments of children, and the educational needs of students with complex neurodevelopmental needs;
- [REDACTED], admitted as an expert in the assessment and provision of occupational therapy services to children and adults;
- [REDACTED], [REDACTED],¹⁵ admitted as an expert in child and adult physical therapy, including the evaluation, development and implementation of physical therapy plans;

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- [REDACTED], [REDACTED],¹⁶ [REDACTED],¹⁷ admitted as an expert in speech language pathology; and
- [REDACTED], father of the Student.

The BCPS presented the following witnesses:

- [REDACTED], [REDACTED], [REDACTED],¹⁸ admitted as an expert in general education, special education, IEP development and implementation, and school administration;
- [REDACTED], admitted as an expert in the assessment and provision of occupational therapy services to adults and children;
- [REDACTED], [REDACTED], [REDACTED], school psychologist;¹⁹
- [REDACTED], [REDACTED], admitted as an expert in special education;
- [REDACTED], [REDACTED], admitted as an expert in physical therapy; and
- [REDACTED], [REDACTED], [REDACTED], admitted as an expert in speech language pathology and assistive technology.

FINDINGS OF FACT

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

Background Information

1. The Student is a nine year old boy ([REDACTED]) who is currently a third grade student.
2. At twelve days old, the Student went into [REDACTED] as a result of complications from an undiagnosed [REDACTED] – a failure of the [REDACTED]

¹⁶ [REDACTED]
¹⁷ [REDACTED]
¹⁸ [REDACTED]
¹⁹ [REDACTED] was offered as an expert in school psychology and psychological assessments in school settings; however, following voir dire I did not find her to be an expert as offered. [REDACTED] was only permitted to testify as a fact witness.

[REDACTED]
[REDACTED]. [REDACTED]
[REDACTED].

3. The Student suffered [REDACTED]
[REDACTED]
[REDACTED].

4. The Student's diagnoses of [REDACTED]
[REDACTED]
[REDACTED]

5. The Student's [REDACTED] impacts multiple domains of development, including "[REDACTED]
[REDACTED]."

(Testimony [REDACTED], Vol IV, January 12, 2024, pp. 507-508).

6. The Student has [REDACTED]
[REDACTED].

7. The Student's involuntary movements expend a tremendous amount of energy and he also uses a lot of energy to maintain his posture, causing physical fatigue.

8. The Student was parentally placed at the [REDACTED], a private separate day school for children with learning disabilities, other health impairments, and other disabilities, when he entered kindergarten and has continued there since.

9. The Student currently receives full-time specialized one-on-one instruction, in small segments, outside the general education environment.

10. [REDACTED] provides the Student opportunities for inclusion. Daily for forty-five minutes to one hour, the Student attends a general education [REDACTED] class with his non-disabled same aged peers.

11. The Student receives integrated physical therapy (PT) and occupational therapy (OT), inside the classroom, as push in services, and outside the classroom, as pull out services, during his school day at the [REDACTED] to address his posture, fatigue level, adaptive skills and readiness/availability for learning.

12. BCPS funded the Student's education, related services and fees at the [REDACTED] [REDACTED] for kindergarten, first and second grade. (Parents Ex. 12; BCPS Ex. 14).

13. The Student has limited verbal skills and communicates primarily through the assistance of an Augmented and Alternative Communication (AAC) device, which operates with eye tracking/gaze.

14. All of the Student's instructional materials are not loaded onto his AAC device because the Parents want to limit his screen time when possible.

15. The Student can walk short distances with the use of a gait trainer, but mostly ambulates in a wheelchair which has a four-point harness that keeps him seated upright.

Evaluations, Observations, and IEP Team Meetings

16. On August 18, 2020, [REDACTED], [REDACTED],²⁰ at the [REDACTED] [REDACTED] ([REDACTED]) conducted a neuropsychological evaluation of the Student, during which she administered multiple tests including select subtests of the Differential Ability Scales, Second Edition (DAS-II); select subtests of the Wechsler Intelligence Scale for Children – Fifth Edition - Integrated (WISC-V Integrated); Peabody Picture Vocabulary Test, Fifth Edition (PPVT-5); Adaptive Behavior Assessment Systems – Third Edition (ABAS-3); and Achenbach

²⁰ [REDACTED]

Child Behavior Checklist (CBL) ages six to eight years, parent/caregiver report. (Parents Ex. 1; BCPS Ex 4).

17. ██████████ utilized accommodations including not adhering to time limits, repeating instructions, clarifying and additional modeling which were not part of the standardization for testing.

18. The neuropsychological evaluation noted the Student's intellectual functioning to be in the well below average to borderline range.

19. ██████████ noted that the Student's diagnosis of ██████████ causes fatigue when just maintaining body posture and head control, and that these periods of substantial fatigue erode his sustained attention consistent with a diagnosis of attention and concentration deficits. (*Id.*).

20. ██████████ found that the Student's presentation was consistent with a diagnosis of neurodevelopmental disability and noted that his "learning needs are particularly complex." (Parents Ex. 1, p. 8; BCPS Ex 4).

21. ██████████'s educational recommendation was that:

[The Student] will require an individually tailored curriculum with a learning pace that accounts for his need for frequent breaks to account for vulnerability to rapid fatigue. Such a curriculum should play on [the Student's] strength in the area of language skills, with ongoing support for developing his problem solving and reasoning skills. He will require a small class size to limit distractions and frequent 1:1 support to help him focus his attention on learning tasks. [The Student] will continue to benefit from intensive related services in physical therapy and occupational therapy, as well as speech and language therapy and assistive technology in order to access his curriculum. Finally, [the Student] is extremely social and interactive. Ongoing interactions with other peers, including those who have developmental disabilities and those who are typically developing, is necessary for [the Student's] ongoing social and emotional development.

(*Id.*)

22. On November 18, 2020, the Student participated in an Assistive Technology Evaluation performed by [REDACTED], [REDACTED],²¹ [REDACTED].²² (Parents Ex. 2; BCPS Ex 5).

23. [REDACTED] noted the Student's diagnoses of [REDACTED], and that he presented with severe [REDACTED].²³

24. [REDACTED] determined that the Student's AAC device was appropriate and should continue to be used. She recommended a wheelchair mount be obtained for consistent positioning and access, and that additional vocabulary be added to the AAC device for increased communication efficiency. (*Id.*).

25. In December 2020, the Parents hired [REDACTED], educational consultant, to assist them with researching and assessing educational placements for the Student. She has attended five IEP meetings and conducted five or six observations of the Student.

26. On November 21, 2022, [REDACTED], [REDACTED] speech and language pathologist, developed a Care Plan for the Student which noted the Student's oral strength and verbal output as very limited. She recommended ongoing speech therapy of three thirty-minute sessions per week to address his oral strength and increase his verbal output by improving sound and word approximation production for communicating when his AAC device is unavailable. (Parents Ex. 10; BCPS Ex 20).

27. [REDACTED] also noted that speech therapy will utilize a total communications approach to enable the Student to communicate functionally to address his wants and needs, interact with peers, ask and answer questions, and use lesson-specific vocabulary. She developed goals and objectives for the Student to work towards. (*Id.*).

21 [REDACTED]
22 [REDACTED]
23 [REDACTED] is a [REDACTED]
[REDACTED].

28. Sometime in December 2023, the [REDACTED] issued a Personalized Learning Plan (PLP) for the Student which described his progress beginning November 21, 2022, and concluding November 2023. (Parents Ex. 11; BCPS Ex. 11).

29. [REDACTED] School PLP contains present levels of performance, annual goals and objectives for the Student, as would be captured in an IEP.

30. The November 2023 PLP noted annual goals and objectives for the Student in the areas of reading, math, writing, and social/emotional. (*Id.*).

31. On December 22, 2022, [REDACTED], [REDACTED] occupational therapist, conducted an OT evaluation of the Student and developed an OT Care Plan, both of which were reduced to writing. (Parents Exs. 13 and 14, BCPS Exs. 20 and 40).

32. [REDACTED] assessed the Student's gross motor, fine motor and activities of daily living (ADL) skills. She noted that he presents with "motor limitations in the areas of grasp, release, reach, and his ability to bring his hands to midline" and that "many of these limitations are due to primitive reflexes." She further noted his startle reflex which interferes with his involuntary movement. (*Id.*)

33. [REDACTED] recommended that the Student continue to receive OT two to four times per week for thirty to forty-five minutes per session to address grasp and release, range of motion, reaching midline, tone management and equipment management. (*Id.*).

34. On February 1, 2023, [REDACTED], [REDACTED] physical therapist, conducted a PT re-evaluation of the Student, which she reduced to writing. As part of her re-evaluation [REDACTED] reviewed the previous PT evaluation from April 25, 2022. (Parents Ex. 15; BCPS Exs. 10 and 40).

35. [REDACTED] assessed the Student's current level of functioning and that he remains dependent for all ADLs, self-care and mobility. She noted that he will continue to benefit from

skilled PT “to address his sitting balance/strength, his endurance/ability to stand with support, his ability to transfer from seated position, [his] equipment management[,] and his overall functional mobility,” because by addressing these deficits he “will be able to be more safe and efficient in his mobility navigating his classroom and school environments.” (*Id.*).

