

██████████ AND ██████████,  
PARENTS,  
ON BEHALF OF ██████████,  
STUDENT,  
v.  
CARROLL COUNTY PUBLIC SCHOOLS

BEFORE ROBERT B. LEVIN,  
AN ADMINISTRATIVE LAW JUDGE  
OF THE MARYLAND OFFICE  
OF ADMINISTRATIVE HEARINGS  
OAH No.: MSDE-CRRL-OT-24-02944

**DECISION**

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

**STATEMENT OF THE CASE**

On January 31, 2024, ██████████ and ██████████, on behalf of their child, ██████████ (“██████████”) ██████████ (Student),<sup>1</sup> 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 Carroll County Public Schools (CCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017);<sup>2</sup> 34 C.F.R. § 300.511(a) (2023);<sup>3</sup> Md. Code Ann., Educ.

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<sup>1</sup> The Student prefers the name “██████████,” which was used throughout the hearing.

<sup>2</sup> “U.S.C.A.” is an abbreviation for the United States Code Annotated. Unless otherwise noted, all citations herein to the U.S.C.A. are to the 2017 bound volume.

<sup>3</sup> “C.F.R.” is an abbreviation for the Code of Federal Regulations. Unless otherwise noted, all citations herein to the C.F.R. are to the 2023 bound volume.

§ 8-413(d)(1) (Supp. 2023);<sup>4</sup> Code of Maryland Regulations (COMAR) 13A.05.01.15C(1). CCPS received the Complaint on February 1, 2024.

*Background*

The Complaint alleged that the CCPS violated the IDEA by denying the Student a free appropriate public education (FAPE) for the 2022-2023 and 2023-2024 school years and failed to act in accordance with the procedural requirements of the IDEA in developing an appropriate Individualized Educational Program (IEP) for the Student. The Complaint further alleged that the CCPS agreed that the Student should be educated in a non-public placement (a private, separate day school), that the Parents unilaterally placed the Student at the [REDACTED] ([REDACTED]), that [REDACTED] is a proper placement under the IDEA, but that the CCPS has refused to fund the Student's placement at [REDACTED], and has not agreed to the Parents' request that the Student be placed in a school where he would never be subjected to restraint and seclusion. The requested remedies are reimbursement of all costs, including tuition, transportation, and other school-related expenses for the Student's placement at [REDACTED] for the 2022-2023 and 2023-2024 school years, reimbursement of attorney's and expert witness fees, and the costs of this action, and that [REDACTED] be deemed the Student's stay-put placement.

On February 9, 2024, the CCPS, through counsel, filed with the OAH its Response to the Complaint. The CCPS averred that its IEP team developed an IEP in accordance with the requirements of the IDEA for the 2022-2023 and 2023-2024 school years that was reasonably calculated to enable the Student to make progress appropriate in light of his circumstances in the least restrictive environment. The CCPS stated that [REDACTED] would not provide an appropriate educational program capable of addressing the Student's academic and behavioral-emotional-social skill deficits in the least restrictive

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<sup>4</sup> Unless otherwise noted, all citations herein to the Education Article are to the 2022 Volume of the Maryland Annotated Code.

environment, and that the CCPS provided the Parents and the Student all rights to which they were entitled under the IDEA and Maryland law.

On February 9, 2024, the parties participated in a resolution session but did not resolve their dispute.<sup>5</sup>

*March 13, 2024 First Prehearing Conference*

On March 13, 2024, I conducted a remote prehearing conference (First Conference) in this case. Cheryl Steedman, Esquire, The Steedman Law Group, represented the Parents and the Student. Craig S. Meuser, Esquire, Carney, Kelehan, Bresler, Bennett and Scherr, LLP, represented the CCPS. After discussing the issues and the number of proposed witnesses, it was determined that the hearing would take nine full days to complete.

Under the regulatory framework, the forty-five-day timeline began to run on March 2, 2024, because March 2, 2024 was thirty days after the CCPS's February 1, 2024 receipt of the Complaint.<sup>6</sup> Under the framework, this meant the due process hearing needed to be held and a decision issued by April 16, 2024.<sup>7</sup> The regulations authorize an extension of time when requested by either party.<sup>8</sup> The parties jointly requested an extension of this deadline because the earliest date that the hearing could reasonably be scheduled to conclude was May 22, 2024, several weeks after the forty-five day period would end, based on the parties' detailed disclosures on the record of the following: both counsels' previously scheduled hearings before the OAH and the United States District Court, my

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<sup>5</sup> The record contains separate copies of a Notice of Outcome of Resolution, signed on behalf of the CCPS on February 29, 2024, and by Wayne Steedman, Esquire, on behalf of the Parents and the Student on March 4, 2024. The parties agreed at the March 13, 2024 First Prehearing Conference conducted in this matter that they conducted the resolution meeting on February 9, 2024, and that the dispute was not resolved by March 2, 2024, which was thirty days after the CCPS's February 1, 2024 receipt of the Complaint.

<sup>6</sup> 34 C.F.R. 300.510(c)(2).

<sup>7</sup> 34 C.F.R. 300.510(b)(2),(c)(2); 34 C.F.R. § 300.515(a).

<sup>8</sup> 34 C.F.R. § 300.515(c).

specially assigned OAH hearings,<sup>9</sup> the requirements that parties exchange exhibits and witness lists five days before the hearing and request subpoenas from the OAH fifteen days before the hearing, and the lack of prejudice to the parties. Additionally, based on the need to properly adjudicate this matter by making detailed Findings of Fact, Conclusions of Law, and a decision, the CCPS requested, and the Parents agreed, that I should have thirty days after the conclusion of the hearing to issue my decision.

The stated conflicts prevented scheduling a nine-day hearing to commence prior to April 23, 2024. Accordingly, based on the scheduling conflicts noted on the record, I found that there was good cause to extend the regulatory timeframe as requested by the parties. Therefore, the hearing was scheduled to begin on April 23, 2024, and continue on April 24-25, and May 6, 13, 15-17, and 22, 2024. At the request of the parties, I agreed to issue my decision within thirty days of the last hearing date, that is by Friday, June 21, 2024. Both parties requested that the hearing be conducted remotely. I granted that request. COMAR 28.02.01.20B(1)(b).

At the First Conference, Ms. Steedman stated that the Parents were not agreeable to any placement of the Student in a school where the restraint and seclusion of *any* student is an available option. She stated that even if the Student himself is not subject to restraint and seclusion, he may be traumatized if he ever witnesses a peer being restrained and secluded. Mr. Meuser stated that the CCPS would object to the admission of evidence that the Student would be harmed by merely witnessing peers being restrained and secluded, to the extent that such claim was not brought to the CCPS's attention

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<sup>9</sup> I had a specially assigned hearing on April 2, 2024, prescheduled leave on April 3-10, 2024, and a prescheduled teaching commitment at the University of Maryland School of Law on April 15, 2024. Mr. Meuser had an OAH hearing starting on April 12 and continuing on April 16 and 17, 2024. Ms. Steedman requested that Mr. Meuser not be required to start the hearing in this matter immediately after the conclusion of his other OAH hearing that would conclude on April 17, 2024, with no break to prepare for the hearing in this case, to which request Mr. Meuser agreed. I had a required OAH training on April 19, 2024. Mr. Steedman had a complex IEP meeting on April 22, 2024. Accordingly, in consideration of the parties' and my scheduling conflicts, and pursuant to the parties' joint requests, the hearing was scheduled for April 23, 2024, to continue on April 24-25, and May 6, 13, 15-17, and 22, 2024. The hearing could not be held on fully consecutive dates as a result of scheduling conflicts as detailed on the record at the First Conference.

before the Parents filed the Complaint in this matter. At the First Conference, I deferred ruling on this objection pending further factual development and legal argument on the issue at or before the hearing on the merits. On March 15, 2024, I issued the first prehearing conference report and order (First PCR).

### *Amended Complaint*

On April 1, 2024, the Parents emailed to the CCPS and the OAH a proposed Amended Complaint, in which they explicitly alleging that the Student would be vicariously traumatized if he were to witness a peer being restrained and secluded.<sup>10</sup> I held a Second Prehearing Conference on April 2 and 3, 2024, to consider the parties' positions on whether the Amended Complaint would be permitted to be filed.

### *April 2-3, 2024 Second Prehearing Conference*

At the April 2 and 3, 2024 Second Conference, Mr. Steedman represented the Parents and the Student. Mr. Meuser represented the CCPS. At the Second Conference, after hearing both parties' positions concerning the proposed Amended Complaint, and related scheduling issues that needed to be addressed in light of the proposed amendment, I granted on the record the Parents' request to file the Amended Complaint. As noted at the Second Conference, the Amended Complaint was deemed filed as of April 1, 2024, the day the OAH and the CCPS received the Amended Complaint.

COMAR 13A.05.01.15C(8) provides, with regard to an amended complaint:

If a party files an amended due process complaint, the time line for the resolution meeting and the time period to resolve the complaint described in 34 CFR § 300.510 begins again with the filing of the amended due process complaint.

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<sup>10</sup> The OAH date-stamped the Amended Complaint as received on April 1, 2024. The Amended Complaint, submitted with "track changes," made the following changes to the Original Complaint: It added a sentence stating the Parents' contention that the Student is subject to trauma by seeing or hearing another student being restrained (p. 6); added a paragraph concerning [REDACTED] and the Parents' objections to the Student's August 2023 IEP (p. 7); deleted a clause and added a new clause to a sentence constituting item 2 of the Parents' requests for relief (p. 8).

In light of the filing of the Amended Complaint, I again advised the parties of the federal forty-five-day timeline requirement for issuing a decision. Here, the Amended Complaint was filed on April 1, 2024. The applicable federal regulations state the following, in part, concerning the timeline to resolve the complaint:

(a) The public agency must ensure that not later than 45 days after the expiration of the 30-day period under § 300.510(b), or the adjusted time periods described in § 300.510(c) –

- (1) A final decision is reached in the hearing; and
- (2) A copy of the decision is mailed to each of the parties.

34 C.F.R. § 300.515.

Section 300.510 describes the resolution period in a due process proceeding as follows:

(b) Resolution period.

(1) If the [Local Education Agency] has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

(2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under § 300.515 begins at the expiration of this 30-day period.

(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

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(c) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing in § 300.515(a) starts the day after one of the following events:

- (1) Both parties agree in writing to waive the resolution meeting;
- (2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;
- (3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process.

*Id.* § 300.510(b), (c).

In this case, the thirty-day resolution period began anew on April 1, 2024, with the filing of the Amended Complaint, and ended on May 1, 2024.<sup>11</sup> As forty-five days from May 1, 2024 is Saturday, June 15, 2024, the hearing ordinarily would have to be completed *and* the decision issued no later than Friday, June 14, 2024.<sup>12</sup>

As previously stated, the regulations authorize me to grant a specific extension of time at the request of either party. *Id.* § 300.515(c). The earliest date after the May 1, 2024 expiration of the thirty-day resolution period on which the parties were available to commence the hearing was May 6, 2024, *i.e.*, two business days after the resolution period expired. Accordingly, the hearing was scheduled to begin on May 6, 2024, and continue on May 8, 9, 13, 15-17, and 21-22, 2024. At the Second Conference, both parties reiterated their request that I have thirty days from the conclusion of the hearing to issue a thorough decision. I found good cause to grant this request and extended the time for issuance of the decision for seven days, *i.e.*, from June 14 to June 21, 2024. I issued a second prehearing conference report and order (Second PCR) on April 11, 2024.

The merits hearing was held remotely on the Webex teleconference platform on May 6, 8, 9, 13, 15-17, and 21-22, 2024, as scheduled.<sup>13</sup> Mr. Steedman and co-counsel Elana Simha, Esquire, represented the Parents and the Student. Mr. Meuser represented the CCPS.

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

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<sup>11</sup> The parties did not waive the resolution process in regard to the Amended Complaint. They advised that they were meeting at an April 19, 2024 resolution session, and did not consent to starting the hearing prior to the May 1, 2024 expiration of the resolution period. They subsequently advised that they were not able to resolve the dispute during or after the resolution period.

<sup>12</sup> Pursuant to the OAH policy, when a decision in this type of case is due on a weekend or holiday, the decision becomes due on the last calendar day before the weekend or holiday.

<sup>13</sup> The hearing concluded on May 22, 2024, the last hearing date as provided in the original schedule and the First PCR. This decision is issued on June 21, 2024, the same issuance date as provided in the original schedule pursuant to the First PCR.

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 action by the CCPS fail to meet the requirements of the law? Specifically:

1. Was the Student denied FAPE for the 2022-2023 and 2023-2024 school years?
2. Did the CCPS fail to act in accordance with the procedural requirements of the IDEA by failing to offer a placement in which the Student could receive a FAPE by the start of the 2022-2023 school year?
3. Did the CCPS fail to act in accordance with the procedural requirements of the IDEA in developing an appropriate IEP for the Student leading up to the 2023-2024 school year?
4. Did the Student receive appropriate educational benefit from his program at [REDACTED], such that [REDACTED] is a proper placement under the IDEA for the 2022-2023 and 2023-2024 school years?
5. If so, what is the appropriate relief?<sup>14</sup>

### SUMMARY OF THE EVIDENCE

#### Exhibits

A complete exhibit list is attached to this Decision as an Appendix.

#### Testimony

The Parents presented the following witnesses:

- [REDACTED],<sup>15</sup> admitted as an expert in psychology
- [REDACTED], educational consultant, admitted as an expert in special education

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<sup>14</sup> The Parents requested reimbursement of tuition and related expenses at [REDACTED] during the 2022-2023 and 2023-2024 school years, and reimbursement of their attorney's fees and costs, including expert witness fees. The Parents/Student also generally requested such other relief as justice may require.

<sup>15</sup> [REDACTED].



- [REDACTED], head of school at [REDACTED], admitted as an expert in education, with additional expertise in twice exceptionality, executive functioning, and ADHD<sup>16</sup>
- [REDACTED], campus director at [REDACTED], admitted as an expert in special education
- [REDACTED], admitted as an expert in special education
- [REDACTED], CCPS coordinator of nonpublic placements<sup>17</sup>
- [REDACTED], the Student's father.

The CCPS presented the following witnesses:

- [REDACTED], CCPS supervisor of special education, admitted as an expert in special education, inclusive practices for children with complex needs, and developing IEPs for students with significant behavioral needs
- [REDACTED], former math teacher at [REDACTED]
- [REDACTED], accepted as an expert in nonpublic placement and occupational therapy in school settings
- [REDACTED], CCPS occupational therapist and instructional consultant for inclusion, accepted as an expert in occupational therapy, sensory processing, and emotional regulation
- [REDACTED], supervisor of special education for the CCPS, accepted as an expert in special education, IEP development, and general education for middle school language arts and math

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<sup>16</sup> [REDACTED]

<sup>17</sup> The Parents called [REDACTED] in their case in chief as an adverse fact witness. Later, in the CCPS's case in chief, the CCPS called [REDACTED] as an expert witness in nonpublic placement and occupational therapy in school settings.

- [REDACTED], CCPS school psychologist, accepted as an expert in school psychology, including evaluation, and provision and implementation of school-based mental health and behaviors services.

### STIPULATIONS

The parties agreed to the following stipulations:

1. There is no record that [the Student] informed the school team that [he] gets traumatized by seeing or hearing other students being restrained or secluded.
2. There is no documentation that specifically states that the Student is retraumatized by witnessing others being restrained or secluded.

### FINDINGS OF FACT

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

#### *Background*

1. The Student is thirteen years old (born in 2011).
2. The Student is a resident of Carroll County.
3. The Student was adopted by the Parents at the age of [REDACTED] months from [REDACTED].
4. The Student attended kindergarten and first grade at [REDACTED] ([REDACTED]), a CCPS public school. He continued to attend [REDACTED] [REDACTED], including for virtual instruction due to the COVID-19 pandemic from

- mid-March 2020 through the 2020-2021 school year, until the spring of 2021, when he was placed in the fifth grade at [REDACTED] ([REDACTED]) at his Parents' request because they had lost confidence in [REDACTED].<sup>18</sup>
5. In 2018, at age [REDACTED], when he was in the first grade, the Student was seen by a licensed psychologist, [REDACTED] ([REDACTED]) for a neuropsychological examination due to a history of motor and verbal tics and disruptive behavior at school.<sup>19</sup>
  6. The Student reads above grade level.<sup>20</sup>
  7. The Student is a talented [REDACTED] player [REDACTED] and [REDACTED]).<sup>21</sup>

[REDACTED] *2018 neuropsychological examination*

8. As [REDACTED] noted in her 2018 evaluation report, the Student's behavior at [REDACTED] [REDACTED] included being off-task, engaging in unsafe behaviors, distracting other students, and he received a number of "referrals," *i.e.* notes sent home reflecting significant rule violations, including verbal defiance of teachers and physical contact with other students. He frequently had behavioral difficulties at times of transitions and was more likely to have them during his English and language arts time, which is his preferred subject.<sup>22</sup>
9. The Student's referrals from [REDACTED] included pushing classmates, disrespecting and defying teachers' instructions, and persistently disrupting the class.<sup>23</sup>
10. In 2018, [REDACTED] administered a battery of psychological tests to the Student who was [REDACTED] [REDACTED] old at the time, and which revealed he had a high average full scale IQ of 117, his verbal reasoning was in the extremely high range, his math ability was in the

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<sup>18</sup> CCPS Ex. 5, p. 1; CCPS Ex. 8, p. 29; P. Ex. 12, p. 001.

<sup>19</sup> P. Ex. 8 at 001. (References to Parents' exhibits are identified as P. Ex, and the CCPS exhibits as CCPS exhibits.

<sup>20</sup> *Id.* p. 002.

<sup>21</sup> CCPS Ex. 4, p. 3.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

- average to high average range, his academic fluency was in within the high average range, and his processing speed and nonverbal reasoning ability was within the average range.<sup>24</sup>
11. ██████ testing revealed weaknesses in the Student’s executive functioning skills, particularly related to regulation of emotion and behavior, both at home and the classroom setting. The Student had significant concerns related to externalizing behaviors, including a clinically significant level of hyperactivity, aggression/defiance, and conduct problems, *i.e.* rule-breaking, and symptoms of anxiety and depression.<sup>25</sup>
12. The Student’s complex neurocognitive profile is suggestive of what the educational field considers “Twice Exceptional” or “2E.” Students with this profile exhibit characteristics of giftedness (the Student has extremely high verbal reasoning ability, creativity, and intensity), while simultaneously having one or more co-occurring conditions, (the Student’s ██████) that may mask or impede his ability to fully express giftedness.<sup>26</sup>
13. The Student’s significant inattention and disruptive, hyperactive, impulsive, and off-task behavior made it more difficult for him to be successful. As ██████ predicted in 2018, while the Student was able to be academically successful at that time based on his high level of intellect, his interfering behaviors, over time and without intervention, led to academic struggles as the Student had trouble maintaining the degree of organizational skills, study skills, writing skills, and multi-tasking skills needed for success in middle and high school. Accordingly, ██████ recommended that he would require environmental modifications as well as supports and interventions tailored to his unique neurocognitive challenges.<sup>27</sup>

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<sup>24</sup> *Id.* p. 010.

<sup>25</sup> *Id.* at 13.

<sup>26</sup> *Id.* at 14.

<sup>27</sup> *Id.*

14. As [REDACTED] found, the Student “meets the criteria for a diagnosis of [REDACTED] [REDACTED] ([REDACTED]),” and Spring children with [REDACTED] are estimated to have a social/emotional age of approximately, eighteen months to two years younger than chronological age, which further contributed to the Student’s difficulty in regulating his emotions and behavior in the classroom.<sup>28</sup>
15. In addition to the [REDACTED] diagnosis, [REDACTED] diagnosed the Student with [REDACTED], because he had [REDACTED], waxing and waning in frequency. [REDACTED] are often co-morbid with [REDACTED].<sup>29</sup>
16. As [REDACTED] further found, the Student has very superior verbal cognitive abilities suggesting that he is verbally gifted, and that it is possible that his other cognitive abilities may be higher than he was able to display, as co-occurring challenges related to [REDACTED] may mask or subdue his performance.<sup>30</sup>
17. [REDACTED] made several recommendations, including that:
- an IEP or Section 504 Plan be considered;
  - based on her observation of the Student in the classroom, where he was on task for less than five minutes in a ninety-minute observation, he needs a high level of individual support for his own safety and that of his peers, such that close, consistent attention is needed;
  - the Student would benefit from a high degree of structure and routine, multi-modal/multi-sensory activities, and small group and one-on-one work with a teacher or paraeducator whenever possible;

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.* p. 15.