36. ██████████ developed goals and objectives for the Student to work towards and recommended he continue to receive PT once or twice a week for thirty to forty-five minutes per session. (*Id.*).

37. It is not uncommon for public school-based IEP teams to draft an IEP for students they have never previously worked with or met. The team drafts the IEP based on a variety of sources of information, including but not limited to, the student’s assessments, progress and reports from the student’s current school, as well as input from parents and other experts, who have provided special education and other services to the student.

38. On February 13, 2023, BCPS held an IEP team meeting comprised of teachers and staff from the ██████████ (██████████),²⁴ to conduct reevaluation planning for the Student, at which time it was determined that no additional formal assessments were needed. The IEP team determined informal assessments or observations were needed in the areas of academics, OT, PT, psychological, speech/language, and assistive technology.

39. On a date sometime after February 13, 2023, the BCPS issued a Prior Written Notice (PWN) which summarized the discussions at the IEP team meeting and provided an explanation of the actions proposed and refused by the BCPS. (Parents Ex. 17; BCPS Ex. 21 and 46).

40. On February 27, 2023, ██████████ observed the Student at the ██████████ ██████████ for the purposes of conducting an informal OT evaluation. ██████████ observed the

²⁴ ██████████ is the Student’s home school, that he would attend based on where he lives if he didn’t need special education. services.

Student in a PT session, ambulating in his gait trainer, rotating between stations in his classroom, and having lunch. She memorialized her observation in a report. (Parents Ex. 18; BCPS Ex. 24).

41. [REDACTED] did not directly observe the Student in an OT session, she spoke with the Student's current OT, [REDACTED], via email and telephone, who indicated the Student was receiving two, forty-minute OT sessions per week as a combination of push in and pull out therapy. [REDACTED] explained that she was working with the Student on using adaptive equipment for coloring, manipulating small objects, and grasping activities. (*Id.*).

42. On March 9 and 16, 2023, [REDACTED], BCPS school psychologist, conducted a psychological assessment which she summarized in a report dated April 11, 2023. (Parents Ex. 20; BCPS Ex. 46).

43. [REDACTED]'s psychological assessment was comprised of a records review, which included [REDACTED]'s August 18, 2020 neuropsychological evaluation, an interview with the Student's teacher, [REDACTED], an interview with the Student's mother, [REDACTED], scoring the ratings scales for the Conners – Fourth Edition Short Form: Parent and Teacher Form provided to [REDACTED] and [REDACTED], and scoring the ratings scales for the Vineland Adaptive Behavior Scales – Third Edition: Parent and Teacher Forms provided to [REDACTED] and [REDACTED]. (*Id.*).

44. While [REDACTED]'s psychological assessment report relied heavily on [REDACTED]'s neuropsychological evaluation, she did not include any of [REDACTED]'s recommendations.

45. [REDACTED] recommended continued communication between home and school to assist the Student to generalize learned behaviors; continuing to provide the Student with academic materials to accommodate his AAC device; and continuing to provide the Student with regular opportunities to socialize with his same-aged peers.

46. On March 28, 2023, [REDACTED], BCPS special educator, observed the Student at the [REDACTED] during his English Language Arts instruction, and summarized her observation in a written report. (Parents Ex. 19; BCPS Ex. 46).

47. [REDACTED] used a ratings scale in which she noted that she did not observe the Student in the areas of math calculation – operation, math reasoning, organization, social interaction, or motivation/participation. She also noted that the Student had significant problems in the areas of oral expression, visual motor coordination and speech. [REDACTED] further noted that the Student had no problems in the areas of listening comprehension, basic reading skills, written expression, discrimination – visual/auditory, attention, activity level, work habits and task completion. She noted no areas on the rating scale as areas of strength. (*Id.*).

48. On May 3, 2023, an IEP team meeting was convened to discuss and complete an Eligibility Determination as to the reevaluation of the Student’s disability or disabilities. The discussion and determination were memorialized in writing. (Parents Ex. 21; BCPS Ex. 43).

49. At the May 3, 2023 Eligibility Determination meeting, the IEP team determined that the Student’s [REDACTED] impairment, speech/language impairment, orthopedic impairment, and multiple disabilities meet the criteria for specialized instruction under the educational disability code of multiple disabilities. (*Id.*).

50. The May 3, 2023 Eligibility Determination further states:

[The Student’s disabilities affect all academic areas. His [REDACTED] affects his cognitive, language, attention, perceptual and motor abilities, physical functioning, information processing, and speech skills. Due to limited motor ability, [the Student] requires assistive technology to access academic instruction. Throughout the school day, [the Student] requires extra time to read, process information, respond to questions/communicate understanding of presented concepts, and to communicate with peers and... assistive technology. [The Student] requires modified assignments that permit him to respond using eye gaze

to access his assistive technology. Due to the cognitive efforts required to process information and express information and thoughts, [the Student] can become fatigued. This affects his ability to maintain attention for extended periods of time.

(Id.).

51. On a date sometime after May 3, 2023, the BCPS issued a PWN which summarized the discussions at the IEP team meeting and provided an explanation of the actions proposed or refused by the BCPS. (Parents Ex. 22; BCPS Ex. 46).

52. On May 17, 2023, an IEP team meeting was convened to conduct the Student's annual IEP review, discuss extended school year (ESY) services and develop the Student's IEP for the 2023-24 school year. *(Id.)*. The Parents attended the IEP team meeting and participated in the discussions.

53. At the May 17, 2023 IEP team meeting, the team proposed the following:

- reviewing and revising the IEP;
- a note that explains how fatigue and extra time need to be added to the present levels of academic achievement and functional performance section to describe how the Student's disability affects his access to the general education curriculum;
- adding small group instruction and testing accommodations;
- a clarifying statement to be added to the 1.5 times extended time for instructional testing and accommodations;
- an assistive technology consult with teacher to be added to the supplementary aides and services;
- extended time of double time to be added to the supplementary aides and services;

- adding check-in for understanding to the supplementary aides and services; and
- a speech goal to address working on clearly articulating single- and two-word combinations.

54. At the May 17, 2023 IEP team meeting, the Parents proposed the following to be added to the proposed IEP:

- small group instruction throughout the day be added to the impact statement;
- the present levels of academic achievement and functional performance should include areas of need in reading, mathematics and writing;
- delivery of instruction at a slower pace should be added to the supplementary aides and services;
- reading – inferencing, writing language – longer responses, and mathematics goals be added;
- speech articulation - sounds goal be added;
- small group instruction throughout the day be added to the supplementary aides and services.

55. The BCPS rejected all of the Parents’ proposals, citing a lack of data to support the Parents’ requests.

56. On a date sometime after May 17, 2023, the BCPS issued a PWN which summarized the discussions at the IEP team meeting and provided an explanation of the actions proposed or refused by the BCPS. (Parents Ex. 24; BCPS Ex. 48).

57. On June 6, 2023, an IEP team meeting was convened to continue the annual IEP review. The Parents attended the IEP team meeting and participated in the discussions.

58. On June 6, 2023, the IEP team considered ██████████’s Neuropsychological evaluation, observations of the Student in the classroom, assessments – psychological,

speech/language, [REDACTED] PT Care Plan, [REDACTED] OT Care Plan and other BCPS observation reports OT and PT, and the Eligibility Determination. (Parents Ex. 26; BCPS Ex. 51).

59. On June 6, 2023, the IEP team agreed that the Student was properly identified pursuant to the IDEA as having Multiple Disabilities with cognitive – [REDACTED], [REDACTED], and [REDACTED], and physical - orthopedic impairments; and met the criteria for specialized instruction.

60. The IEP team agreed that the Student’s disabilities affect all academic areas, and his involvement in the general curriculum, and noted:

His [REDACTED] affects his cognitive, language, attention, perceptual and motor abilities, physical functioning, information processing, and speech skills. Due to limited motor ability [the Student] requires assistive technology to access academic instruction. Throughout the school day, [the Student] requires extra time to read, process information, respond to questions/communicate understanding of presented concepts, and to communicate with peers and staff via assistive technology. [The Student] requires alternate modes of representing his knowledge that permit him to respond using his eye gaze to access his assistive technology. Due to the cognitive efforts required to process information and express information and thoughts, as well as the physical effort of using the eye gaze, [the Student] can become fatigued. This affects his ability to maintain attention for extended periods of time.

(*Id.* at 151).

61. The IEP included present levels of academic achievement and functional performance.

62. The Student’s present level of academic achievement in the area of academic: communication, noted his current instructional grade level as below age expectations, and that it impacts his academic achievement and/or functional performance.

63. The Student’s present level of academic achievement in the area of physical: functional upper extremity/hand skill noted his current level of performance as significantly below age level expectations, and that it impacts his academic achievement and/or functional performance.

64. The Student's present level of academic achievement in the area of physical: other – physical: adaptive skills noted his current level of performance as below age level standards, and that it impacts his academic achievement and/or functional performance.

65. The Student's present level of academic achievement in the area of physical: functional mobility noted his current level of performance as below age level, and that it impacts his academic achievement and/or functional performance.

66. The Student's present level of academic achievement in the area of academic: other-academic: reading, writing, math, noted his current level of performance as end of second grade level, and that it impacts his academic achievement and/or functional performance.

67. The IEP team considered the Student's need for assistive technology to increase, maintain or improve his functional capabilities, and determined that the Student required the use of an assistive technology device and assistive technology services.

68. The IEP team determined that the Student required supplementary aids, services, program modifications, supports, instructional and testing accommodations.

69. With regard to instructional and assessment accessibility features, the IEP team determined the Student requires the following:

- audio amplification;
- bookmark – flag items for review;
- blank scratch paper;
- eliminate answer choice;
- general administration directions clarified;
- general administration directions read aloud and repeated as needed;
- highlighter tools;
- headphones or noise buffers;

- line reading mask tool;
- magnification/enlargement device;
- notepad;
- pop-up glossary;
- redirect student;
- spell check or external spell check device;
- writing tools;
- graphic organizer; and
- audio materials.

70. To assist the Student with reduced distractions, the IEP team determined the Student required small group instruction, a specified area of seating, adaptive or specialized equipment or furniture, frequent breaks, and reduce distractions to self and others.

71. With regard to presentation accommodations, the Student requires notes and outlines to ensure he receives all information in a timely manner and to support his completion of writing tasks.

72. With regard to response accommodations, the Student requires:

- assistive technology;
- ELA²⁵/Literacy selected response assistive technology device;
- math, science, government response assistive technology device;
- ELA/A constructed response external assistive technology device;
- monitor test responses;
- word prediction external device;

²⁵ English language arts.

- answers recorded in test book; and
- to be provided with assessment vocabulary pre-programmed onto AAC device.

73. With regard to timing accommodations, the Student requires extended time by fifty percent to use eye gaze and assistive technology to provide responses.

74. The IEP team considered the Student's needs regarding supplementary aids, services, program modifications and supports. After discussing his needs, the team determined the Student requires:

- Instructional Support: access to accessible presentation and response methods that allow him to use his assistive technology device to communicate comprehension of presented information, daily;
- Instructional Support: assignments that involve writing to be accessible for him to respond using his AAC device, daily;
- Instructional Support: allow use of organizational aides in the form of written checklists of task required in priority for use with independent tasks, daily;
- Program Modification: accessible classwork, in all instructional settings assignments will be modified and presented in digital format whenever possible and any written responses need to be accessible for the Student to respond using his AAC device, daily;
- Program Modification: break down assignments into smaller units, to prevent mental and physical fatigue, assignments need to be chunked and presented in smaller parts, daily;
- Program Modification: given the time required to generate responses and complete assignments extended time of double time is required; daily;

- Social/Behavioral Support: encourage student to ask for assistance when needed, the Student requires prompts to self-advocate, daily;
- Social/behavioral support: strategies to initiate and sustain attention, to include prompts from an adult to initiate and remain on task until completion, and before beginning a task the Student should be reminded that he can appropriately request a break if he is feeling fatigued, daily;
- Physical/Environmental Support: access to adaptive equipment that is accessed via eye gaze is required all day in every setting, personal wheelchair for bus transport and emergency evacuations, adapted classroom chair with chest strap and seat belt, supportive standing station for toileting/clothing management and/or changing table, personal gait trainer for walking while in hallways, classroom and PE, adapted scissor to make snips in paper, daily;
- Physical/Environmental Support: access to an elevator, ramp or lift in a multi-level building throughout the day, daily;
- Physical/Environmental Support: to increase the time spent in the instructional setting, he requires fewer transitions throughout the school day, daily;
- Physical/Environmental Support: the documented deficits in the area of expressive language require the use of dynamic display speech generating device activated by eye gaze, he requires consistent access to the device to communicate across environments, topics, and individuals, daily;
- Physical/Environmental Support: preferential seating that offers space for his wheelchair, his assistive technology, and an adapted classroom chair, daily;
- School Personnel/Parental Support: occupational therapist will consult once a month with classroom staff regarding optimal positioning in all seating/standing

supports to best access his school environment, consult with classroom staff on the best way to support fine motor activities and how to modify tasks for manual independence, consult with classroom staff on self-care needs and ways to assist, monthly;

- School Personnel/Parental Support: physical therapist will consult monthly to monitor all equipment and need for equipment, to train staff to use equipment and in proper lifting/transferring in/out of equipment, collaborate with teachers/staff for embedded practice opportunities in which the Student can use his adapted equipment and maintain his transfer and walking skills throughout the school day and specials, set up a daily walking schedule, and be available to assist with devising an evacuation plan, monthly;
- School Personnel/Parental Support: adult support for all aspects of his school day including but not limited to: supervision/assistance while walking in his gait trainer, transport in wheelchair during community outings, emergency evacuations and to/from the bus, toileting/clothing management and transfers in and out of adaptive equipment; the adult aide will be trained in the usage of the Student's AAC device, toileting schedule, reinforcement and other needs as they arise, daily;
- School Personnel/Parental Support: provision of assistive technology services to be carried out by assistive technology consultant and school team including speech language pathologist and instructional assistants; periodically; and
- School personnel/parental support: special education consult: to ensure alternate methods for assignments are provided in the classroom and by providing appropriate visual aids and strategies for prioritizing tasks; support the classroom

teacher and other teachers working with the Student in efficiently utilizing all accommodations to promote maximum independence for him; support the classroom teacher with instructing the other students on how they can help the Student and the best ways to interact with him, daily.

75. The IEP team determined that the Student required annual goals and objectives to address the Student's communication and motor deficits.

76. The IEP did not include any of the academic goals and objectives, as drafted in the Student's PLP from the [REDACTED].

77. The Student's June 6, 2023 IEP goals included:

- Communication: By June 2024, [the Student] will utilize multi-modal communication strategies (i.e. Dynamic Display Speech Generating Device, word or phrase approximations) to self-advocate (i.e. request wait time for formulation, ask for materials to be repositioned, request repetition of directions or information, ask for assistance with classwork or physical care) given a visual prompt as needed 4 out of 5 targeted trials as measured by data collection by May of 2024.
- Functional Upper Extremity: [the Student] will demonstrate gross grasp on classroom tool or bring his hands to midline in order to functionally participate in classroom activities for 2/3 trials as measured by informal procedures and classroom data collection by June 2024. (Baseline: making random marks on paper with adaptive marker, 1 snip on paper).

(Parents Ex. 26 pp.171-176; BCPS Ex. 51)

78. The IEP team determined that the Student is eligible for ESY.

79. The IEP team was required to consider the least restrictive environment (LRE).

The BCPS-based IEP team members determined the Student would receive specialized instruction in the general education inclusion setting, in an LRE program in which the Student would be in the general education environment at least eighty percent of the school day.

80. The BCPS-based members of the IEP team determined that the Student should receive special education classroom instruction services within the general education setting five times a week, for thirty minutes each.

81. The BCPS-based members of the IEP team determined the Student would receive the related service of direct speech/language therapy for thirty minutes, twice per week, with one session inside general education and one session outside of general education.

82. Speech/language consultative services with classroom teachers was not specified in the IEP.

83. The IEP team determined the Student would receive the related service of OT for one thirty minute session per week, inside general education.

84. Sometime after the June 6, 2023 IEP team meeting, the BCPS issued a Prior Written Notice which summarized the discussions at the IEP team meeting and provided an explanation of the actions proposed and rejected by the BCPS.

85. The BCPS-based members of the IEP team determined that the IEP could be implemented at any BCPS elementary school, including [REDACTED].

86. The BCPS-based members of the IEP team identified [REDACTED] as the Student's home school.

87. The BCPS-based members of the IEP team indicated that the class size at [REDACTED] would be approximately twenty-seven students, and that [REDACTED] is a one level school building, which would enable the Student to easily ambulate in his wheelchair and/or gait trainer.

88. The Parents rejected the proposed June 6, 2023 IEP, and subsequently filed a due process complaint on August 11, 2023. (Parents Ex. 28).

89. On November 14, 2023, [REDACTED] conducted an observation of the Student at the [REDACTED]. Her observations included a classroom observation and observations of the Student in a speech therapy session and an OT session.

90. [REDACTED] took videos of the Student during her observations. (Parents Ex. 39).

91. During the speech therapy session, the Student was observed working with [REDACTED] on providing verbal responses of yes/no to questions, making M sounds, practicing airplane tongue to strengthen the muscles of his tongue, and answering open ended questions using his AAC device. (*Id.*).

92. During the OT session, the Student was observed working with [REDACTED] who massaged the Student and manually moved his arms and fingers, then practiced rolling. She then had the Student practice grabbing items and moving them while lying on the floor. (*Id.*).