<sup>30</sup> *Id.*

- a speech-language evaluation focused on social communication and pragmatic language;
- school-based instruction related to social problem solving and coping skills;
- behavioral interventions such as working in a small group, frequent breaks, use of “bouncy bands” or a yoga ball to reduce his fidgeting; and
- extended time for testing.

18. In November 2018, the Student’s private psychologist, [REDACTED] recommended that he receive home/hospital teaching due to his anxiety and fear of school.<sup>31</sup>

*2020-2021*

19. As stated in the Student’s June 5, 2020 IEP, the Student, then age nine, continued to demonstrate achievement at or above grade level standards in all academic areas, but his inability to regulate emotions, sustain attention, and make positive behavioral decisions impacted his educational performance throughout his day. In the area of social/emotional/behavioral development, he continued to require specialized instruction to help him choose and use appropriate coping strategies in the school setting in order to regulate emotions, display compliant behaviors, and remain safe. In the 2020-2021 school year he had numerous referral for classroom disruption, disrespect, verbal threats to staff, and unsafe behavior. As a result, he did not meet his IEP behavior goal of decreasing behavioral referrals.<sup>32</sup>

20. Based on [REDACTED] [REDACTED] and [REDACTED] diagnoses, the CCPS determined in May 2021 that the Student met the criteria for a student with an educational disability under the Other Health Impairment code based on A [REDACTED] and [REDACTED], and that his impairment

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<sup>31</sup> CCPS Ex. 8, p. 2.

<sup>32</sup> P. Ex. 10, p. 002; 005.

has a continued adverse effect on his social emotional/behavior functioning, that he has challenges persevering through a difficult task, sustained effort is challenging, he has difficulty maintaining focus on a non-preferred task, organizing and prioritizing environmental stimuli which impacts his ability to attend to instruction, impacts his emotional regulation and executive functioning skills, and his availability for learning in the general education classroom.<sup>33</sup>

21. The CCPS further determined in May 2021 that the Student continues to require specialized instruction to address his needs with emotional regulation and executive function skills.<sup>34</sup>
22. During the 2021-2022 school year, the Student was subject to restraint at [REDACTED] as a result of two incidents: one at a pep rally and the other during a tornado drill.<sup>35</sup>
23. The CCPS prepared an updated Functional Behavior Assessment (FBA) for the Student on November 11, 2021, following a prior, May 15, 2018 FBA.<sup>36</sup> As of the updated FBA, his behavior continued to significantly impact his own safety and that of others, his personal learning, and the learning environment of others, as well as his social relationships. His behaviors increased in physicality since the previous school year. He had forty referrals during the 2019-2020 school year, and thirty-three referrals for the 2021-2022 school year (between September 10, 2021, and November 3, 2021).<sup>37</sup>
24. The CCPS developed a Behavior Intervention Plan (BIP) for the Student on June 13, 2018.<sup>38</sup>  
  
This BIP was revised on June 5, 2020, and again on November 12, 2021, and April 27, 2022.

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<sup>33</sup> CCPS Ex. 3, p. 1.

<sup>34</sup> *Id.* at p. 2

<sup>35</sup> CCPS Ex. 8, p. 9.

<sup>36</sup> The May 15, 2018 FBA is not included in the record.

<sup>37</sup> CCPS Ex. 4, p. 2.

<sup>38</sup> The June 13, 2018 BIP is not included in the record.

25. The June 5, 2020 revised BIP provided, under the heading “Physical Restraint,” that when the Student engaged in unsafe behaviors (head hitting, kicking, hitting) the staff should “provide for a pillow or an alternative soft object to kick/hit. When [he] climbs on furniture, use proximity and monitor. When [he] charges adults or peers, try to keep distance away from him.”<sup>39</sup>
26. The CCPS’s November 12, 2021 revised BIP states with respect to crisis intervention that: per COMAR regulations, the use of physical restraint on a student may only be utilized in an emergency situation and to protect a student or other person from imminent, serious, physical harm after less intrusive, nonphysical interventions have failed or been determined inappropriate. A single incident of physical restraint shall not exceed thirty minutes. The restraint will be monitored by CPI [Crisis Prevention Institute]-trained staff and released when [the Student] shows signs of tension reduction.<sup>40</sup>
27. The Student’s November 11, 2021 IEP, developed when he was in the fifth grade at [REDACTED], provided that the school-based IEP team determined that restraint and/or seclusion may be required as part of the BIP when the Student is escalated to the point where he is a danger to himself and others, but that the Parents did not provide consent to the use of restraint as part of the BIP.

*2022 BIP*

28. The CCPS found in its April 27, 2022 revised BIP that the Student (then attending the [REDACTED] program at the CCPS’s [REDACTED] ([REDACTED])) engaged in physical contact, threats, and elopement that interfered with his learning. The physical contact included kicking, hitting, pushing, chasing, and grabbing adults, and bumping and pushing

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<sup>39</sup> P. Ex. 11, p. 002.

<sup>40</sup> P. Ex. 12, p. 002



into peers. His threats directed toward staff included to stab them with a pencil, and his elopement included running out of the classroom without permission.<sup>41</sup>

29. The April 27, 2022 BIP provided that for crisis intervention, if the Student is unable to regain composure and self-regulate within thirty minutes, he should only utilize the “support room” if he chooses to calm there, “OR if his behaviors escalate to the point of physical attack OR his behaviors cause safety concerns to himself or students/staff.”<sup>42</sup>

*2021 occupational therapy evaluation*

30. A licensed occupational therapist (OT) for the CCPS, [REDACTED], conducted a school-based OT evaluation of the Student on October 5, 2021, when he was in the fifth grade at [REDACTED], and prepared an evaluation report on November 8, 2021. The results from her testing showed the Student had moderate difficulty in the area of sensory processing in various environments affecting him throughout his school day. He demonstrated a number of behaviors that interfered with his access to education. For example, he bumped into things, sometimes missing signage in a new environment, not always noticing people walking into the room, getting scrapes or bruises without remembering where he got them, not noticing when his face got dirty, not always noticing when he is touched, slower pace when following a task, and needing to ask others to repeat directions. His scores were not significantly above the typical range. The data [REDACTED] developed showed a sensory component to this behavior, though it did not appear to be the only factor causing the Student’s dysregulation during the day.<sup>43</sup>

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<sup>41</sup> P. Ex. 31, p. 001.

<sup>42</sup> *Id.*, p. 004.

<sup>43</sup> CCPS Ex. 5, p. 5.

31. [REDACTED] recommended that sensory processing is an area of need moderately affecting the Student's access to education, and that he would benefit from consultative OT support, in order to collaborate with his teachers, parents, and student support assistant on how to build sensory accommodations and self-awareness into his school routine.
32. The Student's June 5, 2020 IEP included the following social emotional/behavioral goal: "Across school settings, [the Student] will match his emotional reaction to the size of the problem, as measured by a 20% decrease in referrals as compared to baseline for one quarter (baseline second quarter third grade due to school closing = 15 referrals, Goal = 12 or less)." <sup>44</sup>

#### *2021 IEP*

33. The IEP team met on November 12, 2021, to review and revise the Student's IEP. <sup>45</sup> As of that time the Student was demonstrating achievement at or above grade level (fifth grade at [REDACTED]), but continued to demonstrate the inability to regulate emotions, sustain attention, and make appropriate decisions toward his learning. This impacted his educational performance throughout the day. In the social/emotional/behavioral area, and while he was participating in virtual learning during the pandemic, he engaged in many off-task and dysregulated behaviors such as playing with toys, turning the camera off, screaming into the microphone, and searching for topics of high interest on the computer. <sup>46</sup>
34. The school-based IEP team determined that the Student required a BIP to support his difficulties with emotional regulation, and identified a need for restraint when he was a

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<sup>44</sup> P. Ex. 10, p. 020.

<sup>45</sup> CCPS Ex. 7, p. 1.

<sup>46</sup> CCPS Ex. 8, p. 2.

- danger to himself and others. The school-based team further stated that that the team would meet after every incident of restraint to review the incident and make changes to the BIP.<sup>47</sup>
35. The Parents did not consent to the use of restraint as part of the BIP.<sup>48</sup>
36. The Student’s November 12, 2021 IEP provided a number of special considerations and accommodations, including: a separate, quiet place for him to complete assignments, frequent breaks, extended time, advance notice of assignments, access to a computer for writing, various instructional supports, close adult support for classroom instruction and social/emotional/behavior, advance notice of transitions, an occupational therapist consult for staff, sensory strategies for body awareness, and a psychologist consult for staff.<sup>49</sup>
37. Psychological “consult” or consultation and occupational “consult” or consultation mean that a psychologist or other mental health professional and an occupational therapist would consult with the Student’s teachers or other staff to suggest strategies the staff could use to help the Student make progress. These consults/consultations are to be distinguished from direct psychological and occupational therapy “related services” (also offered the Student in the Services portion of some of his IEPs), in which the psychologist or occupational therapist would work directly with the Student on psychological and OT issues.<sup>50</sup>
38. Many special considerations and accommodations (including psychological consult and occupational consult) were included in the Student’s June 5, 2020 IEP.<sup>51</sup>

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<sup>47</sup> CCPS Ex. 8, p. 11.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*, pp. 10-17.

<sup>50</sup> *Compare, e.g.*, the Student’s August 22, 2023 IEP, CCPS Ex. 44, p. 34 (psychologist and occupational therapist will consult with staff to support his social emotional needs in school) *with* CCPS Ex. 44, p. 40 (4, 30 minute counseling sessions weekly to address Student’s social emotional behavior and self-management of counseling services and 2, 20 minutes direct occupational therapy services to be provided weekly to target sensory processing and dysregulation)

<sup>51</sup> P. Ex. 10, pp. 009-020.

39. The November 12, 2021 IEP included the following two goals and related objectives for the Student:

- Goal No. 1: In counseling sessions given direct instruction, visual aids and verbal prompts, the Student will increase use of his self-regulation skills as demonstrated through use of coping strategies/tools to aid in regulating to an expected emotional state, *i.e.* calm, engaged, focused) in three out of four opportunities as measured by counselor notes, observations and other student data. This goal was accompanied by four objectives: (1) the Student will identify physiological characteristics when he is becoming upset or frustrated in three out of four opportunities, (2) he will identify triggers which cause him to experience a loss of personal regulation in three out of four opportunities, (3) he will practice procedures such as focused breathing, progressive muscle relaxation and mindfulness to effectively regulate his behavior in three out of four opportunities, and (4) when dysregulated *i.e.* frustrated or upset), he will choose a strategy to try when given a field of two in three out of four opportunities.
- Goal No. 2: Given two or fewer prompts, scheduled reward breaks and reminders of appropriate times to engage in preferred tasks, the Student will participate in the expected task for at least forty percent of his school day across a two-week period, evidenced by point sheet data. This goal was accompanied by three objectives: (1) when reminded of an appropriate time to engage in preferred tasks (*i.e.* given the last five minutes of class), he will follow teacher directions within two prompts for an average of at least sixty percent of the time each day across a two-week period, evidenced by teacher observations and point sheets, (2) when reminded of an appropriate time to engage in preferred tasks (*i.e.* given the last five minutes of class to engage in preferred task) and two or fewer prompts, he will transition to

the expected task within two minutes of the prompt, for an average of at least sixty percent of the time based on point sheet, and (3) given structured breaks (*i.e.* work/break intervals), he will sustain focus on the expected task for at least ten minutes at a time in order to participate in live, first pass instruction at least sixty percent of the time, across a two-week period evidenced by point sheet data.<sup>52</sup>

40. The November 12, 2021 IEP noted that the Student was not making progress toward these goals because, although demonstrating high cognitive ability, he was unable to regulate his emotions and behavior when frustrated or upset, having frequent behavior meltdowns involving work refusal, yelling at adults and peers, wrapping things around his neck, shoving or throwing desks or other objects and stating on occasion that he wanted to [REDACTED] or [REDACTED].<sup>53</sup>

41. The November 12, 2021 IEP provided the following special education services: fifteen hours of classroom instruction per week outside of general education, to be provided by a special education teacher as the primary provider, together with an instructional assistant, to address his behavior goal and objectives. The fifteen hours would be divided throughout the week in increments as the special education teacher chooses.<sup>54</sup>

42. The November 12, 2021 IEP provided the following related services: one hour of counseling services to the Student per week outside the general education classroom setting, with a school psychologist as the primary provider, with options for a school counselor, mental health counselor or school social worker to provide the counseling services.<sup>55</sup>

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<sup>52</sup> *Id.*, pp. 21-23.

<sup>53</sup> CCPS Ex. 8, pp. 23-24.

<sup>54</sup> CCPS Ex. 8, p. 25.

<sup>55</sup> *Id.*, pp. 25-26.

February 2, 2022 IEP

43. The Student's IEP was revised on February 2, 2022. At that time, he was in the fifth grade at [REDACTED]. The areas identified by the team for reevaluation were social/emotional/behavioral and sensory processing. As noted in the IEP's Section II (Present Level of Academic Achievement and Functional Performance), he demonstrated "little insight into his behavior," which included frequent frustration outbursts and impulsivity that contributed to his propensity for engaging in risky or dangerous behavior in the school setting, *i.e.* standing on furniture, desks, wrapping things around his neck, threatening to stab staff with a pencil, kicking and punching, posturing by raising his fist, charging and stopping before contact, eloping from his assigned area, running laps around the interior of the school banging lockers and furniture, and bumping into staff and peers.<sup>56</sup>
44. Pursuant to the February 2, 2022 IEP, the Student's special education services outside general education were increased to twenty hours and forty minutes weekly to be provided by a special education teacher and instructional assistant, in order to address his self-management goal. The IEP called for thirty minutes per week of OT services outside general education in order to address his sensory processing needs. The IEP also called for one hour and twenty minutes of counseling services per week outside of general education, due to increased de-escalation and self-regulation time lengths, to be provided by a psychologist or a mental health therapist, a behavior support specialist or a guidance counselor.<sup>57</sup>
45. As stated in the Prior Written Notice (PWN) dated February 9, 2022 for the February 2 and February 9, 2022 IEP meetings, the following statements were *removed* from the Student's

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<sup>56</sup> CCPS Ex. 9, pp. 6-7.

<sup>57</sup> *Id.*, pp. 33-34.

BIP and from the February 2, 2023 IEP: (1) “The IEP team identified there is a need for restraint when he is escalated to the point where he is a danger to himself and others” and (2) “The team will meet after every restraint to review the incident and make changes to the IEP.”<sup>58</sup>

46. As further stated in the February 9, 2022 PWN, the IEP team considered but rejected placements within [REDACTED] and within an alternative placement outside the CCPS. The team determined that “[REDACTED], an out-of-district parental placement, is not appropriate given [the Student’s] need for a mental health therapist and behavior support specialist to be available daily.” The team further determined that “a private placement outside of the CCPS is not appropriate given the availability of the [REDACTED] Program at [REDACTED],” where the Student “will receive behavior intervention, as well as have access to enrichment opportunities within the placement.”<sup>59</sup>

47. The February 9, 2022 PWN for the February 2, 2022 IEP meeting noted that “[a]lthough the statements were removed from within the IEP regarding restraint, it was explained that restraint can still be used as a last possible resort, and by trained staff, if [the Student] is presenting a danger to himself of others.”<sup>60</sup>

*2022 Placement at the [REDACTED] program at [REDACTED]*

48. As of February 28, 2022, the Student left [REDACTED] and entered the CCPS-wide [REDACTED] ([REDACTED]) program located at [REDACTED].<sup>61</sup> As stated in the February 2, 2022 IEP, the Student required access to a mental health provider and behavior

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<sup>58</sup> CCPS Ex. 10, p. 1. A Prior Written Notice or PWN is a written explanation of a change the school district makes or refuses to make in a child’s IEP.

<sup>59</sup> *Id.*, pp. 2-3.

<sup>60</sup> *Id.*, p. 3.

<sup>61</sup> P. Ex. 32, p. 005.

support specialist daily, which [REDACTED] could not provide. In order to have access to these support personnel, the IEP team determined that he would attend the [REDACTED] program at [REDACTED].<sup>62</sup>

49. The Student's Parents agreed to the placement at [REDACTED].<sup>63</sup>

50. The [REDACTED] program is located within [REDACTED], which houses about five hundred students from pre-K to grade 5. All teachers in the [REDACTED] wing of the school are certified special education or general education teachers who had training in CPI techniques. The classes at [REDACTED] were in a small group. A mental health professional and an OT were on staff at [REDACTED]. The [REDACTED] principal said that restraint and seclusion would only be used in an emergency situation to protect a student or other person from imminent, serious, physical harm after other less intrusive, nonphysical interventions have failed or been determined inappropriate.<sup>64</sup>

51. The Student only attended twelve days of school at [REDACTED] between February 28, 2022 and April 1, 2022. He struggled to adjust to his new placement and follow school guidelines. He agreed to have two days of safe behavior in order to earn a walk outside the [REDACTED] wing of [REDACTED], but was unable to remain safe for two straight days. He had two major and two minor referrals for his unsafe/disruptive behavior, which involved running away from staff and climbing on tables and desks when work was presented.<sup>65</sup>

[REDACTED] *February 26, 2022 letter*

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<sup>62</sup> CCPS Ex. 9, p. 39.

<sup>63</sup> T. 1048 (E. [REDACTED]).

<sup>64</sup> P. Ex. 26; T. 779-83; 823 ([REDACTED]).

<sup>65</sup> P. Ex. 32, p. 005.



52. On February 26, 2022, the Student’s private psychologist, ██████████ wrote a “To Whom It May Concern” letter on behalf of the Student, which he gave to the Parents.

The Student was in the ██████████ program at ██████████ at the time. The letter stated:

I am writing this on behalf of [the Student]. I have worked with [the Student] for several years as a psychologist. The purpose of this letter is to provide some of my thoughts regarding [the Student] that may be helpful in the school situation. More specifically that using any restraints/hands-on techniques or use of seclusion will be harmful to [the Student] as well as detrimental to his rapport with school staff. I struggle writing this letter because I do not want to insinuate that the ██████████ program is anything less than amazing and realize that the expertise of your program lines up with my professional training. My interaction with students who have been in the ██████████ program have led me to have the utmost regard for the program's excellence and abilities. So, I apologize for any redundancies, but I want to do what I can to make sure things go well for [the Student]. My recommendation is to avoid restraints and seclusion. In the past, [the Student] has escalated significantly when staff have used restraints with him. Additionally in the past he has been placed in seclusion rooms, where he has engaged in significant self-injurious behavior including head banging. In addition to the self-injury, the use of restraint and seclusion in the past has caused lingering trauma. In my experience, when [the Student] is upset, if he is provided with non-confrontational redirection and time, he is able to get himself together and will follow directions. Much of his acting out behavior is related to work avoidance. However, he tends to be able to do the work. He just gets bored and would rather read. If he has a reinforcement program for doing work and is not attended in a confrontational manner, he generally remains safe, thus not requiring hands on to keep people safe. Thank you for your time and consideration in this manner.<sup>66</sup>

██████████ *March 4, 2022 psychoeducational evaluation and report*

53. On March 4, 2022, ██████████, the licensed psychologist who had evaluated the Student in 2018,<sup>67</sup> conducted a second Psychoeducational Evaluation Summary of the Student for his parents.<sup>68</sup> ██████████ noted that the Student had just been transferred that week from ██████████ ██████████ to ██████████ “in hopes that their ██████████ ... program would be helpful in managing [the

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<sup>66</sup> P. Ex. 15.

<sup>67</sup> P. 8.

<sup>68</sup> P. 18.