93. During the OT session the Student practiced isolating his fingers to pick up items from the tray in front of him, while seated in his wheelchair. He worked on picking up pieces of painter's tape. The Student also worked on using adaptive equipment to use markers and an eraser. These tasks were challenging for the Student, but he continued to persevere. (*Id.*).

94. During the classroom observation the Student worked one-on-one with his teacher [REDACTED] or a para-educator during three ELA rotations.

95. On December 6, 2023, [REDACTED] conducted a second observation of the Student at the [REDACTED] to observe him in his general education [REDACTED] class. [REDACTED] did not video record this observation, but her report indicates that the Student was unable to answer the [REDACTED]'s question when called on, was unable to match root words to [REDACTED] words, got three of three answers incorrect when answering questions after reading a passage, all of the pages in his workbook were not complete and he was five pages behind the rest of the class in his workbook. (Parents Ex. 31).

96. [REDACTED] also noted that the Student was distracted in [REDACTED] class during the independent work time by the other students as they moved around the classroom, ate snacks and conferenced with the [REDACTED]. (*Id.*)

97. [REDACTED] summarized both of her observations of the Student in a written report. (*Id.*)

DISCUSSION

The identification, evaluation, and placement of students in special education are governed by the IDEA. 20 U.S.C.A. §§ 1400-1482; 34 C.F.R. pt. 300; Md. Code Ann., Educ. §§ 8-401 through 8-417 (2018); COMAR 13A.05.01. The IDEA requires “that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living.” 20 U.S.C.A. § 1400(d)(1)(A); *see also* Md. Code Ann., Educ. § 8-403(a).

FAPE is, in part, furnished through the development and implementation of an IEP for each disabled child. *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988, 999 (2017); *Bd. of Educ. of the Hendrik Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181-82 (1982). COMAR 13A.05.01.09 defines an IEP and outlines the required content of an IEP as a written description of the special education needs of the student and the special education and related services to be provided to meet those needs. The goals, objectives, activities, and materials must be adapted to the needs, interests, and abilities of each student. 20 U.S.C.A. § 1414(d).

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

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

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

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

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

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

Notwithstanding the above language in *Andrew F.*, providing a student with access to specialized instruction and related services does not mean that a student is entitled to “[t]he best education, public or non-public, that money can buy” or all the services necessary to maximize educational benefits. *Hessler v. State Bd. of Educ. of Md.*, 700 F.2d 134, 139 (4th Cir. 1983) (*citing Rowley*, 458 U.S. at 176). It does, however, require the State to provide personalized instruction with sufficient support services to permit the student to benefit educationally.

In addition to the IDEA’s requirement that a disabled child receive appropriate educational benefit, the child must be placed in the LRE to achieve FAPE, meaning that, ordinarily, disabled and non-disabled students should be educated in the same classroom. 20 U.S.C.A. § 1412(a)(5); 34 C.F.R. §§ 300.114(a)(2)(i) and 300.117. Yet, placement in the

general education environment may not be appropriate for every disabled child. 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. 34 C.F.R. § 300.114(a)(2)(ii).

Finally, when making decisions regarding the appropriate placement, the issue is not whether another school is better or even as appropriate as the school offered by the school district, but whether the school district has offered a FAPE. The Court has upheld the right of the parents to unilaterally place a learning-disabled child in a private school and to recover reimbursement from the local educational agency only when the educational program offered by school authorities is not reasonably calculated to provide a FAPE. *Burlington Sch. Comm. v. Dep't of Educ.*, 471 U.S. 359 (1985).

The Parents assert that the BCPS failed to develop an IEP that was reasonably calculated to provide the Student a FAPE. The Supreme Court has placed the burden of proof in an administrative hearing under the IDEA upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005). The standard of proof in this case is a preponderance of the evidence. COMAR 28.02.01.21K(1). To prove an assertion or a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

In this case, the Parents are seeking relief and bear the burden of proof to show that the BCPS failed to develop an IEP reasonably calculated to provide the Student with a FAPE for the 2023-2024 school year, and that private placement is proper at the [REDACTED]. COMAR 28.02.01.21K(1), (2)(a).

The Parents' attorney filed a comprehensive complaint on behalf of the Student and the Parents. The Parents complained and subsequently argued that the BCPS did not develop an

appropriate IEP and placement for the Student for the 2023-2024 school year. As a result, the Parents maintain they continued the Student's placement of the Student at the [REDACTED], in order for the Student to benefit from an educational program that could meet his needs. The Parents seek reimbursement for tuition at the [REDACTED] for the 2023-2024 school year on the theory that the BCPS proposed IEP was not developed to provide a FAPE and that the program at the [REDACTED] meets the Student's needs.

After reviewing all of the testimony and evidence presented in this case, I must conclude that the BCPS failed to develop an IEP that was reasonably calculated to meet the specialized needs of the Student for the 2023-2024 school year. I have assessed all the witnesses and explain below why I have determined the school-based IEP team erred in developing the Student's program for the 2023-2024 school year.

The IEP developed by the BCPS was not reasonably calculated to provide the Student with a FAPE for the 2023-2024 school year

To provide a FAPE, the educational program offered to a student must be tailored to the particular needs of the disabled child by the development and implementation of an IEP, taking into account:

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

20 U.S.C.A. § 1414(d)(3)(A); *see also Sch. Comm. of Burlington v. Dep't of Educ. of Mass.*, 471 U.S. 359, 368 (1985) ("The *modus operandi* of the Act is the already mentioned individualized educational program." (internal quotation marks omitted)).

The IEP depicts the student's current educational performance, 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, and

indicates the extent to which the child will be able to participate in regular educational programs. 20 U.S.C.A. § 1414(d)(1)(A); *accord* 34 C.F.R. § 300.22; Md. Code Ann., Educ. § 8-405(a)(4).

As the “centerpiece” of the IDEA’s “education delivery system” for disabled students, an IEP is a “comprehensive plan” for the “academic and functional advancement” for the student. *Andrew F.*, 137 S. Ct. at 994, 999. It must be tailored to the student’s “unique needs” with “careful consideration” of the student’s present levels of achievement, disability, and potential for growth. *Id.*; *see also* 20 U.S.C.A. § 1401(29). The IEP must be “appropriately ambitious,” *Andrew F.*, 137 S. Ct. at 1000, and it must provide for “specially designed instruction” that is “reasonably calculated to enable the child to receive educational benefits” and to “make progress appropriate in light of the student’s circumstances.” *Id.* at 996, 999 (quoting *Rowley*, 458 U.S. at 207). The amount of progress anticipated for the student should be “markedly more demanding than the merely more than *de minimis* test” applied in the past by many lower courts. *Id.* at 1000 (internal quotation marks omitted).

The test for whether an IEP is “appropriately ambitious,” *id.*, and “reasonably calculated to enable the student to receive educational benefits,” *id.* at 996, is different for each student; there is no bright-line rule or formula to determine whether an IEP provides a FAPE.²⁶ *Id.* at 1000-01. For a student who is fully integrated in the regular classroom, a FAPE would generally require an IEP to be “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” *Id.* at 996, 999 (citing *Rowley*, 458 U.S. at 203-04). However, for a student who is not fully integrated and/or cannot be reasonably expected to achieve grade-level advancement, the “educational program must be appropriately ambitious in light of [the student’s] circumstances, just as advancement from grade to grade is appropriately ambitious for

²⁶ In *Rowley*, the Supreme Court also held that a FAPE may be found to have been denied a student when a school fails to comply with the procedures set forth in the IDEA. 458 U.S. at 206; *see also Bd. of Educ. v. I.S. ex rel. Summers*, 325 F. Supp. 2d 565, 580 (D. Md. 2004). The Parents are not claiming any procedural violations in this case.

most children in the regular classroom.” *Id.* at 1000. Regardless, “every child should have the chance to meet challenging objectives.” *Id.*

When assessing whether a student was offered, given, or denied a FAPE, a judge must “afford great deference to the judgment of education professionals” *O.S.*, 804 F.3d at 360 (quoting *E.L. v. Chapel Hill-Carrboro Bd. of Educ.*, 773 F.3d 509, 517 (4th Cir. 2014)). A judge should not substitute his or her own “notions of sound educational policy for those of the school authorities which they review.” *Andrew F.*, 137 S. Ct. at 1001 (quoting *Rowley*, 458 U.S. at 206). Additionally, a judge “should be reluctant . . . to second-guess the judgment of education professionals.” *Tice v. Botetourt Cty. Sch. Bd.*, 908 F.2d 1200, 1207 (4th Cir. 1990). A judge should be mindful that local educators deserve latitude in determining the IEP most appropriate for a disabled child, and that the IDEA does not deprive these educators of the right to apply their professional judgment. *See Hartmann v. Loudoun Cty. Bd. of Educ.*, 118 F.3d 996, 1001 (4th Cir. 1997). Additionally, a judge must be careful to avoid imposing his or her view of preferable educational methods upon a school district. *Rowley*, 458 U.S. at 207; *A.B.*, 354 F.3d at 325.