Student's] disruptive behaviors at school, which have been present since preschool.”<sup>69</sup> The parents requested ██████ to prepare a summary of psychoeducational findings for his school, to document current intellectual and academic functioning “in preparation for an upcoming meeting.”<sup>70</sup>

54. ██████ noted that the Student was receiving occupational therapy services at school, intended to help with his sensory processing.<sup>71</sup> She noted that “[b]ehaviorally, [he] continues to demonstrate a high level of impulsive, inattentive, and oppositional behavior.”<sup>72</sup> ██████ found that the Student’s combination of giftedness, particularly related to his verbal reasoning, exceptionally high reading comprehension and fluency, and applied math skills, along with his neurobehavioral challenges, indicate that he is “Twice Exceptional” or “2E.”<sup>73</sup>
55. ██████ further found that the Student needs significantly differentiated instructional strategies, multiple services and accommodations, as well as supports and interventions tailored to his multiple, unique neurocognitive challenges. She specifically recommended that that “[t]hese will need to include occupational therapy to provide sensory strategies to help manage overwhelm, social skills curriculum infused throughout his program, creative and flexible approaches to obtaining [his] cooperation, and frequent work with a mental health professional to help him develop coping strategies for managing frustration, anger, overwhelm, and impulsivity.”<sup>74</sup>

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<sup>69</sup> *Id.*, p. 001.

<sup>70</sup> *Id.*, p. 003. ██████ report of her March 4, 2022 examination is not itself dated, except to indicate that the date of her examination was March 4, 2022. The date the report was finished or sent to the Parents is not clear from the record. The report is sometimes referred to herein as ██████ March 4, 2022 report.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*, pp. 003-004.

56. ██████ recommended that the Student be in a classroom with a “small group and one-on-one with a teacher or skilled paraeducator,” and “[w]henver possible he should sit near, and/or work in a small group with peer models who have a good attention span and task focus.”<sup>75</sup>

*Developments at ██████ leading to the April 27, 2022 IEP*

57. The Parents advised ██████ in a March 9, 2022 email that the Student claimed he had been dragged to the support room, and was fearful of going to school at ██████.<sup>76</sup>

58. A ██████ counselor, ██████, responded on March 10, 2022, that any staff member who intervenes with the Student is trained in CPI.<sup>77</sup>

59. The Student was not successful at the ██████ program.<sup>78</sup>

60. On March 17, 2022, the ██████ principal, ██████ emailed the Parents to respond to their questions regarding whether ██████ used restraint. Principal ██████ wrote, in pertinent part:

Thank you so much for the questions that you posed regarding transport and restraint. I hope to provide some clarity with the explanation below. However, I am open to further discussion and conversation to clarify any other concerns that you may [sic].

When a student elopes from the classroom there are potential safety concerns for both staff and student. At that point, staff have to make a determination if the behavior and the student needs can be met and resolved without further intervention [ ].

Restraint is not defined, in terms of COMAR, as briefly holding a student to calm or comfort, provide a physical escort, which is the temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purposes of inducing a student who is acting out to walk to a safe location. We can also move a disruptive student who is unwilling to leave the area if other methods, such as counseling, have been unsuccessful. I appreciate the concerns you have raised, and I have already begun conversations with staff as we continue to follow up on our initial

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<sup>75</sup> *Id.*, pp. 004-005..

<sup>76</sup> P. 20.

<sup>77</sup> P. 21..

<sup>78</sup> P. 20; 28; 30; CCPS Ex. 16, p. 7.

trainings. This is to ensure that all members of our team have a clear understanding of our county guidelines when interacting with students during a crisis event.

We also recognized that you have not provided parental permission for restraint and seclusion to be included within [the Student's] programming. The use of physical restraint is prohibited in public agencies and nonpublic schools until there is an emergency situation and physical restraint is necessary to protect a student or other person from imminent, serious, physical harm after other less intrusive, nonphysical interventions have failed or been determined inappropriate. If we do employ these interventions then the IEP team must meet within 10 business days to discuss, review, and make any potential changes to his plan for the benefit of [the Student's] programming.<sup>79</sup>

61. The Student's Parents provided Dr. Della Vecchia's letter to BEST's principal. In a March 18, 2022 email to the principal, the Student's father advised that the Student was refusing to return to [REDACTED], and that the Parents were requesting an emergency IEP meeting to discuss the situation.<sup>80</sup>

*Development of the April 27, 2022 IEP*

62. A remote IEP meeting was scheduled for April 27, 2022.<sup>81</sup>
63. On April 26, 2022, the day before the IEP meeting, the Student's mother emailed the family's educational consultant, [REDACTED], and [REDACTED], with the subject line "REVISION: [REDACTED] – Tomorrow's Meeting." The Parent stated in this email that at the upcoming IEP meeting, [REDACTED] would not be able to avoid direct questions from the CCPS personnel but could "selectively present her findings from the recent testing (his current IQ, need for academic stimulation and strong positive reinforcement, etc.>"). The Parent further expressed her concern in this email that [REDACTED] was "super-concerned" that if the CCPS staff were allowed to ask questions after she presents, "she won't be able to sidestep the findings we do not agree with or are not yet ready to share." The Parent stated that [REDACTED]

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<sup>79</sup> P. Ex. 26, p. 001.

<sup>80</sup> P. 28, pp. 001-002.

<sup>81</sup> CCPS Ex. 14, p. 1; CCPS Ex. 17, p. 1.

liked the [REDACTED], [REDACTED], and [REDACTED], but did not think [REDACTED] is the right placement for the Student. The Parent further suggested in this email that if [REDACTED] and Mr. Steedman felt that having [REDACTED] at the meeting would strengthen their case, that she present her relevant educational findings at the beginning of the meeting and then excuse herself immediately by saying her time is very limited. The Parent also stated in the email that [REDACTED] did not want to attend if there was any chance that her being there could hurt the Student's case, delay his move, or cause him more harm. The Parent concluded the email by stating that [REDACTED] "can handle the psycho-social aspect of the meeting if she [REDACTED] hops off, with little suspicion from the CCPS as to why she can't stay on."<sup>82</sup>

64. The IEP meeting was held on April 27, 2022. [REDACTED], [REDACTED], [REDACTED], and Mr. Steedman attended virtually. All CCPS staff attended in person. The Parents attended as well.<sup>83</sup>

65. At the April 27, 2022 IEP meeting, [REDACTED] verbally provided information from her 2022 report.<sup>84</sup>

66. The Parents did not provide the CCPS with a copy of [REDACTED] March 4, 2022 report, which they did not receive until after the April 27, 2022 IEP was written. [REDACTED] recommended in her March 4, 2022 report, among other things, that the Student be in a classroom with a small group and one-on-one with a teacher or skilled paraeducator, and whenever possible he should sit near, and/or work in a small group with peer models who have a good attention span and task focus, and that he receive occupational therapy and frequent work with a

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<sup>82</sup> CCPS Ex. 14, pp. 1-2.

<sup>83</sup> CCPS Ex. 17, p. 5.

<sup>84</sup> *Id.*

mental health professional to help him develop coping strategies for managing frustration, anger, overwhelm, and impulsivity.<sup>85</sup>

67. At the IEP meeting held on April 27, 2022, “[REDACTED] explained that she does not yet have a written report to share with the family and the family would then determine if they were going to supply the school with the written report.” [REDACTED] shared at the meeting that her findings were consistent with what they saw in the first grade, including [REDACTED], [REDACTED], [REDACTED], superior verbal cognitive abilities, twice exceptional characteristics, emerging executive functioning skills leading to difficulties with focusing, sustaining attention, and regulating cognitive and emotional functioning.<sup>86</sup>

68. The CCPS did not receive a copy of [REDACTED] March 4, 2022 report until the Parents’ attorney emailed it to the CCPS’s attorney on February 14, 2024, after the Amended Complaint was filed.<sup>87</sup>

69. A revised IEP was approved on April 27, 2022. As it stated:

[The Student] displays difficulty with impulsivity, executive functioning skills, emotional regulation, shifting from one activity to another, sustaining effort through an undesirable activity, and maintaining his attention. [He] appears to also have a heightened awareness. The IEP team has provided substantial amounts of special education services to support [his] social emotional behavioral development, however, [he] has not made progress toward his IEP objectives. OT services were added based on an outside OT report shared with the team on 2/02/2022.<sup>88</sup>

70. As of the April 27, 2022 IEP meeting, the Student, whose then-current IEP was implemented on February 2, 2022, had refused to attend school (at the [REDACTED] program at [REDACTED]) since March 17, 2022. He attended twelve days of school since he started

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<sup>85</sup> P. Ex. 17, p. 6; T. 1167, 1232-22, 1241 (E. [REDACTED]).

<sup>86</sup> P. Ex. 17, p. 6.

<sup>87</sup> CCPS Ex. 53.

<sup>88</sup> CCPS Ex. 16, p. 4; CCPS Ex. 44, p. 3 (clarifying that the occupational therapist was not outside the CCPS but was [REDACTED], CCPS occupational therapist.)

at [REDACTED] on February 28, 2022, and was tardy five days. He ran away from staff and around the school building, and climbed on tables and desk when work was presented.<sup>89</sup>

71. The April 27, 2022 IEP identified the following five goals:

- Goal No. 1 (Social motional/Behavioral) was that when the Student expresses frustration or appears to be dysregulated, and an adult models a practice coping strategy (e.g. deep breathing, movement break) he will imitate or “join in” using the strategy, with the adult, on 80% or randomized behavior observations across a month interval. This goal was accompanied by two objectives: Objective 1 was that “[w]hile in a regulated state (e.g. during counseling sessions, engaging in preferred activities, completing more preferred academic tasks) and with adult support and modeling, [he] will imitate or ‘join in’ coping strategies on 3 out of 4 opportunities. Objective 2 was that “[w]hile in a dysregulated state (e.g., while completing a less preferred task, engaging in a less preferred activity, challenging social situation), and with adult support and modeling, [he] imitate[s] or ‘join[s] in’ coping strategies on 2 out of 4 opportunities.”<sup>90</sup>
- Goal No. 2 (Social Emotional/Behavioral) was that given counseling sessions and adult support with guidance, the Student will be able to participate successfully in counseling sessions as evidenced by him being able to complete the therapist task to learn in 2 out of 4 weekly sessions for one month. Goal No. 2 was accompanied by three objectives: Objective 1 was that he will be available to participate in the interoception<sup>[91]</sup> curriculum in weekly session with OT in 3 out of 4 sessions. Objective 2 was that given consistent limits and guidance, he will be able to follow the guidelines in the therapy session to remain safe and follow directions in 4 out of 4 sessions. Objective 3 was that given counseling sessions, he will begin to work on decreasing his impulsive behavior and learn to delay his needs, by practicing during sessions in 2 out of 4 sessions.<sup>92</sup>

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<sup>89</sup> *Id.*, p. 7.

<sup>90</sup> *Id.*, p. 33.

<sup>91</sup> Interoception is “the feeling of knowing what is happening in your body, for example if you are hungry, thirsty, warm, cold, etc.: Interoception allows us to experience many body sensations such as a growling stomach, dry mouth, tense muscles, or racing heart. Mindfulness activities could be helpful for kids who struggle with interoception.” *Cambridge Dictionary*, <https://dictionary.cambridge.org/us/dictionary/english/interoception> (accessed 5/28/24).

<sup>92</sup> CCPS Ex. 16, pp. 33-34.

- Goal No. 3 was that during a situation that might be challenging or frustrating, the Student will verbally or nonverbally (i.e. using a visual, gesture) communicate to an adult, with guidance and support as needed, that he is experiencing signs/cues of dysregulation, in 80% of randomized behavior observations. This goal was accompanied by four objectives. Objective 1 was that the Student will identify physiological cues (e.g., tense muscles, heart racing) that are early warning signs of increased frustration, during 3 out of 4 counselling sessions. Objective 2 was that the Student will identify behavioral cues (e.g., pacing, fidgeting) that are early warning signs of increased frustration, during 3 out of 4 counselling sessions. Objective 3 was that he will identify emotional cues (e.g., scared, frustration) that are early warning signs of increased frustration, during 3 out of 4 counselling sessions. Objective 4 was that he will identify thought patterns (e.g., stuck on one idea, racing thoughts) that are early warning signs of increased frustration, during 3 out of 4 counselling sessions.<sup>93</sup>
- Goal No. 4 was that given two or fewer prompts, scheduled reward breaks & reminders to use break cards, the Student will stay in assigned location as evidenced by a 25% increase from baseline per month as measured by point sheet data. Baseline to be determined within the first 2 weeks of implementation of the goal. This goal was accompanied by three objectives. Objective 1 was that when given a reminder of his assigned location, the Student will follow teacher directions within 2 prompts for an average of at least 60% of the time across a two-week period, evidenced by teacher observations and point sheets. Objective 2 was that given a 1 minute warning prior to a transition, the Student will transition to the appropriate location within 2-minutes of the prompt, for an average of at least 60% of the time based on point sheet data. Objective 3 was that given structured breaks and reminders of the appropriate time to engage in preferred tasks, the Student will complete at least 60% of the graded classwork assignments in the core content areas (math, ELA, science, social studies).<sup>94</sup>
- Goal No. 5 was that given oral rehearsal, the Student will complete a 3-step task within the classroom setting with no more than minimal verbal cues/assistance as evidenced by completing the task in 4/5 trials per month. This goal was accompanied by four objectives. Objective 1 was that the Student will take a 3-step task, and articulate what to do first, next, and last, in order to complete the task, with no more than minimal verbal cues, in 4/5 trials. Objective 2 was that he will identify strategies, people, and classroom tools needed to help him complete all 3 stages of the task, in the proper sequence, with no more than minimal verbal cues, in 4/5

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<sup>93</sup> CCPS Ex. 16, pp. 34-35.

<sup>94</sup> CCPS Ex. 16, pp. 34-35.



trials. Objective 3 was that he will perform a 3-part task, with a successful outcome, with no more than minimal verbal cues, within small group in 4/5 trials. Objective 4 was that he will perform a 3-party task, with a successful outcome, with no more than minimal verbal cues, in the classroom setting, in 2/5 trials.<sup>95</sup>

72. With respect to Goal No. 1 in the April 27, 2022 IEP, the team with the concurrence of the Parents determined that the Student required services to be provided in a private, separate day school that does not house programs for nondisabled students, for which he was then awaiting placement. The Parents chose to keep him home, and he had not attended [REDACTED] since March 17, 2022. His progress on Goals Nos. 1-5 could not be noted because the goals had not yet been introduced.<sup>96</sup>

73. The April 27, 2022 IEP provided the following special education services: thirty hours and ten minutes of classroom instruction monthly by a special education classroom teacher outside general education; two twenty minute OT therapy sessions weekly, outside general education provided by an occupational therapist as primary provider or a certified OT assistant; and five twenty minute counseling services provided by a mental health therapist – LCPC/LCSW-C—<sup>97</sup> as the primary provider or a school social worker, psychologist, or guidance counselor.<sup>98</sup>

74. The IEP provided, with respect to the thirty hours and ten minutes weekly of specialized classroom instruction outside of the general education environment, that he required his entire school day to be out of general education to address his social emotional/behavior, self-management, and executive functioning needs.<sup>99</sup> The OT

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<sup>95</sup> CCPS Ex. 16, pp. 36-7.

<sup>96</sup> *Id.*, pp. 33-36.

<sup>97</sup> Licensed Clinical Professional Counselor/Licensed Certified Social Worker-Clinical.

<sup>98</sup> CCPS Ex. 16., p. 38.

<sup>99</sup> *Id.*, p. 39.

services were offered to address his sensory processing and executive functioning.<sup>100</sup>

The counseling services were offered to address his social/emotional needs.

75. The April 27, 2022 IEP explicitly stated in the Least Restrictive Environment (LRE) Decision Making and Placement Summary, that the team considered various placement options, and accepted the option that services would be provided in a private separate day school that does not house programs for nondisabled students. The team considered but rejected the following options: all services in a regular education setting; combination of services in regular education setting and out of regular education setting at the home school; and all services within the [REDACTED] program.<sup>101</sup>

76. The team's rationale for the Student's placement at a separate nonpublic day school was that he required a setting with integrated, proactive behavior support as listed in his BIP, and a therapeutic educational setting that focuses/reinforces his use of behavior coping strategies. The team determined that the benefits of the proposed placement outweighed its potential harmful effects.

77. The Parents at the April 27, 2022 IEP meeting stated that they did not give consent to the Student being restrained or secluded. The IEP team did not recommend that either restraint or seclusion be added to his IEP or BIP.<sup>102</sup>

78. The Student's April 27, 2022 IEP and BIP do not include restraint or seclusion of the Student as a proposed method of dealing with his behavior.<sup>103</sup>

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<sup>100</sup> *Id.*

<sup>101</sup> *Id.*, p. 40.

<sup>102</sup> CCPS Ex. 17, p. 3.

<sup>103</sup> *Id.*

79. Pursuant to the decision of the April 27, 2022 IEP team to place the Student in a private separate day school (with which the Parents agreed), [REDACTED], the CCPS's coordinator of special education/nonpublic placements, identified in a May 19, 2022 letter to the Parents five potential schools for implementation of the approved IEP:

- [REDACTED] ([REDACTED]), included at the Parents' request
- [REDACTED] ([REDACTED])-[REDACTED] ([REDACTED]), included at the Parents' request
- [REDACTED] ([REDACTED])
- [REDACTED] ([REDACTED]), and
- [REDACTED] ([REDACTED]).<sup>104</sup>

80. [REDACTED] enclosed a Consent to Release Information forms for each school.<sup>105</sup>

81. The Parents did not object to the five schools the CCPS identified.<sup>106</sup>

82. [REDACTED] identified in her May 19, 2022 letter the criteria she used for identifying these schools:

- MSDE-approved Type 1 Special Education school
- Provide services to students with other health impairments
- Provide grade-level instruction as [the Student] is diploma bound
- Meet the social/emotional/behavioral needs through therapeutic environment
- Provide counseling services (five, twenty-minute sessions weekly)
- Can effectively implement the behavior plan
- Can provide crisis counseling and crisis management
- Provide limited school breaks through a longer school year and/or the ability to provide ESY<sup>107</sup> services

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<sup>104</sup> CCPS Ex. 18.

<sup>105</sup> *Id.*

<sup>106</sup> T. 890 ([REDACTED])

<sup>107</sup> Extended School Year.

- Consideration for [board-certified behavior analyst (BCBA)]
- Consideration for time, travel, distance.<sup>108</sup>

83. The MSDE has criteria for approving a nonpublic school as a Type I school. Other, approved, but non-Type 1 private schools, are not required to meet the Type 1 school criteria. The Type 1 criteria include, without limitation, that the school have documentation of all aspects of behavior management policies and procedures for exclusion, restraint, and seclusion required by COMAR 13A.08.04 for schools providing special education services, ability to provide special education and related services consistent with each student's IEP, provision of IEP progress documentation to the local school system, policies and procedures for notifying the local school system if related services are not provided as specified in the IEP, that teachers hold valid Maryland certification, and that related service providers hold required licenses/certificates.<sup>109</sup>

84. When a student is referred by a local education agency like the CCPS to a Type 1 nonpublic school pursuant to the student's IEP, the MSDE shares with the local school system some of the costs of the Type 1 placement.<sup>110</sup>

85. Type 1 schools are accredited by the MSDE, which has some degree of oversight over them. The MSDE has nonpublic school specialists who go out to nonpublic schools, look at records, and observe to ensure that the program is correctly providing services outlined in a student's IEP.<sup>111</sup>

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<sup>108</sup> CCPS Ex. 18.

<sup>109</sup> CCPS Ex. 19.

<sup>110</sup> T. 1977 (CCPS does not dispute state law providing cost-sharing between MSDE and local school districts when a student with in IEP is placed in a Type 1 private school.

<sup>111</sup> T. 891-92 ( )

*2022 nonpublic day school referrals*

86. On May 25, 2022, the Parents returned to [REDACTED] their signed authorization to release information to [REDACTED], one of the five schools identified in her May 19, 2022 letter.<sup>112</sup>
87. On June 9, 2022, [REDACTED] wrote a letter to the Parents to acknowledge receipt of the one signed authorization (for [REDACTED]), and stated that the CCPS sent a referral to [REDACTED] for the Student. [REDACTED] also stated in this letter that the CCPS “will be sending referrals to the other schools listed by 6/13/22. It is [the CCPS’s] intent to secure a location for [the Student’s] private, separate day school.”<sup>113</sup>
88. In response to [REDACTED] June 2, 2022 letter, the Parents’ educational consultant [REDACTED] emailed [REDACTED], questioning why she would send referrals to the four other schools without the Parents’ consent. [REDACTED] further stated that the Parents did not consent to release information to [REDACTED], [REDACTED], and [REDACTED], which the Parents did not consider appropriate for the Student. Further, [REDACTED] stated that there were reports in the Student’s school file that the Parents did not want to be shared with any school without their permission.<sup>114</sup>
89. On June 13, 2022, [REDACTED] emailed the Parents and [REDACTED]. She thanked them for speaking with her that morning and sharing their concerns. [REDACTED] stated that the CCPS, in consultation with its attorney, had the legal right to share the

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<sup>112</sup> CCPS Ex. 20.