This respect and deference, while unquestionably a well-settled principle of review under the Act, both within and without this circuit, is not limitless, however. *See Cty. Sch. Bd. of Henrico Cty. 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.”).

“[T]he fact-finder is not required to conclude that an IEP is appropriate simply because a teacher or other professional testifies that the IEP is appropriate.” *Id.*; *see Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1476 (9th Cir. 1993) (“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.”).

“To give deference only to the decision of the School Board would render meaningless the entire process of administrative review.” *Sch. Bd. of Prince William Cty., Va. v. Malone*, 762 F.2d 1210, 1217 (4th Cir. 1985) (citation omitted). A reviewing judge may fairly expect the school system’s professionals “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 or her] circumstances.” *Andrew F.*, 137 S. Ct. at 1002.

The *Andrew F.* Court confirmed that a FAPE does not promise an “ideal” education. *Id.* at 999. Nor does it promise that a student with a disability will be provided with “opportunities to achieve academic success, attain self-sufficiency, and contribute to society that are substantially equal to the opportunities afforded children without disabilities.” *Id.* at 1001. A reviewing court must determine whether the IEP is “reasonable.” *Id.* at 999. It is also important to remember that the IDEA does not require “the best possible education that a school could provide if given access to unlimited funds.” *Barnett v. Fairfax Cty. Sch. Bd.*, 927 F.2d 146, 154 (4th Cir. 1991). Nor does it require the “furnishing of every special service necessary to maximize each handicapped child’s potential.” *Hartmann*, 118 F.3d at 1001.

The development of an IEP is a prospective process. *Andrew F.*, 137 S. Ct. at 998-99. Other circuits and district courts have held the test of the appropriateness of the IEP is *ex ante* and not *post hoc*. *Z.B. v. Dist. of Columbia*, 888 F.3d 515, 524 (D.C. Cir. 2018); *Adams v. State*, 195 F.3d 1141, 1149 (9th Cir. 1999); *Fuhrmann v. E. Hanover Bd. of Educ.*, 993 F.2d 1031, 1041 (3d Cir. 1993); *J.P. ex rel. Popson v. W. Clark Cmty. Sch.*, 230 F. Supp. 2d 910, 919 (S.D. Ind. 2002) (“[T]he measure of appropriateness for an IEP does not lie in the outcomes achieved.”)

The Student's IEP contained numerous testing and instructional accommodations, and the use of supplementary aids and services to help him achieve the annual goals on the IEP. The BCPS contends that the goals and objectives on the IEP were developed in accordance with the applicable law and regulations, and that the data supports the Student is working on grade level curriculum, so he does not require any academic goals. The Parents disputed the developed goals when the IEP was drafted on June 6, 2023. The annual goals are what determine the Student's program and placement.

An IEP can only be appropriate if it accurately identifies the student's present levels of performance to include academic, emotional, behavioral, social, and physical deficits which impede the Student's ability to progress in the general curriculum. Secondly, the present levels of performance should address not only weaknesses, but also strengths of the child, so that those strengths can be used to develop strategies to address areas of weakness. Additionally, the goals on the IEP must identify a specific, measurable result for the child to achieve at the end of the IEP period and the specially designed instruction must be designed to allow the child to make meaningful educational progress in the least restrictive environment, i.e., a placement involving the maximum level of integration with non-disabled students in which the child can receive appropriate instruction. Lastly, the related service intervention must be necessary to allow the student to make meaningful educational progress. The BCPS IEP does not meet all of these criteria.

The Student's Parents are very knowledgeable about all aspects of the Student's health and education. Additionally, it is overwhelmingly clear from the evidence that the Parents love their son and want him to be able to maximize his potential. The father was very clear in his testimony regarding many of the Student's deficits and how he and his wife perceive those deficits to impact his ability to progress in the general curriculum.

The Parents presented the testimony of several expert witnesses, [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. The expert witnesses were all of the opinion that the Student requires small class sizes, one-on-one instruction, direct OT, direct PT, direct speech and language services, and full-day one-on-one special education instruction. They opined that the June 6, 2023 IEP as written would not provide the Student a FAPE based on his placement in the general education classroom setting, with no special education instruction, no academic goals, or direct OT and PT services.

[REDACTED] was hired by the Parents to assist them in researching and assessing various educational settings, and to assist in developing the Student's educational program for the 2023-2024 school year. In assessing the Student's skills, strengths, and weaknesses, [REDACTED] performed record reviews, reviewed the results of the [REDACTED] Neuropsychological Evaluation conducted by Dr. Gerner on August 18, 2020, and conducted several observations of the Student in the classroom, and in his speech language, OT and PT sessions. [REDACTED] described the Student as

a complex kid, and I think the best way to think about him is that, you know, educationally he is able to make progress, he's able to learn, but he needs a lot other things to help him learn and make progress. And so the speech and language, the occupational therapy, the physical therapy are critical pieces to his programming to help him learn, to help him stay healthy, to help him make progress, as the whole child, not just learn how to read and write, but to give him the ability to sit up, to focus, to maintain attention. All of those things have to be done together in an integrated manner for him to make progress.

(T. Vol. I, January 9, 2024, pp. 103-104).

The BCPS relied on anecdotal information shared by the Parents and teachers regarding the Student's grades, academic performance, and progress toward achieving the annual [REDACTED] PLP goals. They relied on their informal assessments and brief observations of the Student to determine the Student's then present levels of performance. The BCPS acknowledges review and reliance on [REDACTED]'s neuropsychological evaluation to determine the Student's

cognitive abilities. However, the BCPS adopted none of [REDACTED]'s extensive recommendations regarding the type of educational program, and related services the Student requires. A review of the IEP that the BCPS developed reveals that the only recommendation of [REDACTED]'s neuropsychological evaluation recommendation that was included in the June 6, 2023 IEP was interactions with other peers who are typically developing.

The areas of disagreement regarding the IEP are many. The Parents argue that the IEP fails to provide any special education in academic areas and only provides a communication goal based on self-advocacy and a functional upper extremity goal to demonstrate gross grasp and bring his hands to midline. The IEP provides numerous supplementary aids, services, program modifications, supports, instructional and testing accommodations to enable the Student to access the general education curriculum across all academic subject areas, but it does not provide one-on-one instruction, slower paced instruction or specially designed instruction to enable the Student to make meaningful educational progress. Supplementary aids, services and program modifications, supports and accommodations do not constitute specially designed instruction and do not fully address the complex cognitive and physical deficits of the Student.

With regard to the Student's speech/language needs, there is agreement that the Student requires direct speech and language services and consultative services. However, there is disagreement as to the communication goal which is strictly focused on self-advocacy, but does not include articulation to assist the Student to increase his verbal output and thus reduce his reliance on his AAC device.

It is overwhelmingly clear from a review of the Student's present levels of performance and the annual goals, that the Student's needs would not be addressed by the BCPS IEP which provides for two thirty minutes sessions per week of direct speech-language service, one occurring inside general education and one occurring outside general education. While this

amount of direct service would assist the Student to receive services to work on his communication skills, the goals and objectives outlined in the IEP are directed towards the Student self-advocating to take a break, use the bathroom, or have something repeated. The speech and language services proposed by BCPS do not include articulation goals to assist the Student with his verbal output.

There are also no goals and objectives or direct services offered in OT or PT. The Student has extensive OT and PT needs. He requires the use of a wheelchair or gait trainer to ambulate, is dependent for all ADLs and has [REDACTED] and a [REDACTED] which cause involuntary movement of his upper extremities and effect his trunk control and head movements. The evidence presented from the occupational and physical therapist who work with the Student at the [REDACTED] demonstrates that he is making progress in both OT and PT and requires regular therapy sessions to increase his functional use of his upper and lower extremities and to avoid regression.

Every area in which the Student has a deficit in skills that impact his ability to make progress in the general curriculum are not fully addressed in the IEP. While there are two goals and accompanying objectives in the areas of communication and functional upper extremity, there are minimal direct related services and no goals and objectives in any academic areas. When I reviewed the Student's identified deficits, I was unable to find where those deficits are addressed in the IEP in order to assist the Student to make progress in the general curriculum.

In sum, I conclude that the BCPS IEP offered for the 2023-2024 school year is not reasonably calculated to enable the Student to make academic progress appropriate in light of his cognitive abilities, severe motor disabilities, and attention deficits, and that the BCPS failed to provide rational and responsive explanations for its decisions.

The BCPS proposed an IEP for the 2023-24 school year that would be implemented in the general education classroom, when the Student requires one-on-one instruction in a small classroom setting

The crux of the Parents' complaint involves the BCPS-based IEP team's decision to place the Student in an LRE program, inside general education eighty percent or more, instead of placement at the [REDACTED], which BCPS funded for the 2020-21, 2021-22, and 2022-23 school years. The Parents contend that the Student should receive all of his special education services one-on-one from a special educator outside the general education environment in a self-contained classroom, preferably at the [REDACTED].

To the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aid and services cannot be achieved satisfactorily.

20 U.S.C. §1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2). However, this "mainstreaming" requirement is "not an inflexible federal mandate." *Hartmann v. Loudoun Cty. Bd. of Educ.*, 118 F. 3d 996, 1001 (4th Cir. 1997). The BCPS argues that it is obligated to provide the Student with a placement that affords him an opportunity to interact with nondisabled peers, unless it can be demonstrated that his needs will not permit him to receive educational benefit in such a placement. The persuasive evidence has demonstrated that in this case, the Student's complex and multiple needs render him incapable of making meaningful educational progress in an environment with his nondisabled peers.

The school-based IEP team members testified that the Student's home school is [REDACTED] and that he would be placed in a general education classroom of approximately twenty-seven students. Although the BCPS witnesses testified as to reviewing [REDACTED]'s neuropsychological evaluation, they all appeared to ignore and/or dismiss the fact that the

Student is diagnosed with attention and concentration deficits, and that a classroom of twenty-seven students would lead to significant distractions and exacerbate his [REDACTED].

It is clear from the evidence in this case, including the prior written notice for the June 6, 2023 IEP team meeting that none of the school based IEP team members believed on June 6, 2023, that the Student required his program to be implemented in a separate day school. By contrast, it is also clear from the evidence in this case that the Parents and all of their expert witnesses believe the Student requires one-on-one instruction in a separate day school. The [REDACTED] staff who have worked with the Student provided a detailed analysis of the Student's performance, strengths and deficits in the areas of academics, speech/language, OT and PT. The school-based members of the IEP team believe that the Student's IEP could be effectively implemented at any BCPS elementary school and explained to the Parents that the Student's home school would be [REDACTED], which as a one level school that would enable the Student to easily ambulate throughout the building.

While the IEP as drafted could be implemented in any school, the IEP is not appropriately written to meet the needs of the Student. The judgment of educational professionals, such as the staff of BCPS, is ordinarily entitled to deference. *G. v. Ft. Bragg Dependent Schools*, 343 F.3d 295, 307 (4th Cir. 2003); *M.M. v. Sch. Dist. of Greenville Cty.*, 303 F.3d 523, 532 (4th Cir. 2002). However, I am unable to accord the BCPS educational professionals deference in this case, because their assertions concerning what the Student requires are simply not supported by the concrete evaluative data regarding the Student's needs which are well-documented and clearly explained in [REDACTED]'s neuropsychological evaluation and [REDACTED]'s concurring opinion.

The BCPS assertions are based on their brief observations of the Student at the [REDACTED] and their apparent singular focus on least restrictive environment as the only factor to be considered. The BCPS witnesses aver that any student would succeed and thrive with one-on-one instruction and allege the Student does not require one-on-one instruction to make meaningful educational progress. However, they fail to follow the recommendations of [REDACTED] for whom they rely for their diagnosis of the Student's cognition, and only formal educational assessments. Additionally, they failed to obtain updated educational assessments to gauge his current educational strengths and weakness, and instead relied on their brief informal observations and samples of classwork without the context within which the classwork was completed. Further, the BCPS witnesses ignored the Student's attention deficits, severe motoric limitations, and use of an ACC device, which all affect his availability and ability to learn.

[REDACTED], who was admitted as an expert in neuropsychology, neuropsychological assessments of children, and the educational needs of students with complex neurodevelopmental needs, and who the BCPS acknowledged they have used as a consultant and to conduct independent neuropsychological assessment opined that the Student would not be able to make progress in a general education classroom because:

his response time.... is too slow to navigate the pace of a classroom. His capacity for sustained attention and suppression of his [REDACTED] in a larger classroom would interfere with his capacity to learn. The absence of integrated therapies that support a reduction in fatigue would likely result in a greater cognitive fatigue which would limit his ability to learn. His need for basic feeding and toileting require more time that would necessitate time away from instruction. It would interfere with his ability to learn. His slow pacing would not permit repetition of previously taught skills in a general classroom setting..... there are a number of barriers that would limit his ability to make progress in that setting.

(T. Vol. IV, January 12, 2024, pp. 585-586).

Throughout the hearing there seemed to be a basic lack of understanding of the particularly complex and demanding disability picture of the Student. In that regard, on several

occasions inferences were made that the Student's involuntary movements and physical fatigue could be prevented and/or diminished by simply better restraining his neck, head, and trunk to his wheelchair.

These inferences show a complete and utter lack of understanding of the Student's motoric deficits, as his involuntary movements would still persist whether or not his head and body are fully restrained, and that the [REDACTED] of a large classroom would exacerbate his [REDACTED].

The BCPS witnesses also attributed the Student's slow response time in answering questions to his use of eye gaze and AAC device, however; the evidence shows that the Student requires additional time to read, process respond and communicate due to his [REDACTED] [REDACTED], and those cognitive efforts also cause fatigue. The BCPS witnesses also appear not to appreciate the Student's need for continued integrated direct OT and PT therapy to support his long term academic adaptive and social skills, by developing his muscles and increasing his trunk and neck control.

After carefully reviewing all of the evidence presented by the Parents and the BCPS, I find that the BCPS has not developed an appropriate IEP and placement for the Student for the 2023-2024 school year. The IEP and placement are not reasonably calculated to enable the Student to make appropriate progress in light of his very unique needs as a student identified as having Multiple Disabilities which include a [REDACTED] impairment, speech/language impairment, and orthopedic impairment. When drafting the IEP, the team included a veritable laundry list of the supplementary aids and services for the Student, however; they failed to include any of the academic goals from the Student's PLP at the [REDACTED], or any direct OT or PT services even though the service providers who have worked daily with the Student

provided persuasive explanations of why these academic goals and direct OT and PT services were needed.

The PWN, as well as the written IEP, states the Student's present levels of performance from the then most recent evaluative data, including the PLP, Speech and Language Evaluation, OT Evaluation and PT Evaluation conducted by the [REDACTED]. All of the evaluative data including the information regarding the Student's performance as shared through the formal assessments, J [REDACTED] evaluations, BCPS observation reports, and parent and teacher information, indicate the academic, physical and social/emotional areas affected by the Student's disability. The June 6, 2023 IEP states that the Student's

[REDACTED] affects his cognitive, language, attention, perceptual and motor abilities, physical functioning, information processing, and speech skills. Due to limited motor ability [the Student] requires assistive technology to access academic instruction. Throughout the school day, [the Student] requires extra time to read, process information, respond to questions/communicate understanding of presented concepts, and to communicate with peers and staff via assistive technology. [The Student] requires alternate modes of representing his knowledge that permit him to respond using his eye gaze to access his assistive technology. Due to the cognitive efforts required to process information and express information and thoughts, as well as the physical effort of using the eye gaze, [the Student] can become fatigued. This affects his ability to maintain attention for extended periods of time.

(Parents Ex. 26 at p. 151; BCPS Ex. 51). As a result, the IEP and placement can only be reasonably calculated to meet the unique needs of the Student if it addresses all areas of deficit. It is overwhelmingly clear that it does not.

The BCPS-based members of the IEP team memorialized all of the concerns of the Parents in the PWN and documented the reasons for accepting or rejecting the Parents' proposals. It is clear that with regard to the 2023-2024 school year, the parties disagree as to the Student's need for one-on-one instruction specially designed instruction and the setting in which the Student should receive those services.

The Parents and their expert witnesses all testified that the Student requires small class sizes, and a learning environment with a low student-to-teacher ratio, one-on-one instruction, direct OT, direct PT, and speech and language services to increase his verbal output. The Parents have provided credible evidence to support their contention that the size and structure of the program directly affects the Student's ability to access the curriculum or to make progress, based on his complex cognitive and motoric needs.

While all the expert witnesses in this case have either worked directly with the Student or had the opportunity to observe the Student, the BCPS witnesses cited their reliance on the formal assessment provided by the Parents from [REDACTED] and those of the staff at the [REDACTED]. They did not request or conduct any formal assessments of the Student and only conducted brief observations of the Student at the [REDACTED].

It is of note that the BCPS relied on [REDACTED]'s neuropsychological assessment from August 18, 2020, as the sole source of formal cognitive and achievement testing, chose not to request any updated formal cognitive testing, yet chose to ignore all of [REDACTED]'s recommendations for what the Student needs to make meaningful progress in an educational environment. Instead, the BCPS opined that the Student can make meaningful educational progress in a general education classroom with twenty-six other students and keep up with the pace of learning despite his documented inattention, slower response time due to use of eye gaze and need to communicate using his AAC device, and his cognitive and physical fatigue resulting from his traumatic [REDACTED] and motoric deficits, which require frequent breaks. [REDACTED] attributes the Student's current academic success and ability to work on grade level curriculum directly to the one-on-one instruction and the pace of instruction provided to the Student at the [REDACTED].

██████████ testified that:

the pacing is critical given his vulnerability to fatigue, his slow response time, his scattered cognitive profile, and his availability for learning. So pacing, I think for him, has to be very individualized and really dependent on his availability.....I think it would be very hard for him to navigate the pace of a traditional classroom setting. It moves at a certain rate. He doesn't move at the same rate.

(T. Vol. IV, January 12, 2024, pp. 488-489).