<sup>113</sup> CCPS Ex. 21, p. 1.

<sup>114</sup> *Id.*, pp. 2-3.

records without signed parental consent pursuant to its obligation to find a location for the Student's educational placement. She stated that by close of business on June 13, 2022, she would send referral packets to all schools listed in her prior letters: [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] stated that she would continue to look for additional schools that met the criteria she previously outlined, and would notify the Parents if the CCPS sends a referral packet.<sup>115</sup>

90. On June 22, 2022, [REDACTED] emailed the parents and asked for an opportunity to discuss "next steps." She advised that she had no acceptances for the Student and needed to send additional referral packets to other schools.<sup>116</sup>

91. By July 7, 2022, the Student had not been accepted, for various reasons, by [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. As of that date, [REDACTED] was waiting to hear back from [REDACTED]. [REDACTED] advised the Student's father and [REDACTED] that she wanted to send packets to [REDACTED] ([REDACTED]) and [REDACTED] ([REDACTED]). The Student's father and [REDACTED] asked [REDACTED] to hold off sending those new packets until the Student had a chance to "shadow" at [REDACTED] and [REDACTED]. [REDACTED] agreed.<sup>117</sup>

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<sup>115</sup> *Id.*, p. 4.

<sup>116</sup> CCPS Ex. 22.

<sup>117</sup> CCPS Ex. 23.

92. The Parents visited [REDACTED] and liked it, but the Student was not accepted. If he had been accepted, the Parents would have sent him there.<sup>118</sup>
93. The Parents also visited [REDACTED], which uses restraint and seclusion. The Student was not accepted by [REDACTED], but because it uses restraint and seclusion the Parents would not have sent him there if he had been accepted.<sup>119</sup>
94. [REDACTED] did not accept the Student. The Parents had no communication with [REDACTED].<sup>120</sup>
95. [REDACTED] declined to accept the Student, stating that their sixth grade teacher had just quit, and they did not have room for him. [REDACTED] advised in a November 9, 2022 email to the Student's mother that they had read [REDACTED] [REDACTED] letter which the Parents sent them, and stated that they would try every intervention and strategy possible before engaging in any hands-on techniques. [REDACTED] stated that if a student engages in unsafe behavior a clinician (therapist, social worker, or psychiatrist) is called and they make a decision if seclusion is needed to keep everyone safe. [REDACTED] further stated that the law permits it to use seclusion/restraint if deemed necessary, but that it has other students who do not have restraint and seclusion on their IEPs, and it has not had problems with needing to use those methods, but that it could not guaranty they would never be used, as it would depend on the behaviors that were occurring. [REDACTED] did not say in their November 9, 2022 email that they could not meet the Student's needs.<sup>121</sup>

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<sup>118</sup> T. 1081 ([REDACTED]).

<sup>119</sup> T. 1083 ([REDACTED]).

<sup>120</sup> T. 1084 ([REDACTED]).

<sup>121</sup> CCPS Ex. 28, p. 1,

96. The Student was not accepted at [REDACTED].<sup>122</sup>
97. [REDACTED] did not send [REDACTED] February 26, 2022 letter regarding restraint and seclusion to the referred schools because the Student’s IEP did not include a provision for restraint or seclusion, and she believed none of the schools would use restraint and seclusion unless it was absolutely necessary.<sup>123</sup>
98. After none of the five schools accepted the Student, [REDACTED] sent referrals to [REDACTED], [REDACTED] ([REDACTED]), and [REDACTED].<sup>124</sup>
99. The Parents started the admission process with [REDACTED], but decided it was too far from their home. The CCPS felt other placements should be prioritized over [REDACTED]. [REDACTED] agreed with the Parents not to pursue [REDACTED].<sup>125</sup>
100. [REDACTED] advised [REDACTED] in writing that it had one spot available for which the Student may be appropriate, and that its administration would review his referral. [REDACTED] offered dates for the Parents and Student to visit. In a September 2, 2022 email, the Student’s mother asked for a commitment that “under **NO CIRCUMSTANCES**” will anyone at [REDACTED] ever use restraint and seclusion.<sup>126</sup>
101. [REDACTED] of [REDACTED] responded to [REDACTED] by email on September 7, 2022 as follows:

As a school, our behavior philosophy is one that focuses on proactive strategies, de-escalation techniques, rapport building, and providing dense reinforcement to shape behaviors. Seclusion and/or restraint is only used if there is an imminent safety risk to the students and staff.

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<sup>122</sup> T. 1084-85 ([REDACTED]).

<sup>123</sup> T. 796-97 ([REDACTED]).

<sup>124</sup> T. 801 ([REDACTED]).

<sup>125</sup> T. 802 ([REDACTED]).

<sup>126</sup> CCPS Ex. 24, p. 13, all capitals and bolding in original.



If we needed to use seclusion and/or restraint, we would call an IEP meeting to proactively problem solve and debrief the incident to determine what could be done differently to minimize the use of such interventions in the future. We have a team of highly trained behavior specialists and Mental Health providers who are intimately involved with each student and their programs. I mention all this to say that there is no guarantee that a situation might not arise that would require us to use a more restrictive intervention to maintain safety, but as noted above it would only be implemented as a last resort. We would build a relationship with [the Student] and reinforce the positive, pro-social learning behaviors that he demonstrates and intervene with behavior interventions as needed. I appreciate your transparency with us and I hope you appreciate mine in return. Please let me know if you'd like to move forward with [the Student's] intake next week.<sup>127</sup>

102. Upon receipt of [REDACTED]'s email, the Parents canceled their scheduled September 16, 2022 visit to [REDACTED].<sup>128</sup>  
[REDACTED]-2022

103. The Parents and Student toured [REDACTED]. On July 13, 2022, the Student was accepted by [REDACTED], starting July 25, 2022. [REDACTED] stated the Student's April 27, 2022 IEP would be implemented upon enrollment.<sup>129</sup>

104. After visiting [REDACTED] with the Student, the Parents rejected [REDACTED]. They felt it had a musty basement, sticky floors, and two seclusion rooms. In a September 2, 2022 letter to [REDACTED], they asked [REDACTED] to confirm that under no circumstances would it use restraint or seclusion with the Student. [REDACTED] replied in a September 5, 2022 email that because restraint and seclusion were not included on the Student's IEP, if those methods were employed as a last resort in situations of continuous acts of physical aggression, self-injurious behavior, and/or high magnitude disruption, [REDACTED] would contact the CCPS and the Parents to request an IEP within ten days to discuss

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<sup>127</sup> CCPS Ex. 24, p. 12.

<sup>128</sup> CCPS Ex. 24, p. 12, 15.

<sup>129</sup> CCPS Ex. 24, p. 20-21.

the event, potential harmful effects, and possible amendment of the IEP. [REDACTED] moved to a new location on [REDACTED] in January 2024.<sup>130</sup>

105. [REDACTED] has a psychiatrist available to observe students and make clinical decisions. It has more licensed emotional/behavioral staff than the [REDACTED] program. The [REDACTED] mental health staff has a smaller caseload than [REDACTED]. [REDACTED] is able to provide individualized instruction.<sup>131</sup>

*Unilateral parental placement at [REDACTED]*

106. The Parents applied for the Student's admission to [REDACTED] in [REDACTED], Maryland. [REDACTED] admitted the Student in August 2022. The Parents paid a deposit to [REDACTED]. On August 9, 2022, the Student's father emailed [REDACTED] March 4, 2022 evaluation report to [REDACTED], [REDACTED] head of school. As of August 9, 2022, the Parents had not shared [REDACTED] March 4, 2022 report with the CCPS, [REDACTED], [REDACTED], or [REDACTED].<sup>132</sup>

107. [REDACTED] offered the Student a place in its not-for-credit tutor/mentor (TM) program to start, working up his stamina to begin taking credit courses likely in a few months' time. [REDACTED] told the Parents she was willing to brainstorm to find a way to allow a slower transition for the Student, "without losing payment by the school system," so [REDACTED] can get to know him better and has time to prove to himself that he can be successful at the 'right fit' school."<sup>133</sup>

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<sup>130</sup> T. 1095 ([REDACTED]); CCPS Ex. 27, pp. 3-4; T. 711 ([REDACTED]).

<sup>131</sup> T. 912 ([REDACTED]).

<sup>132</sup> T. 1167 ([REDACTED]); CCPS Ex. 32.

<sup>133</sup> CCPS Ex. 32.

108. On September 15, 2022, the Parents' attorney notified the CCPS that the Parents had unilaterally placed the Student at [REDACTED].<sup>134</sup> The CCPS's attorney wrote to the Parents' attorney on September 27, 2022, stating that the CCPS had secured a location for the agreed-upon April 27, 2022 IEP because, on July 13, 2022, the Student was accepted at [REDACTED]. The CCPS letter noted that [REDACTED] had not made an admission decision because the Parents cancelled the planned meeting. In the letter, the CCPS further stated that it disputed the Parents' contention that the proposed Type 1 nonpublic placement could not meet the Student's needs because the programs would not commit to never using restraint or seclusion if the situation warranted such measures. The letter stated that the CCPS continued to believe that the April 27, 2022 IEP and placement determination offered the Student a FAPE in the LRE. The letter further stated:

With respect to [REDACTED], the district does not believe that an educational program that is not a state approved Type 1 program, that lacks related service providers, that does not offer direct counseling services, and that only provides direct instruction in a 1:1 setting, is an appropriate educational program capable of meeting [the Student's] mutually agreed upon IEP goals and objectives in his least restrictive setting.

For the above reasons, the school district denies the parents' request for funding and reimbursement for transportation and any other school-related expenses associated with their planned placement of [the Student] at [REDACTED] in [REDACTED].<sup>135</sup>

109. The Student started attending [REDACTED] on October 6, 2022. His entry was intentionally slow. He was enrolled in a combination of different tutor mentoring sessions which included social studies, "humanities and creative," history, fine arts,

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<sup>134</sup> This September 15, 2022 letter was not included in the record.

<sup>135</sup> CCPS Ex. 33.

humanities, topics in life science, topics in civics and economics, and middle school math intro and placement. These were all non-credit tutor mentor sessions. Starting the week of October 24, 2022, he attended campus two times a week. One day of the week he had one tutor mentoring session lasting fifty minutes. The other day of the week he had two, fifty minute sessions. This schedule was consistent for ten weeks.<sup>136</sup>

110. Between October 6, 2022 and July 27, 2023, while in sixth grade, the Student attended [REDACTED] on all days when he had scheduled courses, except for two days when he was absent and several days when his course was cancelled for inclement weather or other reasons.<sup>137</sup>

111. The Student was enrolled in his first credit-bearing course, United States (U.S.) history, on March 2, 202. As reflected in a [REDACTED] attendance document, in his 2022-2023 school year, during the period March 6, 2023 through March 31, 2023, he attended campus five days a week, where each day he attended one, fifty minute course each day. This schedule was consistent for four weeks.<sup>138</sup>

112. Following spring break, starting on April 10, 2023, the Student increased the number of credit-bearing courses to three courses: life science, early U.S. history, and art studio. By May 25, 2023, he was enrolled in four credit-bearing courses, with the addition of pre-algebra. From April 10, 2023 to June 2, 2023, he attended campus five days a week. Three days a week he attended two different courses. Two days a week he completed back-to-back sessions of the same course content. This initially started

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<sup>136</sup> CCPS Ex. 36, p. 5; P. 36..

<sup>137</sup> P. 51.

<sup>138</sup> *Id.*

with life sciences being scheduled with two adjacent sessions and then similarly art studio was also scheduled for two adjacent sessions. This schedule was consistent for eight weeks.<sup>139</sup>

113. Between June 5, 2023 and June 16, 2023, the Student attended campus two days a week and attended two different courses. This schedule was consistent for two weeks. During the week of June 19, 2023 to June 23, 2023, he attended campus three times a week and attended two different courses each day. During the week of June 26, 2023, he attended campus five days a week, three days he attended two different courses, and two days he attended back-to-back sessions of the same course (studio art). The following week (July 3, 2023 to July 7, 2023), he attended campus four times a week. Two of the days he attended two different courses, and two days he attended back-to-back sessions of the same course (studio art). During the week of July 10, 2023, he attended campus four days a week and took two courses each day. No services were provided the week of July 17, 2023 to July 21, 2023. During the week of July 24, 2023, he attended campus two days a week and took two courses each day.<sup>140</sup>

114. [REDACTED] is a school for students in grades six through twelve. It is not accredited by the MSDE. It is accredited by [REDACTED], a private accreditation entity. The class size at [REDACTED] is always one teacher to one student.<sup>141</sup> Some Fusion teachers are certified. The majority of [REDACTED] students are neurodiverse, with [REDACTED], [REDACTED], [REDACTED], [REDACTED], anxiety, depression, or bipolar disorder.<sup>142</sup>

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<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> T. 328-331 ([REDACTED]).

<sup>142</sup> *Id.*, p. 333.

115. At [REDACTED], the Student has access to a trusted adult, [REDACTED], the campus director. In the center of the campus is [REDACTED] “homework café,” where the Student can see [REDACTED]. He can also access her in her office.<sup>143</sup>
116. The Student has access to other students in the homework café, where they can socialize. [REDACTED] had a prom, and the Student attended a 5K event where he played chess with another student.<sup>144</sup>
117. During the 2022-2023 school year, the Student only spent a maximum of ten minutes in the homework café a day, before or between course sessions.<sup>145</sup>
118. [REDACTED] students are able to earn credits toward a high school diploma, and [REDACTED] has awarded high school diplomas. It has a graduation ceremony. A [REDACTED] diploma is accepted by four-year colleges.<sup>146</sup>
119. When the Student takes two classes in a given day, he attends school from either 8:30 to 10:30 a.m. or from 9:30 to 11:30 a.m.<sup>147</sup>
120. [REDACTED] has carpeted floors, floor lamps/soft lighting, and low music playing in the background in shared spaces.<sup>148</sup>
121. [REDACTED] does not have documentation that summarizes why the Student does not participate in certain classes, leaves the classroom, or says something inappropriate to a staff member.<sup>149</sup>

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<sup>143</sup> *Id.*, pp. 336-37.

<sup>144</sup> *Id.*, pp.342-43.

<sup>145</sup> T. 580 ([REDACTED]); CCPS Ex. 41, p. 1.

<sup>146</sup> T. 370-71 ([REDACTED]).

<sup>147</sup> T. 404. ([REDACTED]).

<sup>148</sup> T. 503 ([REDACTED]).

<sup>149</sup> T. 414 ([REDACTED]).

122. Some [REDACTED] students have IEPs. [REDACTED] does not currently produce quarterly IEP progress reports for any enrolled students.<sup>150</sup>
123. [REDACTED] does not have a school psychologist.<sup>151</sup>
124. [REDACTED] does not have an occupational therapist.<sup>152</sup>
125. [REDACTED] does not have a social worker.<sup>153</sup>
126. [REDACTED] does not have a BCBA.<sup>154</sup>
127. The Student has not physically attacked anyone at [REDACTED].<sup>155</sup>
128. No one at [REDACTED] has complained that they felt threatened by the Student.<sup>156</sup>
129. The Student has not eloped from the [REDACTED] campus, meaning he did not physically leave the building without permission.<sup>157</sup>
130. For the 2022-2023 school year and the first semester of the 2023-2024 school year combined, the Student attempted seventy-five credits and earned twenty-five credits.<sup>158</sup>
131. In September 2023, the Student took two, fifty-minute courses a day per week. The courses were physical science, medieval history, English, algebra 1, and language arts.<sup>159</sup>

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<sup>150</sup> T. 415; 438 ([REDACTED]).

<sup>151</sup> T. 408 ([REDACTED]).

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*, p. 409 ([REDACTED]).

<sup>155</sup> *Id.*, p. 460,

<sup>156</sup> *Id.*

<sup>157</sup> T. 497.

<sup>158</sup> P. 44; T. 488-90.

<sup>159</sup> P. Ex. 39, p. 1.

132. In October 2023, the Student took two courses, three days a week for two weeks, and two courses, four days a week for one week that month.<sup>160</sup>
133. In November 2023, the Student generally took two courses a day for five days, excluding holidays.<sup>161</sup>
134. In December 2023, the Student generally took two classes a day per week, excluding holidays.<sup>162</sup>
135. In January 2024, the Student took two classes a day about half the month, and one class a day the other half, approximately.<sup>163</sup>
136. In February 2024, the Student took one class a day during fourteen days of attendance, and two classes a day for his remaining three days of attendance.<sup>164</sup>
137. At [REDACTED], the Student is allowed to dictate responses, receive advance notice of assessments, have access to a computer for extended writing tasks, be checked for understanding and assisted with organization, have opportunities for enrichment, have assignments altered or modified, use a project-based learning technique to demonstrate understanding of a topic, be redirected back to task, have access to calming strategies, have close adult supervision, have preferential seating, have advance notice of transitions, home-school communication, staff training, and have frequent breaks.<sup>165</sup>
138. At [REDACTED], the student does not have access to crisis counseling.<sup>166</sup>

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<sup>160</sup> *Id.* p. 2.

<sup>161</sup> *Id.* p. 3.

<sup>162</sup> *Id.* p. 4.

<sup>163</sup> *Id.* p. 5.

<sup>164</sup> *Id.* p. 6.

<sup>165</sup> T. 516-17.

<sup>166</sup> T. 517.



139. Of the Student's teachers at ██████ for the 2022-2023 school year, only his history teacher was certified in Maryland in special education.<sup>167</sup>
140. The Student discusses behavior issues with ██████. She is not certified in school psychology or social work.<sup>168</sup>
141. ██████ does not collect quantitative data on whether and to what extent the Student is making progress toward the social emotional and behavior goals and objectives in his IEP, and did not collect baseline data concerning his ability to meet them.<sup>169</sup>
142. ██████ does not keep quantitative data on the Student's behavior issues because ██████ follows a "love, motivate, teach philosophy," and does not believe that "data logs" work in that context.<sup>170</sup>
143. On the following days, the Student engaged in challenging behavior at ██████, to which his teachers in the particular courses responded as indicated:<sup>171</sup>
- 1/3/23 TM (Tutor Mentor) Fine Arts: the Student got very upset when the watercolor lesson was introduced, and put his head on the table. After twenty minutes the teacher began creating paper cranes and the Student lifted his head to watch.
  - 2/2/23 TM Fine Arts: the Student was set on jewelry-making and metalworking, becoming frustrated at teacher suggestions of other projects. Teacher changed activity; Student moved past frustration quickly.

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<sup>167</sup> T. 563.

<sup>168</sup> T. 565-66.

<sup>169</sup> T. 555-58; 568-69.

<sup>170</sup> T. 629.

<sup>171</sup> CCPS Ex. 43; CCPS Ex. 34; CCPS Ex. 35; CCPS Ex. 47; P. Ex. 37; P. Ex. 38; P. Ex. 40; P. Ex. 46; P. Ex. 48.

- 5/12/23 Credit/Studio Art: With fifteen minutes left in class, the Student wanted to go for a walk, stormed out when teacher suggested starting a sketch, and held the door so the teacher could not exit the classroom. Later he seemed to feel better, and teacher agreed to add more breaks to the schedule.
- 10/11/22 TM Social Studies: Student got pretty frustrated when assignment work started. Teacher provided alternatives but Student needed time to work past his frustrations; teacher left assignment open for him to try before next session.
- 10/25/22: TM Social Studies: Student got frustrated, but after a walk rewrote assignment based on feedback and discussions.
- 11/10/22 TM Social Studies: Student did not want to work on his paper. Teacher elicited that Student was tired from not feeling well last night. Teacher discussed value in explaining what's happening when he is upset, then they read a book.
- 11/29/22 TM Humanities and Creative: Student became frustrated with misplacement of a [REDACTED] in the [REDACTED]. Student allowed to leave the classroom, and upon return agreed to put the [REDACTED] away and work on other things.
- 12/1/22 TM Social Studies: Student became frustrated; but was able to explain what was bothering him with support.
- 12/13/22 TM History: Student "not into it." Student was able to explain he wanted to do another activity, and was doing well in explaining reason for frustration.
- 1/3/23 TM History: Student had difficulty returning from break. Teacher reminded him this was class time and made time for fun at end of class.