It appears the BCPS has chosen to ignore the academic progress the Student has made at the ██████████ utilizing one-on-one instruction in a small classroom environment, at a pace specially designed to meet the Student's need for frequent breaks, and instead to focus on inclusion with same aged non-disabled peers as the singular focus.

Appropriateness of the ██████████

The Supreme Court has upheld the right of parents to unilaterally place a learning disabled child in a private school and to recover reimbursement from the LEA when the educational program offered by school authorities is not reasonably calculated to provide a FAPE. *Burlington Sch. Comm. v. Dep't of Educ.*, 471 U.S. 359 (1985). However, the IDEA does not require an LEA to pay for the cost of private education if the agency has made a FAPE available to the child and the parents have nevertheless elected to place the child in a private school. 34 C.F.R. § 300.148(a). Parents who unilaterally place their child at a private school without the consent of school officials do so at their own financial risk. *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15 (1993) (*citing Burlington*, 471 U.S. at 373-74). Parents may recover the cost of private education only if they satisfy a two-pronged test: (1) the proposed IEP was inadequate to offer the child a FAPE and (2) the private education services obtained by the parent were appropriate to the child's needs. *Burlington*, 471 U.S. at 370.

I have found that the IEP and placement offered by the BCPS failed to provide the Student a FAPE for the 2023-2024 school year. The Parents have shown that the IEP proposed

by the BCPS for the 2023-2024 school year is not tailored to provide the Student with opportunities to make meaningful educational progress, provides no direct speech/language services to increase his verbal output, and ignores his need for direct OT and PT services to strengthen his mobility and prevent regression of the motoric skills needed for him to perform basic ADLs, safely navigate his classroom environment, reduce his fatigue and thus increase his availability for learning.

The next question is whether the placement and services the Parents obtained for the Student at the [REDACTED] are appropriate for the Student's needs. I find that they are. The services offered at the [REDACTED] are vastly different from those proposed by the BCPS. At the [REDACTED], the Student receives one-on-one instruction in a very small classroom of seven students. The instruction is tailored to his learning pace and special needs throughout the day. The Student receives instruction in smaller chunks where he can retain the information and demonstrate his skills and knowledge. [REDACTED] offers the educational environment and services as recommended in [REDACTED]'s August 18, 2020 neuropsychological evaluation, and supported by the expert testimony of [REDACTED]. [REDACTED] testified that "in the context of a small highly structured classroom providing integrated speech, physical therapy, and occupational therapy with learning centers truncated to 15 minutes with one-to-one instruction via a trained special educator and his device, he is making progress." (T. Vol. IV, January 12, 2024, p. 585).

It is of note that [REDACTED] is the only individual to have conducted formal cognitive and educational assessments of the Student. The BCPS chose not to conduct their own formal assessments, and relied significantly on [REDACTED]'s assessments, however; decline to accept or follow any of the recommendations which flowed from those formal assessments.

The Student made progress on his PLP goals which demonstrate his ability to learn grade level curriculum. The Student has opportunities for inclusion with his non-disabled, same aged peers in his general education [REDACTED] class, which has led to a sense of cultural pride in having a [REDACTED] and being fully integrated into his [REDACTED] community. Additionally, the Student is able to receive OT, PT and speech/language services outside the classroom setting and integrated into the classroom. The [REDACTED] is the appropriate school for the Student.

Remedy

Having found that the BCPS denied the Student a FAPE when it failed to create an IEP designed to provide meaningful educational benefit for the 2023-2024 school year, I must next determine the appropriate relief for the Student.

The IDEA’s procedural safeguards direct district courts to “grant such relief as the court determines is appropriate.” 20 U.S.C.A. § 1415(i)(2)(C)(iii). Where a school district has failed to provide a FAPE, “a court will evaluate the specific type of relief that is appropriate to ensure that a student is fully compensated for a school district’s past violations of his or her rights under the IDEA and develop an appropriate equitable award.” *D.F. v. Collingswood Borough Bd. of Educ.*, 694 F.3d 488, 498–99 (3d Cir. 2012) (quoting *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 720 (3d Cir. 2010)). The equitable relief authorized by 20 U.S.C.A., § 1415(i)(2)(C)(iii) most commonly results in reimbursement for private placement when the child was denied a FAPE, or prospective compensatory education. *G. ex rel R.G. v. Fort Bragg Dependent Sch.*, 343 F.3d. 295, 308 (4th Cir. 2003).

As a remedy, the Parents seek an order placing the Student at the [REDACTED] for the 2023-2024 school year, and reimbursement for the Student’s tuition, fees and related services for the Student’s placement at the [REDACTED] for the 2023-24 school year.

The BCPS argues that the [REDACTED] is not the least restrictive placement because it does not afford the Student the opportunity to interact with non-disabled peers. I do not need to fully address argument because I have found that the placement offered by BCPS does not offer the Student the opportunity to make meaningful progress.

Additionally, witnesses for both the Parents and BCPS testified that the Student regularly interacts with non-disabled peers in his general education [REDACTED] class at the [REDACTED]. Further, [REDACTED] testified that the Student has playdates and other interactions with his non-disabled peers outside of school.

[REDACTED] offers the Student the ability to make meaningful progress in school, and continue to interact with non-disabled peers both during school and outside of school. [REDACTED] is a certified school meaning it is able to administer services to students who are eligible for IEPs in the public school system. Based on the totality of the record before me, I find that it would be equitable and appropriate for the Student to be awarded reimbursement for the [REDACTED] tuition and related services for the 2023-2024 school year, and that the [REDACTED] be designated as the Student's placement for the remainder of the 2023-2024 school year.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the IEP and placement proposed by Baltimore County Public Schools for the 2023-2024 school year was not reasonably calculated to offer the Student a free appropriate public education. 20 U.S.C.A. §§ 1412(a)(5), 1414 (2017); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117 (2016). *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017); *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982).

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

I further conclude that the Parents are entitled to placement of the Student at the [REDACTED] for the 2023-2024 school year. 20 U.S.C.A. §§ 1412(a)(5), 1414 (2017); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117 (2019). *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017); *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Florence Cty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993); *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49 (2005).

ORDER

I **ORDER** that:

1. Baltimore County Public Schools shall **FUND** the placement, including the cost of tuition, services and related fees for [REDACTED] to attend the J [REDACTED] [REDACTED] for the 2023-2024 school year.
2. The Baltimore County Public Schools shall, within thirty (30) days of the date of this decision, provide proof of compliance with this Order to the Chief of the Complaint Investigation and Due Process Branch, Division of Special Education and Early Intervention Services, Maryland State Department of Education.

May 8, 2024
Date Decision Mailed

Jocelyn L. Williams
Administrative Law Judge

JLW/at
#209839

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 To:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

██████████,
STUDENT

v.

BALTIMORE COUNTY

PUBLIC SCHOOLS

BEFORE JOCELYN L. WILLIAMS,
AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-BCNY-OT-23-20934

APPENDIX

I admitted the following exhibits offered by the Parents, unless otherwise noted:

Parents Ex. 1	Neuropsychological Evaluation by: ██████████, ██████ – ██████, 8/18/20	001-009
Parents Ex. 2	Assistive Technology Evaluation by: ██████████, ██████████ – ██████, 11/18/20	010-018
Parents Ex. 3	Individualized Education Program Team Summary, 2/11/21	019-027
Parents Ex. 4	Personal Learning Plan, 2/2021	028-038
Parents Ex. 5	NOT OFFERED, NOT ADMITTED	039-041
Parents Ex. 6	NOT OFFERED, NOT ADMITTED	042-043
Parents Ex. 7	NOT OFFERED, NOT ADMITTED	044-049
Parents Ex. 8	Physical Therapy Evaluation by: ██████████ – ██████████, 4/25/22	050-052
Parents Ex. 9	NOT OFFERED, NOT ADMITTED	053-055
Parents Ex. 10	Speech & Language Care Plan by: ██████████ – ██████████, 11/21/22	056-058
Parents Ex. 11	Personal Learning Plan, 11/21/22	059-067
Parents Ex. 12	BCPS Funding Agreement, 12/7/22	068-070
Parents Ex. 13	Occupational Therapy Evaluation by: ██████████ – ██████████, 12/22/22	071-072