- 1/10/23: TM Fine Arts: Student hit a few hurdles during carving process. Student asked for help and was a quick problem solver.
- 1/26/23 TM Fine Arts: Student focused on making coins instead of watercolor assignment. After discussion with teacher, Student started watercolor at end of the session.
- 1/31/23 TM History: Student got frustrated. After discussion with teacher, he began watercolor assignment.
- 2/2/23 TM History: Student had difficulty but shook it off after a walk and some time to play on the [REDACTED].
- 2/17/23 TM Humanities: Student was upset during his ride to class, and did not want to talk about it.
- 2/21/23 TM Fine Arts: Student frustrated and said project was taking too long. Teacher discussed that art projects can take days or weeks to complete.
- 3/7/23 U.S. History 1: Student was fidgety. Got through class with teacher promise of showing pictures from a trip.
- 3/14/23 U.S. History 1: Student a little extra fidgety in more traditional class, and did not finish the reading Teacher advised he should complete before quiz.
- 3/23/23 US History 1: Student feeling low energy. Teacher offered quick walk.
- 3/30/23 US History 1: Student did not care for lesson but got through it. Teacher let him work on a short story he wanted to show teacher later.

- 5/18/23 Pre-Algebra: Student and teacher spent a lot of time getting him refocused on preparing for upcoming test. He was unable to finish work but can finish next class.
- 5/19/23: Studio Art: Student had a lot of energy to begin session. Teacher allowed breaks in homework café.
- 5/25/23 US History 1: Slow start, Student worked through feelings from being corrected; was able to get through content.
- 5/25/23 Pre-Algebra: Student focused on swordplay; was able to focus on test and wait for swords until after test
- 6/1/23 Pre-Algebra: Student distracted by pearls, was able to adjust to making jewelry after he finished tasks for the day.
- 6/2/23 Studio Art: Student got upset, did not want to do pastels, and was more interested in creating money. Teacher and Student compromised, and he was allowed to create money design and then work on watercolors.
- 6/8/23 Pre-Algebra: Student and teacher had conversation about not screaming in social spaces.
- 6/15/23 Pre-Algebra: Student only able to get through first page of test review. Next class he will have entire session to take unit test.
- 6/20/23: Student interested on another task, was only able to get through the first page of the test before class ended. Teacher agreed he could pick up next class.
- 6/28/23 Studio Art: Student came in with much energy. Student allowed to go outside and engage in LARPing (live action role playing).

- 6/28/23 Studio Art: Student had difficulty with patience and taking his time on project. Teacher allowed him to regularly get up and move around the room.
- 6/29/23 Pre-Algebra: Student had a ton of energy and burned it off [REDACTED].
- 6/30/23 Studio Art: Student was not into the lesson and was interested in paper airplanes and currency. Teacher switched lesson and created stamps and play money.
- 7/7/23 Studio Art: Student preoccupied with making fireworks instead of painting them. Teacher response not known.
- 7/25/23 Studio Art: Student frustrated with lesson, got up and left classroom, knocking things over. Teacher gave him space to cool down; Student talked with [REDACTED] and another teacher.
- 7/27/23 Pre-Algebra: Student overwhelmed and distracted on last day in pre-algebra. Teacher provided break time, he started test, did not finish, and wanted to complete at home.
- 7/27/23 Studio Art: Student impatient with project, but was able to create cool-looking skeleton man.

144. [REDACTED] staff responded to the above-described behaviors as follows: Change location (leave area where Student was working), 7 times; Change activity (change the task or activity being completed), 13 times; Alternative (same activity with different method for completing), 4 times; Wait (removal of demands for time period), 5 times; Discussions (talking about situation), 12 times; “First Then” (first teacher

task, then Student task), 7 times; and Finish later (finish task as homework/next class), 6 times.<sup>172</sup>

145. For the 2022-2023 school year (first semester) and the 2023-2024 school year (fall and winter) the Student's grades were all either A or A+.<sup>173</sup>

*Student's reenrollment at [REDACTED] for 2023-2024 school year*

146. On July 8, 2023, the Student's mother electronically signed an Enrollment Contract (Contract) for the Student at [REDACTED] for the 2023-2024 school enrollment year, with an estimated start date of August 21, 2023. The contract required payment of a [REDACTED] registration fee, which was due on July 7, 2023, and which was paid on a date not contained in the record.

147. The Student's mother also executed, on July 2, 2023, a [REDACTED] Enrollment Contract Supplement (Supplement) The Supplement required payment of a [REDACTED] Installment Convenience Fee, in consideration of [REDACTED] permitting the tuition to be deferred (borrowed) and paid in installments. The Supplement provided that the total tuition, including the amount deferred (borrowed) by the Parents for the 2023-2024 school year would be [REDACTED], allocated as follows: [REDACTED] for the fall semester; [REDACTED] for the winter semester, and [REDACTED] for the spring semester. Pursuant to the Supplement, the Parents agreed to pay installment payments as follows: [REDACTED] due July 17, 2023, and [REDACTED] due September 1, 2023; and

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<sup>172</sup> CCPS Ex. 43, p. 1.

<sup>173</sup> P. Ex. 44, 45, 47.

██████████ due November 1, 2023, and ██████████ due December 1, 2023.<sup>174</sup> The total tuition cost for the 2023-2024 school year would be ██████████.<sup>175</sup>

148. The Contract for the 2023-2024 school year provided that once paid, “Deposits, convenience fees and registration fees are non-refundable.”<sup>176</sup>

149. A ██████████ planning document for the 2024-2025 school year for the Student provides that his math course would be taken remotely from home, which ██████████ attributed to the Student’s experience that math is stressful.<sup>177</sup>

*Development of the August 22, 2023 IEP*

150. On July 14, 2023, the CCPS provided a written notice and invitation to the Parents to participate as partners at an IEP team meeting to discuss the Student’s educational program on August 14, 2023.<sup>178</sup> The meeting’s purpose was to review information to determine the need for additional data, and develop the Student’s IEP.

151. On August 4, 2023, the CCPS asked the Parents to sign a Consent for Release of Information (ROI) in order to aid in development of the Student’s IEP for the 2023-2024 school year, authorizing ██████████ to provide records regarding the Student’s attendance, discipline, assessments, related service records, report cards, work samples, informal assessments, and teacher checklists. The Student’s mother signed the ROI, and the CCPS obtained the following documents from ██████████: teacher

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<sup>174</sup> CCPS Ex. 39, pp. 1-4, 8-16. The record does not disclose when (or if) the Parents paid the installment payments for the 2023-2024 school year, but does show that the Student attended ██████████ that school year.

<sup>175</sup> CCPS Ex. 39, pp. 1-2,

<sup>176</sup> *Id.*, p. 8.

<sup>177</sup> CCPS Ex. 49; T. 402-03.

<sup>178</sup> CCPS Ex. 40.

session notes from the Student's tutor mentor and credit-bearing courses, attendance report, and report card/transcript.<sup>179</sup>

152. On August 4, 2023, the CCPS also asked the Parents to sign an ROI permitting the CCPS staff to observe the Student at [REDACTED]. The Student's mother signed the ROI. The CCPS did not conduct an observation because the Student had no classes in August.<sup>180</sup>

153. On August 10, 2023, in preparation for the upcoming August 14, 2023 IEP team meeting, [REDACTED], the CCPS's nonpublic placements coordinator, spoke with [REDACTED], [REDACTED] campus director. Among other things, [REDACTED] stated that the Student's fifty-minute classes typically began with the Student talking about a topic he wanted to talk about, then work for fifteen-to-twenty minutes of content, then a break was provided, and then another fifteen-to-twenty minutes of content. [REDACTED] [REDACTED] also stated that though the Student had not participated in the homework café during the 2022-2023 school year, she recommended that he participate in the café during the 2023-2024 school year with one-to-one support from an educator during that time. [REDACTED] stated that the Student was receiving very personalized instruction, that he was on grade level across academics, and that he had more struggles (work refusal) in math which appeared to her to result from the more concrete nature of math, and the Student not wanting to be wrong.<sup>181</sup>

154. The IEP meeting began on August 14, 2023, and continued on August 22, 2023. The participants included, without limitation, the Parents; their attorney; their

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<sup>179</sup> P. Ex. 41; CCPS Ex. 44, p. 6.

<sup>180</sup> P. Ex. 42; T. 864; 941.

<sup>181</sup> CCPS Ex. 1.



educational consultant, [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; the CCPS occupational therapist, [REDACTED]; the CCPS school psychologist, [REDACTED]; and the CCPS’s attorney.<sup>182</sup>

155. The IEP team accepted the Parents’ proposal to remove the BIP, in that the behaviors identified in the November 11, 2021 FBA of physical contact, threats, and elopement were not currently being presented and a BIP was unwarranted to address those behaviors. The IEP stated that the teaching strategies previously listed in the previous BIP “need to be targeted within the IEP to ensure that [the Student] is developing coping skills, and the IEP is tracking his progress on his use of his coping skills.”<sup>183</sup>

156. The IEP changed the Student’s goals. New Goal No. 1 is: “Given visual or verbal cues, [the Student] will identify when he is feeling frustrated or overwhelmed and either independently or with adult prompting state what he needs (examples: break, different activity, different location) on at least 4 or 5 occasions. This goal was accompanied by four objective. Objective 1 is “Given visual or verbal cues, [the Student] will state when he is frustrated or overwhelmed in 4 out of 5 opportunities. Objective 2 is “Given visual or verbal cues, [the Student] will choose a coping strategy or sensory tool to manage feelings of frustration on 4 out of 5 opportunities. Objective 3 is “Given visual or verbal cues, after an incident/episode of frustration, [the Student] will talk with a trusted adult to reflect and state the possible causes to his frustration (identify trigger) in 4 out of 5 opportunities.”<sup>184</sup>

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<sup>182</sup> CCPS Ex. 44, pp. 6-7.

<sup>183</sup> CCPS Ex.44, p. 3.

<sup>184</sup> CCPS Ex. 44, p. 37.

157. New Goal No. 2 is: “Given strategies to initiate and sustain attention, [the Student] will complete a 3 step nonpreferred or unfamiliar task with no more than minimal verbal cues/assistance as evidenced by completing the task in 4 out of 5 occasions. This goal was accompanied by three objectives. Objective 1 is “Given strategies to initiate and sustain attention, [the Student] will articulate what to do first, next, and last in order to complete a nonpreferred or unfamiliar task with no more than minimal verbal cues in 4 out of 5 opportunities.” Objective 2 is “Given strategies to initiate and sustain attention, [the Student] identified strategies, people, and classroom tools needed to help him complete all 3 steps of the nonpreferred or unfamiliar task, in the proper sequence, with no more than minimal verbal cues in 4 out of 5 opportunities. Objective 3 is “Given strategies to initiate and sustain attention, the Student will perform a 3-part nonpreferred or unfamiliar task with successful outcome with no more than minimal verbal cues in 4 out 5 opportunities.”<sup>185</sup>

158. The IEP includes a monthly psychological consult with staff, and periodic occupational therapy consult with staff.<sup>186</sup>

159. The following services were included in the IEP:

- Four, thirty-minute sessions of direct counseling (*i.e.* psychological) services to the Student;
- Two, twenty-minute per week sessions of direct occupational therapy services to the Student;

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<sup>185</sup> CCPS Ex. 44, p. 38.

<sup>186</sup> CCPS Ex. 44, p. 34.

- Seventeen hours and twenty minutes per week of classroom instruction, outside of general education; and
- specialized transportation.<sup>187</sup>

160. The Parents disagreed with the provision of psychological consult, psychological services, occupational therapy consult, and occupational therapy services.<sup>188</sup>

161. The CCPS recommended seventeen hours and twenty minutes of classroom instruction outside general education, with the aim of eventually doubling the approximately ten hours per week of instruction he was receiving at [REDACTED]. The Parents disagreed with this decision. The CCPS team members did not recommend a traditional thirty hours a week because they felt it was not reasonable under the IEP timeframe.<sup>189</sup>

162. The IEP team again determined that the LRE was a private, separate day school because the Student requires a small, structured learning environment with a low student to staff ratio which cannot be provided in the general education setting, requires specialized instruction throughout the entire day with supports in initiating and sustaining attention, requires flexibility, requires a psychologist to consult with adults in his educational environment to support his social emotional needs in the classroom and school environment, requires an OT to consult with adults in the school environment, requires counseling services to address his social emotional/

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<sup>187</sup> CCPS Ex. 44, pp. 39-40. No issue regarding transportation was raised in this litigation.

<sup>188</sup> CCPS Ex. 44, p. 3.

<sup>189</sup> CCPS Ex. 44, p. 4.

self-management goals, and requires occupational therapy services to develop sensory coping skills.<sup>190</sup>

163. At the August 2023 meeting, the Parents proposed that the Student attend [REDACTED].<sup>191</sup>

*2023 nonpublic school referrals*

164. The CCPS team members stated that the placements that would be considered were those accredited through the MSDE at Type 1 special education schools that could implement the services and supports outlined in his IEP. [REDACTED] stated that CCPS would refer the Student to [REDACTED], [REDACTED], and [REDACTED] (P [REDACTED]). [REDACTED] had not been previously considered, but the CCPS considered it as the Student was now in middle school. [REDACTED] was also considered in order to incorporate the Parents' advocacy for a one-to-one educational program, and "to respond to parental input regarding the use of restraint and seclusion as this program endorses itself as 'restraint and seclusion free.'"<sup>192</sup>

165. [REDACTED] is a Type 1 special education school that uses a one-to-one format, uses noncertified teachers but has a certified special education teacher, and its classes are taught in community locations like a library, not necessarily in a school building. [REDACTED] provides opportunities for small group counseling or social-emotional opportunities.<sup>193</sup>

166. [REDACTED], [REDACTED], and [REDACTED] are fully segregated schools, meaning all students have IEPs.

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<sup>190</sup> CCPS Ex. 44, p. 5.

<sup>191</sup> CCPS Ex. 44, p. 5.

<sup>192</sup> CCPS Ex. 44, p. 7.

<sup>193</sup> T. 879-80; 946-47; 962-63. [REDACTED])

167. On September 25, 2023, [REDACTED] emailed the Parents a completed copy of the August 22, 2023 IEP and PWN. [REDACTED] stated in a cover letter to the Parent, and as the PWN also stated:

Since [the Student] has not fully enrolled back into [the CCPS] from a previous indication of a parental placed unilateral placement, this IEP was not able to be finalized and is still the DRAFT format. Similarly, [the Student's] demographic information listed on the first page [of the IEP] is not up to date. [The Student] is in 7<sup>th</sup> grade, his residence school is [REDACTED], his service school would be updated to state 'unknown school.'<sup>194</sup>

168. The Parents and [REDACTED] never said they were confused in regard to the April 22, 2023 IEP's draft status.<sup>195</sup>

169. On September 25, 2023, [REDACTED] sent a letter to the Parents, stating that the CCPS sent referral letters to three schools: [REDACTED], [REDACTED], and [REDACTED]. Unlike [REDACTED] earlier, May 19, 2022 letter to the Parents (in which she advised that the CCPS would send referrals to [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], and enclosed ROI forms for each school), [REDACTED] did not enclose with her September 25, 2023 letter ROI forms for the Parents to sign for [REDACTED], or [REDACTED].<sup>196</sup> The CCPS received no response from [REDACTED], [REDACTED], or [REDACTED] following the September 2023 referrals, and the Student was neither accepted nor explicitly rejected by any of these three schools for the 2023-2024 school year.<sup>197</sup>

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<sup>194</sup> CCPS Ex. 44-1, 7.

<sup>195</sup> T. 945 ([REDACTED])

<sup>196</sup> Compare CCPS Ex. 18, pp. 1-6 ([REDACTED] May 19, 2022 letter and enclosed ROI forms) with P. 52 ([REDACTED] September 25, 2023 letter with no enclosures).

<sup>197</sup> P. Ex. 52; T. 878-79 ([REDACTED])

170. [REDACTED] did not inform the Parents whether or not the Student had been accepted by [REDACTED], [REDACTED], or [REDACTED].<sup>198</sup>
171. [REDACTED] did not send follow-up letters to the three schools to which she sent the September 25, 2023 letters.<sup>199</sup>
172. The Parents never asked [REDACTED] how things were going with [REDACTED], [REDACTED], or [REDACTED].<sup>200</sup>
173. Following the August 2023 IEP meetings, the CCPS did not send referrals to any nonpublic schools other than [REDACTED], [REDACTED], or [REDACTED], none of which responded or accepted the Student.<sup>201</sup>
174. As of the August 22, 2023 IEP meeting, the Parents indicated they were not willing to consider [REDACTED] or [REDACTED] schools unless those schools changed their restraint and seclusion policy.<sup>202</sup>
175. The Parents did not consider [REDACTED] as an appropriate placement because they considered [REDACTED] as the Student's only appropriate placement.<sup>203</sup>
176. [REDACTED] is the only school that accepted the Student for the 2023-2024 school year.<sup>204</sup>

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<sup>198</sup> T. 1127 ([REDACTED]).

<sup>199</sup> T. 878-79 ([REDACTED]).

<sup>200</sup> T. 945-46 ([REDACTED]).

<sup>201</sup> T. 878-79 ([REDACTED]).

<sup>202</sup> T. 936-37 ([REDACTED]).

<sup>203</sup> T. 935-36 ([REDACTED]); T. 1223-24 ([REDACTED]).

<sup>204</sup> T. 879 ([REDACTED]).

## DISCUSSION<sup>205</sup>

### *Burden of Proof*

The standard of proof in this case is a preponderance of the evidence. COMAR 28.02.01.21K(1). To prove an assertion or a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered.<sup>206</sup> The burden of proof rests on the party seeking relief.<sup>207</sup> The Parents are seeking relief and bear the burden of proof to establish that the CCPS substantively and/or procedurally denied the Student a FAPE for the 2022-2023 and 2023-2024 school years, that [REDACTED] is an appropriate placement, and that equitable considerations favor reimbursement of [REDACTED]’s costs. For the following reasons, I find that the Parents have not met their burden of proof.

### *Legal Framework*

#### *FAPE*

The identification, evaluation, and placement of students in special education are governed by the IDEA.<sup>208</sup> 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.”<sup>209</sup> To be eligible for special education and related services under the IDEA, a student must meet the

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<sup>205</sup> My findings, analysis, and legal conclusions are based upon consideration of all of the parties’ arguments and the credible evidence of record. All testimonial and documentary evidence was considered and given the weight it was due, regardless of whether it has been recited, cited, referenced, or expressly set forth in the Decision. *See, e.g., Mid-Atl. Power Supply Ass’n v. Md. Pub. Serv. Comm’n*, 143 Md. App. 419, 442 (2002) (emphasizing that “[t]he Commission was free to accept or reject any witness’s testimony” and “the mere failure of the Commission to mention a witness’s testimony” does not mean that the Commission “did not consider that witness’s testimony”).

<sup>206</sup> *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

<sup>207</sup> *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005).

<sup>208</sup> 20 U.S.C.A. §§ 1400-1482; 34 C.F.R. pt. 300; Educ. §§ 8-401 through 8-417; COMAR 13A.05.01.

<sup>209</sup> 20 U.S.C.A. § 1400(d)(1)(A); *see also* Educ. § 8-403.

definition of a “child with a disability” as set forth in section 1401(3)(a) of the United States Code and the applicable federal regulations. The statute provides as follows:

(A) In General

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

- (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
- (ii) who, by reason thereof, needs special education and related services.<sup>[210]</sup>

The Supreme Court addressed the FAPE requirement in *Board of Education of the Hendrick Hudson Central School District v. Rowley*,<sup>211</sup> holding that FAPE is satisfied if a school district provides “specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.”<sup>212</sup> The Court identified a two-part inquiry to analyze whether a local education agency satisfied its obligation to provide FAPE: first, whether there has been compliance with the procedures set forth in the IDEA; and second, whether the IEP, as developed through the required procedures, is reasonably calculated to enable the child to receive some educational benefit.<sup>213</sup> The *Rowley* Court found that, because special education and related services must meet the state’s educational standards, the scope of the benefit required by the IDEA is an IEP reasonably calculated to permit the student to meet the state’s educational standards; that is, generally, to pass from grade to grade, on grade level.<sup>214</sup>

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<sup>210</sup> 20 U.S.C.A. § 1401(3)(A); *see also* Educ. § 8-401(a)(2); 34 C.F.R. § 300.8; COMAR 13A.05.01.03B(78).

<sup>211</sup> 458 U.S. 176 (1982).

<sup>212</sup> *Rowley*, 458 U.S. at 201 (footnote omitted).

<sup>213</sup> *Id.* at 206-07.

<sup>214</sup> *Rowley*, 458 U.S. at 204; 20 U.S.C. § 1401(9).



In 2017, the Supreme Court revisited the meaning of a FAPE in *Endrew F. v. Douglas Count School District*,<sup>215</sup> and held that for an educational agency to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a student to make progress appropriate in light of the student’s circumstances. Consideration of the student’s particular circumstances is key to this analysis; the Court emphasized in *Endrew F.* that the “adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.”<sup>216</sup>

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

[w]hile *Rowley* declined to articulate an overarching standard to evaluate the adequacy of the education provided under the Act, the decision and the statutory language point to a general approach: to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.<sup>[217]</sup>

The “reasonably calculated” qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. The IDEA contemplates that this fact-intensive exercise will involve consideration not only of the expertise of school officials but also the input of the child’s parents or guardians. Any review of an IEP must include the recognition that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.<sup>218</sup> The Supreme Court stated:

[t]he IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement. This reflects the broad purpose of the IDEA, an ‘ambitious’ piece of legislation enacted ‘in response to Congress’ perception that a majority of handicapped children in the United States ‘were either totally excluded from

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<sup>215</sup> 137 S. Ct. 988 (2017).

<sup>216</sup> *Endrew F.*, 137 S. Ct. at 1001.

<sup>217</sup> *Endrew F.*, 137 S. Ct. at 998-99.

<sup>218</sup> *Id.*, at 999

schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to ‘drop out.’” A substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act.<sup>219</sup>

A focus on the particular student is at the core of the IDEA, and so it is unsurprising that the Court concluded that the progress contemplated by the IEP must be appropriate in light of the particular student’s circumstances. “The instruction offered must be ‘*special*ly designed’ to meet a child’s ‘*unique* needs’ through an ‘*i*ndividualized education program.”<sup>220</sup> The Court expressly rejected the Tenth Circuit’s interpretation of what constitutes *some* benefit:

[w]hen all is said and done, a student offered an educational program providing “merely more than *de minimis*” progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to ‘sitting idly . . . awaiting the time when they were old enough to ‘drop out.’” The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.<sup>221</sup>

Directly adopting language from *Rowley*, and expressly stating that it was not making any “attempt to elaborate on what ‘appropriate’ progress will look like from case to case,” the *Endrew F.* Court instructs that the “absence of a bright-line rule . . . should not be mistaken for ‘an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.’”<sup>222</sup> At the same time, the *Endrew F.* Court observed that, in determining the extent to which deference should be accorded to educational programming decisions made by public school authorities, “[a] reviewing court may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions

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<sup>219</sup> *Id.*, at 999 (quoting *Rowley*, 458 U.S. at 179).

<sup>220</sup> *Id.*, at 999 (citations omitted; emphasis in original).

<sup>221</sup> *Id.*, at 1001 (citation omitted).

<sup>222</sup> *Id.* (quoting *Rowley*, 458 U.S. at 206).

that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.”<sup>223</sup>

Ultimately, a disabled student’s “educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.”<sup>224</sup> Moreover, the IEP must be reasonably calculated to allow him to advance from grade to grade, if that is a “reasonable prospect.”<sup>225</sup>

Regarding procedural violations, the IDEA<sup>226</sup> states:

(ii) Procedural issues

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

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

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

(III) caused a deprivation of educational benefits.

The existence of a procedural violation does not necessarily establish the presence of a substantive one. In *MM ex rel. D.M. v. School District of Greenville County*,<sup>227</sup> the Fourth Circuit Court of Appeals explained:

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

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<sup>223</sup> *Id.* at 1002.

<sup>224</sup> *Id.* at 1000.

<sup>225</sup> *Id.*

<sup>226</sup> 20 U.S.C.A. Section 1415(f)(3)(E)(ii).

<sup>227</sup> 303 F.3d 523 (4th Cir. 2002).

free appropriate public education.”). If a disabled child received (or was offered) a FAPE in spite of a technical violation of the IDEA, the school district has fulfilled its statutory obligations.<sup>[228]</sup>

### The IEP

COMAR 13A.05.01.09 defines an IEP and outlines the required content of it to include a written description of the student’s special education needs and the special education and related services to be provided to meet those needs. The IEP must take into account:

- (i) the strengths of the child;
- (ii) the concerns of the Parents for enhancing the education of their child;
- (iii) the results of the initial evaluation or most recent evaluation of the child; and
- (iv) the academic, developmental, and functional needs of the child.<sup>229</sup>

Among other things, the IEP describes a student’s current educational performance, explains how the student’s disability affects a student’s involvement and progress in the general curriculum, sets forth annual goals and short-term objectives for improvements in that performance, describes the specifically-designed instruction and services that will assist the student in meeting those objectives, describes program modifications and supports for school personnel that will be provided for the student to advance appropriately toward attaining the annual goals, and indicates the extent to which the child will be able to participate in regular educational programs.<sup>230</sup>

IEP teams must consider the student’s evolving needs when developing their educational programs. The student’s IEP must include “[a] statement of the child’s present levels of academic achievement and functional performance, including . . . [h]ow the child’s disability affects the child’s involvement and progress in the general education curriculum (i.e., the same

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<sup>228</sup> *MM ex rel. D.M.*, 303 F.3d at 533-34; *T.B. Jr. by and through T.B., Sr. v. Prince George’s Cnty. Bd. of Educ.*, 897 F. 3d 566, 573 (4<sup>th</sup> Cir. 2018).

<sup>229</sup> 20 U.S.C.A. § 1414(d)(3)(A).

<sup>230</sup> 20 U.S.C. § 1414(d)(1)(A)(i)(I)-(V); COMAR 13A.05.01.09A.

curriculum as for non-disabled children) . . . .”<sup>231</sup> If a child’s behavior impedes his or her learning or that of others, the IEP team must consider, if appropriate, the use of positive behavioral interventions, strategies, and supports to address that behavior.<sup>232</sup> To comply with the IDEA, an IEP must, among other things, allow a disabled child to advance toward measurable annual academic and functional goals that meet the needs resulting from the child’s disability or disabilities by providing appropriate special education and related services, supplementary aids, program modifications, supports, and accommodations.<sup>233</sup>

A public agency is responsible for ensuring that the IEP is reviewed at least annually to determine whether the annual goals for the child are being achieved and to consider whether the IEP needs revision.<sup>234</sup> However, a “school district is only required to continue developing IEPs for a disabled child no longer attending its schools when a prior year’s IEP for the child is under administrative or judicial review.”<sup>235</sup>

### LRE

In addition to the IDEA’s requirement that a disabled child receive educational benefit, the child must be placed in the LRE to achieve a FAPE, meaning that, ordinarily, disabled and non-disabled students should, when feasible, be educated in the same classroom.<sup>236</sup> Indeed, mainstreaming children with disabilities with non-disabled peers is generally preferred if the disabled student can achieve educational benefit in the mainstreamed program.<sup>237</sup> At a minimum, the statute calls for school systems to place children in the “least restrictive environment”

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<sup>231</sup> 34 C.F.R. § 300.320(a)(1)(i).

<sup>232</sup> *Id.* § 300.324(a)(2)(i).

<sup>233</sup> 20 U.S.C. § 1414(d)(1)(A)(i)(II), (IV), (VI).

<sup>234</sup> 34 C.F.R. § 300.324(b)(1).

<sup>235</sup> *MM ex rel. DM*, 303 F.3d 523, 536.

<sup>236</sup> 20 U.S.C.A. § 1412(a)(5); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117.

<sup>237</sup> *DeVries v. Fairfax Cnty. Sch. Bd.*, 882 F.2d 876, 878-79 (4th Cir. 1989).

consistent with their educational needs.<sup>238</sup> Placing disabled children into regular school programs may not be appropriate for every disabled child, and removal of a child from a regular educational environment may be necessary when the nature or severity of a child’s disability is such that education in a regular classroom cannot be achieved.

Because including children with disabilities in regular school programs may not be appropriate for every child with a disability, the IDEA requires public agencies like the CCPS to offer a continuum of alternative placements that meet the needs of children with disabilities.<sup>239</sup> The continuum must include instruction in regular classes, special classes, special schools, home instruction, hospitals, and institutions, and it must make provision for supplementary services to be provided in conjunction with regular class placement.<sup>240</sup>

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.<sup>241</sup> In such a case, a FAPE might require placement of a child in a nonpublic school setting that would be fully funded by the child’s public school district.

### Notice

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

- (A) a description of the action proposed or refused by the agency;
- (B) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

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<sup>238</sup> 20 U.S.C.A. § 1412(a)(5)(A).

<sup>239</sup> 34 C.F.R. § 300.115.

<sup>240</sup> *Id.* § 300.115(b); COMAR 13A.05.01.10B(1).

<sup>241</sup> COMAR 13A.05.01.10A(2).

- (C) a statement that the parents of a child with a disability have protection under the procedural safeguards of this subchapter and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- (D) sources for parents to contact to obtain assistance in understanding the provisions of this subchapter;
- (E) a description of other options considered by the IEP Team and the reason why those options were rejected; and
- (F) a description of the factors that are relevant to the agency’s proposal or refusal.<sup>[242]</sup>

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

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

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<sup>242</sup> 20 U.S.C.A. § 1415(c)(1).

### Unilateral Placement

Parents may be entitled to retroactive reimbursement from the state for tuition and expenses for a child unilaterally placed in a private school if it is later determined that the school system failed to comply with its statutory duties and that the unilateral private placement provided an appropriate education.<sup>243</sup> The issue of reimbursement for unilateral placement was expanded in *Florence County School District Four v. Carter*,<sup>244</sup> where the Court held that placement in a private school not approved by the state is not a bar under the IDEA. Parents may recover the cost of private education only if (1) the school system failed to provide a FAPE; (2) the private education services obtained by the parent were appropriate to the child's needs; and (3) overall, equity favors reimbursement.<sup>245</sup>

Like an IEP, a parental placement is appropriate if it is “reasonably calculated to enable the child to receive educational benefits.”<sup>246</sup> Evidence of actual progress is important but not dispositive in determining the appropriateness of the placement.<sup>247</sup> The private education services need not be provided in the least restrictive environment, but the tribunal may consider the restrictive nature of a placement in determining whether the placement was appropriate.<sup>248</sup>

### Equitable Considerations

Equitable considerations are relevant in fashioning relief, and the tribunal enjoys broad discretion in fashioning such relief.<sup>249</sup> Administrative hearing officers or courts fashioning discretionary equitable relief under the IDEA must consider all relevant factors, including the

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<sup>243</sup> *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985) (emphasis in original).

<sup>244</sup> 510 U.S. 7 (1993).

<sup>245</sup> *Carter*, 510 U.S. at 12-13.

<sup>246</sup> *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009)

<sup>247</sup> *Id.* at 326-327.

<sup>248</sup> *Id.* at 369-370.

<sup>249</sup> *Burlington*, 471 U.S. 359 at 374, 369.



appropriate and reasonable level of reimbursement that should be required.<sup>250</sup> Total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable.<sup>251</sup>

### **The Parties' Positions**

#### *The Parents' Position*

The Parents argued that the CCPS failed to provide the Student with a FAPE in the 2022-2023 and 2023-2024 school years. He started school in kindergarten, continuing in the CCPS schools through most of fifth grade. He has had an IEP since first grade, identifying his disability as Other Health Impairment (██████████ and ██████████). He had a BIP from first grade until it was removed in August 2023 after he attended sixth grade at ██████████.

The Parents asserted that the Student was unsuccessful in the CCPS. After he briefly attended the ██████████ behavioral program, which used restraint and seclusion, both the CCPS and the Parents agreed in April 2022 that that he needed a private school placement to achieve an appropriate education. The Parents argued that the Student had been traumatized by the use of restraint or seclusion at the CCPS schools, resulting in self-injurious behavior such as head-banging. They further argued he would be retraumatized by simply witnessing another student restrained or put in seclusion. They were unwilling to place their child in a school that might harm him.

The April 2022 IEP team agreed to provide referrals for the Student to five private schools. None accepted him. Then CCPS sent referrals to three more schools: ██████████, ██████████, and ██████████. The CCPS and the Parents ruled out ██████████. The Parents stopped the

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<sup>250</sup> *Carter*, 510 U.S. at 16.

<sup>251</sup> *Id.*

██████████ admission process because of their concerns regarding restraint and seclusion. ██████████ accepted the Student, but the Parents rejected ██████████ because it told the Parents that restraint and seclusion might be used as a last resort.

They chose ██████████ because it does not use restraint and seclusion, and provides a highly flexible, individualized educational program consistent with the Student's needs. The Parents argued that ██████████ provides the Student an appropriate education, and that the CCPS failed to offer an appropriate nonpublic school placement in both the 2022-2023 and 2023-2024 school years. The Parents requested reimbursement by the CCPS of the cost of the Student's placement at ██████████ for both school years.

#### *The CCPS's Position*

The CCPS responded that it did offer the Student a FAPE for both school years at issue. It did not leave the Parents to fend for themselves and find a program for either year. The CCPS argued that ██████████ is not an appropriate program to address the reason the Student has an IEP. And the CCPS contended that even if it denied a FAPE to the Student for either year, the Parents' reimbursement claims should be denied or significantly reduced because ██████████ tuition cost is unreasonably high.

As to the 2022-2023 school year, the CCPS argued that it offered a program, at ██████████, that could immediately implement the Student's IEP. The family visited ██████████, which accepted the Student on July 13, 2022. However, the Parents unilaterally enrolled the Student in ██████████ in August. On September 2, 2022, they advised ██████████ that they would not enroll him there unless ██████████ guaranteed no restraint and seclusion would ever be used with the Student. ██████████ declined to provide that assurance because its policy permits restraint or seclusion if a student

exhibits continuous acts of physical aggression, self-injurious behaviors or high-magnitude disruption.

The CCPS argued that prior to the filing of their Amended Complaint in April 2024, the Parents never informed the CCPS of their concern that the Student would be traumatized, not only if *he* were restrained or secluded, but even if he ever witnessed *another* student restrained or secluded (the so-called “third-party trauma” claim).

With respect to the second school year (2023-2024), the CCPS asserts that it offered an appropriate IEP for that year. The August 2023 IEP properly included three provisions with which the Parents disagreed: (1) a twenty-hour school week, (2) direct and consultative (indirect) psychological services, and (3) direct and consultative (indirect) occupational therapy services.

██████ does not provide the Student a twenty-hour week or psychological or occupational therapy services, which the Parents claim he does not need.

The CCPS argued that ██████ is incapable of implementing the Student’s IEP, resulting in his failure to achieve his IEP goals and objectives. The CCPS argued that its objections to ██████ do not mean that the CCPS predetermined the outcome of the August 2023 meetings. Rather, the CCPS argued that it was the Parents who came to the August 2023 IEP meetings with a predetermined outcome—that the Student attend ██████. The CCPS contended that if it were determined that no FAPE was offered, ██████ does not offer the Student an appropriate education. Finally, the CCPS submitted that ██████ costs are unreasonably high, so reimbursement should be denied or significantly reduced even if ██████ was an appropriate placement.

## Summary of Testimony<sup>252</sup>

### The Parents' Witnesses

The Parents' first witness, [REDACTED], was accepted as an expert in psychology, pursuant to the parties' stipulation. He has experience as a behavioral specialist at [REDACTED], and testified that restraint and seclusion were used there. He testified that restraints are used in situations involving aggression toward others, self-harm, or throwing dangerous objects. He noted that staff assists students by grabbing their arms to help them walk to a specific place, and that students taken to seclusion are often upset and exhibit behaviors like yelling, stomping, and banging on walls.

[REDACTED] has worked with the Student for several years, providing cognitive behavioral therapy (CBT) to the Student on a weekly basis. He has knowledge of the Student's academic needs through regular conversations and interactions. Based on his experience with the Student, [REDACTED] agreed with [REDACTED] identification of the Student as twice exceptional or 2E. Being twice exceptional can create challenges in meeting educational goals due to behavioral difficulties and the need for engaging educational activities.

[REDACTED] wrote a letter expressing concern about the use of restraint and seclusion on the Student.<sup>253</sup> He testified that the Student had negative reactions to past restraints, leading to trust issues with school staff. He felt that the Student was likely restrained during his time at the CCPS, and recommended avoiding the use of restraint and seclusion with the Student. He opined that the Student would reexperience his prior trauma if he witnessed another student being restrained or secluded but that there was not a strong likelihood he would experience new trauma from seeing another student restrained.

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<sup>252</sup> This is a brief summary of the testimony of the thirteen witnesses who testified in this nine-day hearing; it does not purport to comprehensively set out the entirety of the approximately 2,000 pages of testimony.

<sup>253</sup> P. Ex. 15.

██████████ opined that based on his provision of weekly therapy sessions with the Student, and the Student's experience at ██████████, where he has not had externalizing behaviors, the Student does not need counseling services in school.

The next witness for the Parents was ██████████, the Parents' educational consultant, who was accepted pursuant to the parties' stipulation as an expert in special education. ██████████ conducted an observation of the Student at ██████████, where she noted his personable skills in a one-to-one level, as well as reviewing his educational records including narrative reports from his ██████████ English/language arts teachers, to form her opinions.

She opined that his time at ██████████ was successful and that a program like ██████████ would be inappropriate for him, potentially causing regression. ██████████ described ██████████ as primarily a behavioral program with a class size of about nine, one teacher, and one teaching assistant. ██████████ uses professional crisis management to intervene with externalizing behaviors, and that it employs restraint and seclusion. She was concerned that the Student might engage in similar behaviors as he did in the ██████████ program, which would make him unavailable for instruction, She also opined that ██████████ does not cater to the Student's sensory needs, such as carpeted floors and soft lighting, which are helpful to him. She also doubted that ██████████ could provide the academic challenge that the Student needs.

██████████ also opined that the Student does not need in-school counseling services, because he receives therapy from ██████████, and ██████████ or teachers can handle the Student's needs in this area.

The Parents next presented the testimony of ██████████, the head of school at ██████████, who was accepted as an expert in in education with additional expertise in twice exceptionality, executive functioning, and ██████████. She has thirty-five years of experience in education, contributing to her expertise in neurodivergent students. ██████████ testified that the Student, who has been identified as

twice exceptional, is provided with specially designed instruction at [REDACTED], which is tailored specifically to his needs. Each of his classes, whether TM or for credit, includes instruction that follows curriculum objectives as the basis, but is differentiated to meet his unique needs.

[REDACTED] opined that [REDACTED] is capable of addressing the Student's academic needs. The curriculum objectives at [REDACTED] are not overly prescriptive, allowing teachers to adjust and find the "sweet spot" for each student's learning requirements. For example, in an English class, a teacher can modify the approach to teaching symbolism in prose to match the Student's specific learning style and capabilities. This degree of adaptability and focus on individualized teaching methods indicates that [REDACTED] is suitable for meeting the Student's unique educational requirements as a twice exceptional student.

She stated that 37% of [REDACTED] students have an IEP, developed by the students' home public school system, and 63% do not. She indicated that that the Student has no difficulty interacting with nondisabled peers. Such interactions include going off-campus with nondisabled peers for activities like going fishing with a teacher and a nondisabled peer. The Student's frustration tolerance has improved at [REDACTED], but he is behind in socialization, frustration tolerance, and emotional regulation. [REDACTED] is accredited for grades six through twelve by [REDACTED], an accrediting body. Some but not all [REDACTED] teachers are certified. The Student's trusted adult at [REDACTED] is [REDACTED], the head of campus. [REDACTED] opined as an expert in education that [REDACTED] is able to address the Student's needs as a twice exceptional student. [REDACTED] students can go on to college. Some students graduate from [REDACTED] and have a graduation ceremony,

On cross-examination, [REDACTED] acknowledged that a [REDACTED] course planning tool used for reenrollment estimates that the cost of enrolling the Student at [REDACTED] for the 2024-2025 school year, assuming he took English, language arts, math, science, social studies, a tutorial, and supported

homework café (Monday through Friday) in the fall and winter terms, and took art or music, language arts, math, science, social studies and supported homework café (Monday through Friday) in the spring term would be [REDACTED].