Parents Ex. 14	Occupational Therapy Care Plan by: [REDACTED] – [REDACTED], 12/22/22	073-074
Parents Ex. 15	Physical Therapy Care Plan by: [REDACTED] – [REDACTED], 2/1/23	075-076
Parents Ex. 16	Accommodations, 2/10/23	077-078
Parents Ex. 17	Prior Written Notice, 2/13/23	079-081
Parents Ex. 18	Occupational Therapy Observation by: [REDACTED] – BCPS, 2/27/23	082-084
Parents Ex. 19	Classroom Observation by: [REDACTED] – BCPS, 3/28/23	085-088
Parents Ex. 20	Psychological Report by: [REDACTED] – BCPS, 4/11/23	089-098
Parents Ex. 21	Eligibility Determination, 5/3/23	099-103
Parents Ex. 22	Prior Written Notice, 5/3/23	104-109
Parents Ex. 23	Individualized Education Program Draft, 5/17/23	110-141
Parents Ex. 24	Prior Written Notice, 5/17/23	142-145
Parents Ex. 25	Individualized Education Program Meeting Notice, 6/6/23	146-147
Parents Ex. 26	Individualized Education Program, 6/6/23	148-183
Parents Ex. 27	Prior Written Notice, 6/6/23	184-186
Parents Ex. 28	Mediation - Due Process Complaint by: Mark B. Martin, 8/11/23	187-194
Parents Ex. 29	Speech & Language Care Plan by: [REDACTED] – [REDACTED], 9/6/23	195-199
Parents Ex. 30	Occupational Therapy Care Plan by: [REDACTED] – [REDACTED], 9/14/23	200-202
Parents Ex. 31	Classroom Observation, by: [REDACTED], 11/14/23	203-211
Parents Ex. 32	Physical Therapy Care Plan by: [REDACTED] – [REDACTED], 11/21/23	212-214

Parents Ex. 33	Personal Learning Plan, 11/21/23	215-223
Parents Ex. 34	Weekly Schedule, 2022/23 School Year	224-225
Parents Ex. 35	Tuition Contract, 2023/24 School Year	226
Parents Ex. 36	NOT OFFERED, NOT ADMITTED	227-264
Parents Ex. 37	NOT OFFERED, NOT ADMITTED	265-275
Parents Ex. 38	Picture – Talker, undated	276
Parents Ex. 39	Flash Dive of Videos, undated	
Parents Ex. 40	CV - [REDACTED], [REDACTED], [REDACTED], undated	277-286
Parents Ex. 41	CV - [REDACTED], [REDACTED], undated	287-290
Parents Ex. 42	CV - [REDACTED], undated	291-292
Parents Ex. 43	NOT OFFERED, NOT ADMITTED	293-294
Parents Ex. 44	NOT OFFERED, NOT ADMITTED	295-298
Parents Ex. 45	CV - [REDACTED], undated	299-300
Parents Ex. 46	NOT OFFERED, NOT ADMITTED	301-302
Parents Ex. 47	NOT OFFERED, NOT ADMITTED	303-305
Parents Ex. 48	CV - [REDACTED], [REDACTED], [REDACTED], undated	306-307

I admitted the following exhibits offered by BCPS, unless otherwise noted:

BCPS Ex. 1	NOT OFFERED, NOT ADMITTED
BCPS Ex. 2	OFFERED, NOT ADMITTED
BCPS Ex. 3	OFFERED, NOT ADMITTED
BCPS Ex. 4	[REDACTED] Neuropsychological Evaluation, dated August 18, 2020
BCPS Ex. 5	[REDACTED] Assistive Technology Evaluation, dated November 18, 2020
BCPS Ex. 6	[REDACTED] Personalized Learning Plan, dated November 23, 2020

BCPS Ex. 7	NOT OFFERED, NOT ADMITTED
BCPS Ex. 8	NOT OFFERED, NOT ADMITTED
BCPS Ex. 9	NOT OFFERED, NOT ADMITTED
BCPS Ex. 10	NOT OFFERED, NOT ADMITTED
BCPS Ex. 11	NOT OFFERED, NOT ADMITTED
BCPS Ex. 12	NOT OFFERED, NOT ADMITTED
BCPS Ex. 13	NOT OFFERED, NOT ADMITTED
BCPS Ex. 14	Funding Agreement, dated December 7, 2022
BCPS Ex. 15	NOT OFFERED, NOT ADMITTED
BCPS Ex. 16	School Email Correspondence, dated January 30, 2023
BCPS Ex. 17	Notice of Documents, dated January 31, 2023, and school email correspondence with attachments (Notice of Documents, Parental Rights Handbook and Habilitative Services Guide)
BCPS Ex. 18	School Email Correspondence between [REDACTED] and [REDACTED], dated February 6, 2023
BCPS Ex. 19	Parent Notification of IEP Team Meeting, dated February 6, 2023, for an IEP meeting on February 13, 2023, and school email correspondence
BCPS Ex. 20	[REDACTED] Student Documents provided to Wellwood on 2/13/2023 <ul style="list-style-type: none"> • Daily Schedule for N. Burkom • [REDACTED] Speech Therapy Care Plan (11/21/22) • [REDACTED] Assistive Tech Evaluation1(11/18/20) • [REDACTED] Physical Therapy Evaluation (4/25/22) • [REDACTED] Occupational Therapy Evaluation (12/22/22) • [REDACTED] Classroom Picture • [REDACTED] Accommodations and Modifications (2/10/23) • [REDACTED] work samples • Email correspondence dated February 13, 2023
BCPS Ex. 21	Prior Written Notice, dated February 13, 2023
BCPS Ex. 22	Notice and Consent for Assessment, dated February 13, 2023
BCPS Ex. 23	School Email Correspondence, dated February 14, 2023

BCPS Ex. 24	Classroom Observation, dated February 27, 2023
BCPS Ex. 25	Informal Physical Therapy Observation at [REDACTED], dated February 27, 2023
BCPS Ex. 26	[REDACTED] Personalized Learning Plan, dated November 21, 2022, and email, dated March 3, 2023
BCPS Ex. 27	NOT OFFERED, NOT ADMITTED
BCPS Ex. 28	Notice of Consent for Assessment, dated March 9, 2023
BCPS Ex. 29	BCPS Classroom Observation, dated March 28, 2023
BCPS Ex. 30	NOT OFFERED, NOT ADMITTED
BCPS Ex. 31	NOT OFFERED, NOT ADMITTED
BCPS Ex. 32	BCPS Psychological Assessment, dated April 11, 2023
BCPS Ex. 33	BCPS Speech and Language Assessment, dated April 12, 2023
BCPS Ex. 34	Notice of Documents, dated April 12, 2023, school email correspondence, and attachments: <ul style="list-style-type: none"> • Notice of Documents • BCPS Classroom Observation (3/28/23) • BCPS Psychological Assessment (4/11/23) • BCPS Speech and Language Assessment (4/12/23) • BCPS Informal PT Observation at [REDACTED] (2/27/23) • BCPS OT Observation at [REDACTED] (2/27/23))
BCPS Ex. 35	NOT OFFERED, NOT ADMITTED
BCPS Ex. 36	NOT OFFERED, NOT ADMITTED
BCPS Ex. 37	NOT OFFERED, NOT ADMITTED
BCPS Ex. 38	NOT OFFERED, NOT ADMITTED
BCPS Ex. 39	NOT OFFERED, NOT ADMITTED
BCPS Ex. 40	Notice of Documents and school email correspondence, dated May 2, 2023, and attachments: <ul style="list-style-type: none"> • Notice of Documents, dated May 2, 2023 • [REDACTED] PT Evaluation (4/25/23) • [REDACTED] OT Evaluation (12/22/22)

BCPS Ex. 41	NOT OFFERED, NOT ADMITTED
BCPS Ex. 42	NOT OFFERED, NOT ADMITTED
BCPS Ex. 43	Eligibility Determination, dated May 3, 2023, and school email correspondence
BCPS Ex. 44	NOT OFFERED, NOT ADMITTED
BCPS Ex. 45	NOT OFFERED, NOT ADMITTED
BCPS Ex. 46	School Email Correspondence, dated May 8, 2023, and attachments: <ul style="list-style-type: none"> • Signed Eligibility Determination • Prior Written Notice (5/3/23) • Prior Written Notice (2/13/23) • Signed and dated Classroom Observation • Amended Psychological Assessment
BCPS Ex. 47	Notice of Documents and school email correspondence, dated May 10, 2023, and attachments: <ul style="list-style-type: none"> • Notice of Documents (5/10/23) • Draft IEP
BCPS Ex. 48	Prior Written Notice, dated May 17, 2023
BCPS Ex. 49	Parent Notification of IEP Team Meeting, dated May 22, 2023, for an IEP meeting on June 6, 2023, and school email correspondence
BCPS Ex. 50	Prior Written Notice, dated June 6, 2023
BCPS Ex. 51	IEP, dated June 6, 2023
BCPS Ex. 52	NOT OFFERED, NOT ADMITTED
BCPS Ex. 53	NOT OFFERED, NOT ADMITTED
BCPS Ex. 54	NOT OFFERED, NOT ADMITTED
BCPS Ex. 55	██████████ Personalized Learning Plan, dated November 2023 (provided to BCPS on November 30, 2023, in response to BCPS Request for Production of Documents)
BCPS Ex. 56	NOT OFFERED, NOT ADMITTED
BCPS Ex. 57	NOT OFFERED, NOT ADMITTED

BCPS Ex. 58

Resumes:

58a NOT OFFERED, NOT ADMITTED

58b [REDACTED]

58c [REDACTED]

58d NOT OFFERED, NOT ADMITTED

58e [REDACTED]

58f [REDACTED]

58g [REDACTED]

58h [REDACTED]