[REDACTED] proposed for the 2024-2025 school year to have the Student's math instruction be virtual, because math is stressful for him. Math would not necessarily be virtually the entire year. [REDACTED] does not have a psychologist, social worker, occupational therapist or behavior analyst on staff. [REDACTED] helps the Student with socialization, frustration, and self-regulation. She also helps him with sensory strategies. [REDACTED] was not aware his IEP calls for mental health counseling in his school program. [REDACTED] does not provide quarterly progress reports for any students who have IEPs. The CCPS is not monitoring the Student at [REDACTED], but [REDACTED] attended an IEP meeting.

The Parents also presented the testimony of [REDACTED], [REDACTED] campus director, who is the instructional lead for a staff of twenty-five. [REDACTED] was stipulated as an expert in special education. She interacts with the Student every day. She is his trusted adult, and comes to her when he is dysregulated. Sometimes she redirects him back to class, or sits with him quietly, identifies his feelings, or goes outside or to the weight room as sensory strategies. He has become dysregulated at times, ripping a paper or kicking a wall, but he has never attacked or threatened anyone. [REDACTED] has not been called in recently to address dysregulation.

The Student is very sensory sensitive. [REDACTED] has a sensory controllable environment, with a weight room to give him a physical weight or pull-up bar to hold, a [REDACTED] room where he can play the [REDACTED], or he can go outside, or quietly sit in [REDACTED] office. She described the Student as happy and trusting in the people at [REDACTED]. Based on instruction that meets his needs as a gifted student with [REDACTED], [REDACTED] opined that he has received an appropriate education at [REDACTED].

On cross-examination, ██████ stated that she did not ask the team of teachers to compile a record of the Student's deficits in terms of ██████ and impulsivity, or his difficulty with task initiation or nonpreferred activities. Nor does she have baseline data regarding his dysregulated behaviors. ██████ does not have a background in school psychology or social work, but is a special educator. She acknowledged that he has left the classroom on occasion and when that happens he is not engaged in the class content. ██████ does not use any approved sensory curriculum to help him with dysregulation. ██████ stated that ██████ does not collect quantitative data because it is not part of their model. They use a love, motivate, and teach philosophy, and the core philosophy is that teachers are teacher-mentors.

The Parents next presented the testimony of ██████, accepted as an expert in special education. ██████ observed the Student at ██████, interviewed his parents and the Student, spoke with ██████ and ██████, and reviewed the Student's IEP, PWN, and reports from ██████. She formed opinions as to his educational needs. He needed flexibility and a specialized setting, but the ██████ program exacerbated his school avoidance. It was the Student's perception that at ██████ he was dragged down the hall even if that never happened. He experienced trauma related to going to school. She opined that ██████ is well-equipped to meet his needs, providing flexibility, low sensory environment, and ability to redirect an assignment if it triggers him. She is familiar with the concept of LRE, and opined that he can be educated with nondisabled peers. She stated it would be harmful to segregated the Student from nondisabled peers, which would be more restrictive than necessary. She did not believe a psychological consult is needed because the Student has an outside provider who could talk to ██████ if needed. She opined that ██████ has the skill set to defuse him, and has been able to meet his needs.

████████ opined that the Student has two sources of trauma: his adoption and that he was restrained and secluded in the past in school. This opinion was based on her conversations with ██████



██████████; she had no personal knowledge of restraint or seclusion being used with the Student. She opined it would be very hard for him to be in a class of five to ten students because the flexibility cannot happen in a larger class.

On cross-examination, ██████████ acknowledged that ██████████ thought the Student can be educated in a small group setting. She noted that ██████████ does not have data as to the baseline of his ██████████ condition, and stated she cannot speak to ██████████ data collection practices. She stated that in the Student's fifty-minute class sessions he does not have access to nondisabled peers because ██████████ classes are one-to-one.

The Parents called as an adverse witness ██████████, the CCPS's coordinator for nonpublic placements. She attended the Student's April 27, 2022 IEP meeting. At that time, he was assigned to the ██████████ program at ██████████, where he experienced emotional difficulties and behavioral challenges. ██████████ had certified special education and general education teachers, and a mental health professional providing counseling to students. ██████████ also had an occupational therapist on staff to consult with the teaching staff as to the Student's sensory needs. ██████████ used physical restraint to protect students or others from imminent physical harm, when less intrusive interventions failed or were determined to be inappropriate.

The Student's experience at ██████████ resulted in referrals to nonpublic, private day schools. ██████████ informed the Parents that they could participate in a placement. The Parents requested referrals be sent to four private schools at the April 2022 IEP meeting: ██████████, ██████████, ██████████, and ██████████. Of the four parentally requested schools, the CCPS sent referrals to ██████████ and ██████████, but not ██████████ and ██████████, because ██████████ and ██████████ met the criteria ██████████ developed for the referrals. The CCPS also sent referrals to ██████████, ██████████, ██████████, and ██████████.

The IEP team did not recommend the use of restraint and seclusion on the Student. [REDACTED] noted the Parents' opposition to restraint and seclusion, stating that no data exists that they help improve his educational performance. She did not send [REDACTED] letter, which stated restraint and seclusion would be harmful to the Student, to the referred schools because the IEP did not address restraint and seclusion. She did not think any of the schools she wrote to would use restraint and seclusion unless absolutely necessary, so the letter was not information the schools needed in order to meet his needs. She noted that [REDACTED] uses restraint and seclusion.

None of the five schools rejected the Student. [REDACTED] did not send a rejection letter but indicated they had lost their sixth grade teacher. [REDACTED] did not say they could not meet his needs. [REDACTED] and [REDACTED] rejected him. Then [REDACTED] sent referrals to [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. The Parents and the CCPS agreed that the other schools should be prioritized over [REDACTED], and it was not pursued.

[REDACTED] and [REDACTED] use restraint and seclusion. [REDACTED] [REDACTED] said they had one spot that might be appropriate for the Student. The Parents rejected [REDACTED] because they would not agree never to use restraint and seclusion for the Student. The CCPS and the IEP did not ask any school to use restraint and seclusion on the Student.

[REDACTED] services students with emotional disabilities. When it accepted the Student, the Parents were not required to accept [REDACTED]. [REDACTED] knew at the time that [REDACTED], then in [REDACTED] on [REDACTED], would be moving to a new location. [REDACTED] class size was four students, with maybe more in middle and high school. [REDACTED] provides wraparound services and therapeutic supports, to include a psychiatrist, and other staff with social/emotional credentials and licensure. [REDACTED] is able to meet students' needs and differentiate methods so as to meet students where they are. [REDACTED] could not meet the Student's needs, which is the reason the CCPS looked for a private, nonpublic day school.

██████████ also attended the two August 2023 IEP meetings that concerned the upcoming 2023-2024 school year. The team used ██████████ data for the IEP's present levels of academic achievement and functional improvement. The team agreed the Student's BIP was no longer needed based on the ██████████ data showing that he was no longer engaged in the behaviors described in the BIP. At the meeting, ██████████ said the CCPS was recommending ██████████, ██████████, and ██████████ as nonpublic placements. The Student's mother said that ██████████ was the only appropriate placement.

On September 25, 2023, ██████████ sent what she called the finalized, draft IEP to the Parents. She could not hit the close button on the CCPS e-system to finalize the IEP because the Student was not fully registered after his Parents unilaterally enrolled him in ██████████. To be fully registered meant the CCPS needed proof of his birthday, vaccinations, and residency. As a result, she could not close the IEP in the CCPS system. But the draft IEP included all changes from the Student's prior IEP, and it is what would be sent to the private schools.

In her September 25, 2023 letter to the Parents, ██████████ identified her criteria for sending referrals to ██████████, ██████████, and ██████████. Those were the three schools to which she sent referrals. She got no response, and the Student was not accepted for the 2023-2024 school year. ██████████ did not send follow-up letters to these schools. ██████████ uses a one-to-one format. Its classes are taught in community locations, not necessarily in a school building. There is no access to other students because the classes could be in a ██████████ or ██████████. One person teaches all classes and may not be certified. All of the schools to which ██████████ referred the Student are fully segregated, meaning no access to nondisabled peers. ██████████ is the only school that has accepted him for the 2023-2024 school year.

On cross-examination, ██████████ said that the Parents and their representatives did not object to the five schools to which she sent referrals in April 2022. The Parents were interested in ██████████, but it did not meet her criteria, including the lack of service providers to implement the counseling and occupational therapy services in the IEP, and ██████████ was not a Type 1 special education school. She explained that a Type 1 school is accredited by the MSDE which has some oversight over them. The MSDE has specialists who visit private schools, inspect records, and observe instruction to ensure the program is correctly implementing a student's IEP. In selecting schools, ██████████ looked at whether schools could educate a student with an emotional disability.

As for restraint and seclusion, she said they are not in the Student's IEP, so the only circumstances they could be used is an imminent threat to self or others and less intrusive intervention have not been successful. They should never be used absent those factors. ██████████ attended the April 2022 IEP meeting, not objecting to the five proposed schools on the basis that they used restraint and seclusion. During the April 2022 meeting, ██████████ suggested ██████████, which has used restraint and seclusion.

The family toured ██████████ which accepted the Student, but ██████████ never heard back from the Parents. ██████████ was unaware whether the Parents asked ██████████ for a no restraint/seclusion guaranty. ██████████ is able to provide individualized instruction and meet students where they are. The Parents cancelled ██████████ because of its geographic distance, but their distance to ██████████ is comparable to ██████████. The Parents never informed ██████████ that the Student would be traumatized if he was not restrained but witnessed another student being restrained. The CCPS never received any communication from outside providers about what was referred to in the hearing as "third-party trauma" from witnessing another student restrained or secluded.

In 2022, the Parents did not visit [REDACTED]. [REDACTED] tried to schedule an interview, which did not occur. The Parents did not inform [REDACTED] that they were visiting [REDACTED], or that it had accepted him. [REDACTED] was providing the Student with ten hours of academics, which [REDACTED] said at the August 2023 meeting that they would increase from ten to twelve. But the IEP called for seventeen hours and twenty minutes of classroom instruction. The [REDACTED] teacher notes [REDACTED] reviewed show continuing challenging behaviors—screaming, leaving the work area, closing a door with the teacher inside the classroom. He still needs to develop coping skills. [REDACTED] is not tracking the behaviors and his responses to the recommended coping strategies.

For the 2023-2024 school year, [REDACTED], [REDACTED], and [REDACTED] were recommended. [REDACTED] believed the Parents wanted [REDACTED] as the only appropriate placement. She testified that the Student's mother stated at the August 2023 IEP meeting was the only appropriate placement. The Parents never asked how the process was going with [REDACTED], [REDACTED], or [REDACTED]. The CCPS considered that [REDACTED], which is a Type 1 school, has one-to-one instruction, and opportunities for small groups, counseling, and other social/emotional opportunities.

[REDACTED] opined that the Student is accessing the curriculum somewhat, based on the [REDACTED] assessments and scores, but the CCPS never received test samples or completed work so it is difficult to determine what his work content is. The CCPS wanted to observe the Student at [REDACTED], but his last day of instruction was in July, and he was not enrolled in classes in August 2023. The Parents never said they were confused about the draft status of the August 2023 IEP. The button to denote an IEP was approved could not be clicked.

On redirect examination, [REDACTED] stated that there is potential harm when a student has no access to nondisabled peers. Because [REDACTED] has the homework café and extracurricular activities it is less restrictive than any of the referred schools. She stated that even though the August 2023 IEP was a

draft, it was approved, and does not think the Student was rejected because it was a draft, noting that other school systems such as Montgomery County send draft IEPs.

The Parents' final witness was the Student's father, [REDACTED]. He described the Student's adoption from [REDACTED] in 2012, through [REDACTED]. Before the Student started at the CCPS, his father described the Student's demeanor as ridiculously bright and happy. At the CCPS he became less trustful of adults and more anxious. He was easily bored, leading to disciplinary issues. At [REDACTED] he has made a complete 180: he enjoys school, sharing his interests, and is much more trusting.

The Parents strongly oppose restraint and seclusion. They were always told it would be a last resort, but they kept getting reports from school and from the Student that it was happening. After [REDACTED], [REDACTED], and [REDACTED], the Parents felt it was important to get the next school right or they would lose him as learner. His first IEP and BIP were in first grade. The CCPS started using restraint and seclusion with him in second grade. In fourth grade he was virtual due to COVID and there were no restraints or seclusion. The Parents determined [REDACTED] could not meet his needs and he transferred to [REDACTED] from September 2021 to February 2022. They lost trust in [REDACTED], where restraint and seclusion were mounting. The Student was growing more anxious and had multiple referrals, including documented reports of [REDACTED].

After [REDACTED], he went to [REDACTED] [REDACTED] program, pursuant to an IEP. The Parents agreed. The Student started at [REDACTED] in late February 2022. The Parents toured [REDACTED], noting it had seclusion rooms. The first day went well, but it rapidly declined, the Student claimed they were dragging him down the hall. He began to refuse to get out of the car and enter the school.

The Parents accepted the April 27, 2022 IEP which recommended a nonpublic placement. The Parents shared that they wanted to send packets to [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. If he had been accepted at [REDACTED], they would have sent him there. They visited [REDACTED]

and did not see a seclusion room, but had they known it uses restraint and seclusion they would not have sent him there. He was not accepted by [REDACTED], with which they had no communication. [REDACTED] declined to accept him because their sixth-grade teacher had left, and they did not have room. [REDACTED] told them he was not accepted at [REDACTED].

The Parents toured [REDACTED], which accepted the Student. [REDACTED] did not have a gifted program, and [REDACTED] staff talked about his BIP in front of the Student, making him uncomfortable. The basement was musty, and there were two seclusion rooms. The floors were sticky, which was a sensory issue. The Student was anxious and scared, mentioning the sticky floor and that he did not feel comfortable there. [REDACTED] told the Parents they used seclusion. The Parents rejected the [REDACTED] placement because it seemed to them it would be the same situation as at [REDACTED] but at a bad facility, and that due to the proximity of the seclusion rooms they would not be able to get the Student into the [REDACTED] building.

The Parents did not want to waste [REDACTED] time with a visit because [REDACTED] stated restraint and seclusion would only be used as a last resort.

[REDACTED] agreed to pull [REDACTED] off the table because they did not have a gifted program, the children were two to three grade levels below grade, there were metal detectors at the front door, and the Student would be put in a taxi.

[REDACTED] acknowledged that the Student has had challenging behaviors at [REDACTED], but he has access to a trusted adult ([REDACTED]), and can take learning elsewhere than a classroom, and has ability for exercise to reduce tension. [REDACTED] provides a daily report, which includes the Student's response to [REDACTED] addressing his behaviors, which he usually accepts. Sometimes he needs a short break, or to move, or a class session can be moved. [REDACTED] has a way of minimizing his challenging behavior. The BIP he had from first to fifth grades has been removed since he started at [REDACTED]. He has no resistance to attending [REDACTED].

The Parents disagreed with the IEP team's recommendation of psychological consultation because he has access to [REDACTED]. They disagreed with the recommendation of an occupational therapy consult because [REDACTED] has a sensory program. They disagreed with the recommendation for psychological counseling because he sees [REDACTED] weekly. They disagreed with the recommendation for occupational therapy services because [REDACTED] has a controlled sensory environment, and he is doing well with it. At the CCPS OT, [REDACTED], told the IEP meeting that some things [REDACTED] was doing were helpful.

In regard to [REDACTED] September 25, 2023 email identifying referrals to three schools ([REDACTED], [REDACTED], and [REDACTED]), as of the August 22, 2023 IEP meeting, the Parents were only willing to consider [REDACTED] and [REDACTED] if they changed their restraint/seclusion policy. [REDACTED] was concerned about the Student attending a school where restraint is used. He feels the child would be traumatized and refuse to go back to that school.

The third school referred to was [REDACTED]. [REDACTED] testified that as of August 22, 2023, the Parents were willing to consider [REDACTED], which was described as providing a one-to-one setting where restraint is never used. The Parents liked those qualities. [REDACTED] testified that the Parents never said they would only consider [REDACTED]. They did request at the August 2023 meeting that the CCPS agreed to placement at [REDACTED]. But they were open to the possibility of [REDACTED] because it was very similar to what [REDACTED] does, *i.e.* one-to-one and no restraint. The Parents received the draft IEP from the two August 2023 meetings on September 25, 2023. The CCPS never informed the Parents whether the Student was accepted at [REDACTED], [REDACTED], and [REDACTED]. As of the 2023-2024 school year, [REDACTED] is the only school to accept him.



On cross-examination, ██████ said that he could not answer whether the Parents would have considered ██████ in view of the fact that the IEP required psychological services, which ██████ would have provided, because he didn't know the programming at ██████.

He agreed that no other documents the Parents received from ██████ or ██████ teachers have more information than the teachers' daily course session notes. The Student's interests are coins, Egypt, Legos, space, ██████, and the Titanic. The CCPS agreed with the Parents that restraint and seclusion should not be included in the Student's IEP. The CCPS removed restraint language from the IEP and BIP in February 2022. ██████ acknowledged that the Parents are not claiming a denial of FAPE for the 2021-2022 school year. As of the hearing, the Student's schedule at ██████ was three hours on Wednesday, and two hours on Thursday and Friday. He has two hours a week of remote math. The Parents shared ██████ 2022 report with ██████, but as of August 9, 2022, had not shared the report with the CCPS, ██████, ██████, or ██████. ██████ offered an acceptance at the end of August 2022. They also did not send to CCPS the ██████ 2022 report for the 2023 IEP meeting, because it was not asked for, and ██████ participated in the meeting. They gave the 2022 report to the CCPS in February 2024.

██████ did not write to ██████ or the CCPS to advise the Parents were rejecting ██████ and ██████. The Parents did not ask schools that did not use restraint what they would do if the Student struck a teacher or ran out into traffic. ██████ does not provide quantitative data as to how much time the Student was off task. CCPS counsel showed ██████ documents reflecting instances of the Student's dysregulated behavior at ██████, such as ripping up a play, storming out of math class, refusing a math class, and throwing a yardstick in the hallway. ██████ did not ask ██████ for further information regarding strategies to redirect him back to academic instruction.

*The CCPS's Witnesses*

The CCPS's first witness was [REDACTED], admitted as an expert in special education, inclusive practices for children with complex needs, and developing IEPs for students with significant behavioral needs. The witness is certified in Maryland for special education and for grades one through six in general education. She is familiar with the Student, having attended IEP meetings and interacting with him and his family at [REDACTED] in the 2021-2022 school year. She observed his difficulty with peer interaction, impulsivity, need for movement, and managing frustration, as well as his accelerated verbal skills. He was less likely to engage in inappropriate behaviors in a small group or in a one-on-one setting with a special education teacher. At the 2022 IEP meeting the Parents did not object to a small, structured setting for the Student. The team did not recommend exclusive one-to-one instruction. The team recommended a full school week of thirty hours. The Parents did not say he could only be educated in a ten-to-fifteen hour per week program.

She discussed the educational benefits of including children in a classroom with their peers as compared with the more restrictive setting of one-to-one instruction where children miss interaction and rich discussion with peers. She explained that restraint is only used a last resort, acknowledging that students do get upset when hands are put on them. If the Student, whose IEP did not include restraint, had to be restrained as a last resort, the IEP team would be required to meet in then days to discuss the event. The alternative of police intervention is more intrusive and very hard for students, family, and staff.

[REDACTED] explained that the Student's favorite books, *The Lion, the Witch, and the Wardrobe* and *Harry Potter* align with grades five and six respectively. She opined that the Student needs frequent work with a mental health professional, and seeing an outside therapist one hour a week is insufficient to support his school-based needs. She further opined that the absence of special educators

at [REDACTED] means the specially designed instruction called for in his IEP could not be implemented. The [REDACTED] teacher notes are the only source of data regarding his behavior. [REDACTED] would expect to see data concerning the frequency, intensity, and duration of his behavior, how long he takes to initiate and complete an assignment, and to understand the antecedent event for his leaving the classroom. She opined that [REDACTED] is not working with the Student to develop independent coping skills pursuant to the IEP. The IEP goals are not reflected in the [REDACTED] teacher notes. There is no evidence that the Student is progressing toward meeting Maryland state standards. She disagreed with [REDACTED] assertion that allowing him to take breaks and be in a highly controlled environment constitutes specially designed instruction. Though he may benefit from the environment, it is not individualized for him. She disagreed with [REDACTED] that pivoting away from a nonpreferred task is specially designed instruction; it is just a temporary strategy. From the session notes she could not say he was meeting his IEP objectives. She attended both August 2023 IEP meetings and stated the CCPS did not predetermine the outcome.

[REDACTED] opined that the psychological consultation included in the IEP, which the Parents opposed, is necessary to implement the IEP considering that the Student's BIP was removed. The psychological consult would provide training, coaching, and modeling for the staff. The Student could be present in that coaching. At [REDACTED], he only attends classes a short time, not a full six-and-a-half-hour school day. She disagreed with [REDACTED] view that he would get more academic content in the one-one-one setting than a small group. [REDACTED] noted that at [REDACTED] each course has thirty sessions of fifty minutes per semester. She opined that he would get more instruction in 180 days of small group instruction than in sixty sessions of fifty minutes per year. She agreed with [REDACTED] that his IEP goals could be implemented in a small group classroom.

On cross-examination, [REDACTED] acknowledged that she has never observed the Student at [REDACTED]. She agreed that [REDACTED] is less restrictive than the schools to which the Student was referred. She

testified that the reason the IEP did not include a prohibition against restraint and seclusion is because they may be used as a last resort if a student is in danger. [REDACTED], [REDACTED], and [REDACTED] all had policies to only use restraint as a last resort. [REDACTED] stated that [REDACTED] was not suitable for the Student because it is primarily for dyslexia.

CCPS's next witness, [REDACTED], was a [REDACTED] math teacher for three years before recently leaving for a new position. He is not a certified teacher, which was not a requirement for [REDACTED]. He met the Student at the beginning of the 2023-2024 school year, teaching him Algebra 1, a middle school level course. The Student did not do well with an early morning class, so he was changed to a different teacher later in the day. [REDACTED] described a number of incidents when the Student was disinterested in math, stormed out, wanted to talk about coins instead of math, or left for the [REDACTED] room. He prepared session notes but did not create additional documentation to explain why, for example, the Student stormed out of class. His intervention plan was to notify [REDACTED] and see if the Student could return to class.

On cross-examination, [REDACTED] said the Student was really good at math, but was not a fan of worksheets. The math class was individualized for him by doing the work out loud or using coins in a math setting. On re-direct, he stated that [REDACTED] did not have a written plan for managing the Student's emotions, but spoke with him about how to better manage frustration in the classroom. [REDACTED] did not work with the Student on his coping skills.

Next, the CCPS called [REDACTED] (who had earlier testified in the Parents' case as an adverse fact witness) in its case as an expert in nonpublic placement and occupational therapy in a school setting. She is a licensed OT with a master's degree in occupational therapy. She worked at [REDACTED] and [REDACTED] as an OT. She has visited eighteen schools where the CCPS students are being educated. She attended the Student's April 27, 2022 IEP meeting. She supported the inclusion of an occupational

therapy consult and occupational therapy direct services as well as psychological consult in his IEP, explaining that sensory and behavioral issues are connected. She noted that at that time the Parents did not oppose an occupational therapy consult and direct services or psychological consult and psychological direct services at the April 27, 2022 meeting. She pointed out that ██████ attended the April 2022 meeting and shared her assessment, but when asked if she had a written report denied having on, although ██████ had prepared a report following her March 4, 2022 evaluation of the Student. Having since seen that report, ██████ stated she agreed with ██████ that the Student needed occupational therapy services to provide sensory strategies. ██████ also agreed with ██████ that ne needed frequent work with a mental health professional to help him develop coping strategies for managing frustration, anger, overwhelm, and impulsivity. ██████ asked for a copy of ██████ report at the August 14, 2023 IEP meeting. As of 2023, the Student still needed occupational therapy and mental health services because his deficits had not changed.

████████ stated that as stated in CCPS Ex. 33, ██████ could not implement the April 22, 2022 IEP because it did not provide counseling services, provided a restrictive, one-to-one setting, and does not have related service providers. She observed that ██████ only uses restraint if there is an imminent safety risk, never said they could not implement the IEP, and that the Parents did not share their communication with ██████ regarding restraint/seclusion. The Parents did not inform her they were concerned about the moldy smell or seclusion rooms in ██████ former building.

████████ prepared a summary from ██████ session notes of the Student's challenging behavior.<sup>254</sup> The session notes provided no systematic data or explanation of whether ██████ responses to the behaviors were providing him with access to instruction, or that he is being taught coping skills. The adults are doing that for him. ██████ stated at the August 22, 2023 meeting that ██████ does not

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<sup>254</sup> CCPS Ex. 41.

track behaviors. The Parents did not support the inclusion of occupational therapy or psychological consult in the August 22, 2023 IEP.

██████████ opined that the Student's needs cannot be met with a twelve-hour school week. He needs a full day program to meet his social-emotional behavior needs. He uses maladaptive coping strategies like walking out of the room or stating he doesn't want to do an assignment.

On cross-examination, ██████████ acknowledged omitting ██████████ letter from the referral packets she sent to schools because she did not think it was important. She stated that parents are not required to share their communications with nonpublic schools with the CCPS. Noting that she believed the Parents paid deposits to ██████████ in July and September 2023, ██████████ stated that indicated to her that the Parents intended to have the Student at ██████████ for the 2023-2024 school year.

On redirect examination, ██████████ stated that the session notes show that the Student has been allowed to self-select his educational objectives by refusing to read assignments and doing preferred activities like coins instead. His attendance at ██████████ from October 2022 to January 2023 averaged from three to ten hours of instruction weekly. Most nonpublic schools have seven-hour days, so his attendance at ██████████ is a fraction of the usual time for a nonpublic school student.

The next CCPS witness was ██████████, a CCPS OT, who testified as an expert in occupational therapy, sensory processing, and emotional regulation. She is licensed in Maryland, and board certified in occupational therapy, with extensive experience. She explained that sensory integration and sensory processing are synonymous. A student with sensory difficulty cannot handle the input and access their education. Emotional regulation means bringing the person back to the emotional state that fits the situation. She met the Student in person in October 2021 when he was in fifth grade at ██████████,

and prepared a November 8, 2021 school-based occupational therapy evaluation.<sup>255</sup> After extensive testing, she found he had moderate difficulty in sensory processing in various environments which affected him throughout the school day. He also demonstrated behaviors that interfered with his access to education. There was a sensory component to this behavior, but it was not the only factor causing his dysregulation during the day. ██████████ recommended in her report that he would benefit from consultative support in order to collaborate with his teachers, parents, and student support assistant on how to build sensory accommodations and self-awareness into his school routine.

The Student's IEP was revised to include direct occupational therapy services, which ██████████ supports and recommended. She stated the Student is incredibly bright. ██████████ also supported direct occupational therapy services. She supports his IEP goals which combine an occupational therapy consult and direct occupational therapy service and his social-emotional goals. ██████████ testified that at an IEP meeting for the Student, she heard a CCPS OT, ██████████, say that some things ██████████ was doing were helpful. ██████████ has never evaluated the Student or provided occupational therapy services to him. ██████████ could not say that the Student was sensitive to the musty smell and sticky floor at ██████████ building. His clinging to a Parent on the tour may have been due to anxiety. She acknowledged that his behavior at ██████████ is less disruptive than at ██████████, which she attributed to the Student having less difficulty when not pushed to do things he does not want to do. She did not see in the data that he has met the IEP's functional goals, which were for him to be able to identify what he needed and advocate for himself.

The CCPS next called ██████████, a CCPS school psychologist, who was accepted as an expert in school psychology, including evaluations of students, and school-based mental health and behavioral services. She works at ██████████, and has been a school psychologist for seven years. She is not a licensed

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<sup>255</sup> CCPS Ex. 5.

psychologist. She has Maryland certification as a school psychologist. She provides direct services to students and consultation with staff. She attended the Student's April 22, 2022 IEP meeting. The IEP included direct psychological service to help him maintain emotional regulation. His triggers are nonpreferred tasks, misreading social cues, [REDACTED], and demands placed by adults resulting in power struggle and redirection.

[REDACTED] also attended the August 2023 IEP meetings. The CCPS did not predetermine that he would attend a particular program but assessed all the data and made decisions as a team. She did not see in the information reviewed by the team a consistent strategy or data to lessen or eliminate his behavior. The Student's needs include a social skills curriculum infused throughout the program. [REDACTED] noted that [REDACTED] recommended frequent work with a mental health professional. [REDACTED] opined that he would not have difficulty managing frustration at [REDACTED] because its demands are few. He is allowed to step away from a nonpreferred activity and [REDACTED] has no procedure to get him back to task. She further opined that social demands are not put on him because he works one-on-one with an adult for academics so there are no social demands in that setting. [REDACTED] does not have special educators, and he is not getting what he needs without them. She disagreed that [REDACTED] could meet all his needs, in particular the social and mental health pieces and coping strategies. She also disagreed that the Student does not need psychological consultation, because no information supports [REDACTED] ability to provide counseling.

On cross-examination, [REDACTED] acknowledged that she has never provided direct or consultative services to the Student, observed him in a classroom, or psychologically tested him. She believes he is twice exceptional in that he has high verbal and reasoning abilities and also a disability. She has a background in trauma, stating a witness can reexperience trauma by seeing it happen to



someone else. She is familiar with [REDACTED] letter about restraint and seclusion. She does not disagree with anything in the letter.

The CCPS's final witness was [REDACTED], supervisor of special education for the CCPS, who was admitted as an expert in special education, IEP development, and general education for middle school language and math. She is a certified teacher in middle school English, language arts, and math. She opined that a high IQ student's needs can be met in a small class with four or five peers who have lower IQs. A small group setting is better than one-to-one for socialization because it is closer to a community setting where a student has to wait for their turn or must deal with nonpreferred tasks. Socialization is more difficult in a one-to-one setting. Moreover, rewards and consequences can be implemented in a small group setting. [REDACTED] previously worked at the [REDACTED] and was trained in their method of restraining students. Previously, students could be held in a prone position or could be restrained for disrupting the milieu, but that is no longer permitted. Now it is only used for imminent danger.

As a teacher, [REDACTED] benefited from consultative occupational therapy and psychological services. She attended both of the August 2023 IEP meetings. The CCPS did not predetermine the outcome, because the IEP changed based on input from the Parents and their experts as well as information from [REDACTED]. The IEP goals and aids changed based on that input. At the meeting, the Parents wanted the Student to stay at [REDACTED]. They rejected some recommendations such as occupational therapy and psychological consults because [REDACTED] did not provide them. At the meeting [REDACTED] 2018 report was provided, but not her 2022 report. The BIP was removed based on information from [REDACTED] that aggressive behavior was not happening, but pieces of the former BIP were included in the IEP in other areas. For example, targeting his coping skills was included in the IEP because it is the learning barrier for him.

██████████ opined that ██████████ teachers did not provide direct instruction of coping skills. Instead, the adults adjusted the environment or the task demand, or mitigated the issue instead of the Student taking responsibility to work through the issue. She explained that changing a task demand is not inherently wrong, but it is important to build the Student's skill so he can do the task himself. ██████████ does not impose consequences for infractions. Sometimes he had discussions with an adult after a situation arose, but he was driving the train, permitted to go somewhere else or do something else. If he did not want to engage, the teacher would pause, or taught around him. He missed almost six out of twenty-two math sessions, which indicates his behavior is having an impact on his instruction. He is doing math remotely at home, which is a restrictive setting with no benefit of being around other students. He has sensory and emotional regulation issues that may have contributed to the above. Considering that a school week is thirty-two hours and fifty-five minutes in middle school (about six-and-a-half hours a day for a full middle school day), the Student's school day of one to two hours is limiting. As of August 2023, he was attending ██████████ about ten hours a week after a slower start. The IEP sought to increase his time from twelve to twenty hours a week and build from there, but the twenty hours would not commence immediately. The team agreed to seventeen plus hours of instruction, counseling and occupational therapy services. She supported the inclusion of psychological services to target coping skills and identify behavioral triggers. She has never met the Student.

██████████ noted that ██████████ in 2022 recommended that he work in a small group with peer models. A disabled student can still be a model for a nondisabled peer and vice versa. She noted that there is no academic demand in ██████████ homework café. It is not as useful as a small class with academic demand. She opined that it is not appropriate for a student with an IEP to be educated at a school with no special educators. Special educators have rich knowledge about disabilities and are trained in methodologies and in-depth assessments on how the disability impacts the student and what

specialized instruction is available. She recognized there were no reports of dangerous behaviors at [REDACTED], which is different from his the CCPS experience. She opined that quantitative data is required to monitor progress toward an IEP goal. Without quantitative data the IEP team is rudderless. She does not agree that collecting quantitative data would be harmful to the Student. The [REDACTED] session notes are qualitative, but their information could be put in a graph to chart progress or the lack thereof. She did not see any qualitative data from [REDACTED] regarding sensory strategies.

[REDACTED] disagreed with [REDACTED] that the IEP team had information that he needed one-to-one instruction. That is [REDACTED] model but is not a requirement for him to have FAPE. The IEP team recommended a nonpublic program, but not a one-to-one program. At [REDACTED], the IEP was not implemented. She also disagreed that [REDACTED] teachers do not need occupational therapy or psychological consultation, noting that she works with and supervises OTs. He is identified as having sensory needs that interfere with his access to instruction. The related services of occupational therapy services and occupational therapy consult are needed for him to access the environment and develop skills to identify what his sensory system is saying so he can engage in a prosocial way. She opined that [REDACTED] is not qualified to provide occupational therapy consultations to [REDACTED] teachers. The witness also disagreed with [REDACTED] that he does not need psychological services and consults. He has [REDACTED] and emotional dysregulation. The consults carry over to the classroom, sustaining his attention and managing his frustrations appropriately.

On cross-examination, [REDACTED] stated that she is not the head of special education for the CCPS and does not supervise OTs or counselors. She agrees that disabled students should have access to nondisabled peers. She deferred to [REDACTED] on the nonpublic schools and does not supervise [REDACTED]. She did not express disagreement with the suggested schools. The Student has two IEP goals and [REDACTED] should be providing quarterly progress reports on each goal. His [REDACTED] teacher notes cannot

be compared to IEP progress reports. She agreed that the MSDE and the CCPS would share the cost of a Tier 1 school placement. She agreed the Student does not have reading, writing, or math skill deficits. His deficits are in regulating his behavior. While the Parents proposed [REDACTED], the team did not accept it as a placement because it does not offer occupational therapy and psychological services and consultations. The Parents felt he was making progress and did not need them.

[REDACTED] testified that she does not think that [REDACTED] was dishonest. She stated they are doing their best with their model but are working around his deficits. [REDACTED] does not have a teaching component or task demands to work through frustration. [REDACTED] has not been in contact with an OT or counselor regarding school issues, except that it could contact [REDACTED]. The witness did not know if [REDACTED] actually talked to [REDACTED]. She acknowledged that at [REDACTED] he received direct psychological counseling but does not know if he got psychological consultation. At [REDACTED] he received occupational therapy services; she did not know if he received occupational therapy consultation.

Referring to [REDACTED] list of the Student's behaviors at [REDACTED] and the school's responses, [REDACTED] stated that she did not believe [REDACTED] responses were inappropriate. She considers one-to-one instruction inappropriate for the Student. She acknowledged that he likes to show off what he knows to adults and peers. At [REDACTED] he performed magic in front of peers, played the [REDACTED], and set off a rocket, receiving positive feedback from his peers. These activities could build his self-esteem.

On redirect examination, [REDACTED] stated that the Parents did not raise a concern that the Student must be in a setting with nondisabled peers. The [REDACTED] session notes do not refer at all to the IEP goals. They are not comparable to IEP progress notes that would inform parents about a student's progress toward meeting the goals. If the Student had no physical aggression or threats to anyone for twenty months, [REDACTED] considers that to be progress.

She stated that the suggested schools should be informed about potential retraumatization if he were exposed to a restraint situation. But he should be around people trained in restraint and debriefing to process the situation and minimize the trauma if he observed a restraint. [REDACTED] opined that he does not need to be in a school that uses restraint and seclusion, and there have no behaviors at [REDACTED] that warranted restraint and seclusion. She agreed that restraint can be traumatic. She has not done research outside her training regarding restraint and agreed that there are many contraindications for restraint. She said he never refused to go to [REDACTED], which she considers excellent progress. But it is also important to consider what he is doing throughout the day at [REDACTED] and the underlying reasons [REDACTED] has not been more positive for him. She has never been to [REDACTED] and is not familiar with its tutor-mentor or mastery model. She said it is positive that [REDACTED] processes his behavior with him.

On redirect examination, [REDACTED] said that while [REDACTED] responses are not inappropriate, she cannot say they were effective in building or reinforcing a skill. She expressed concern that if a school was prohibited from using restraint, what intervention could be done by school professionals if there was an imminent safety risk. Staff could call 911 or the police or paramedics, or staff might intervene in a way that might harm the student or a staff member. If a student was about to run out into traffic and staff tackled the student to the road, the student might be harmed if an appropriate technique was not used to intervene. She acknowledged that the Student could be retraumatized if ever restrained in the future, leading to anxiety afterwards, but the context would be a supportive environment that would decrease the likelihood of retraumatization. She agreed that [REDACTED] did not absolutely prohibit restraint and seclusion if there was an imminent safety risk. [REDACTED] said restraint should be avoided but did not say it should be absolutely prohibited.

In a brief recross-examination, [REDACTED] opined that the Student should be in a program that has a structure similar to [REDACTED] in terms of the availability of licensed mental health professionals and a

structured schedule. In a brief redirect examination, ██████████ stated that the referred schools have a higher ratio of mental health staff to students, which is a reason to place a student in a therapeutic setting.

Finally, the Parents called ██████████ as a rebuttal witness. She denied refusing a records request from ██████████. She said the demands on students at ██████████ are not low, based on her observations of students learning in class. The classes are rigorous and provide what the students need. She disagreed with ██████████ that the Student is driving the train, stating it is a mischaracterization of what happens at ██████████. Teachers have plans in place but can be flexible. The Student is not driving the train, but the teacher curates the lesson to meet the Student's needs.

██████████ stated the Student is verbally gifted and a great reader. She said ██████████ supported ten math mastery sessions because the Student had not met the course objectives in thirty sessions. Asked if playing with Legos or listening to an audiobook is a high academic demand, she stated it could be, but you need a full picture of what the session covers. She said notes and charting do not cover everything that happened in a class, and do not include the specific lesson plan.

### *Analysis*

#### *2022-2023 School Year*

Based on the record evidence, and under the controlling legal authorities, I find that the CCPS offered the Student a FAPE for the 2022-2023 school year. The CCPS did not fail to act in accordance with the procedural requirements of the IDEA. It did not fail to offer a placement in which the Student could receive a FAPE by the start of the 2022-2023 school year.

#### *The April 27, 2022 IEP*

The record demonstrates that the April 27, 2022 IEP was reasonably calculated to provide the Student with a FAPE, and enable him to make progress appropriate to his circumstances, focusing on

appropriate goals and objectives in the social emotional/behavioral and self-management areas. In developing this IEP, the IEP team considered, as required, the Student's strengths, the Parents' and their representatives' recommendations for enhancing his education (including those of his treating psychotherapist [REDACTED], and his outside neuropsychological evaluator [REDACTED]), his prior educational experience at the CCPS schools, [REDACTED] occupational therapy evaluation, the impact of his behavior in impeding his learning, and his academic, developmental, and functional needs and goals.<sup>256</sup>

The IEP therefore complied with the IDEA's requirements. *See MM v. Sch. Dist. of Greenville Co.*, 303 F.3d 523, 527 (4<sup>th</sup> Circ. 2002) (“[a]n appropriate IEP must contain statements concerning a disabled child's level of functioning, set forth measurable annual achievement goals, describe the services to be provided, and establish objective criteria for evaluating the child's progress”), and *Wagner v. Bd. of Ed. of Montgomery Cty.*, 340 F.Supp. 2d 603 (agreed upon goals are the standard against which any placement is measured.)

### *Restraint and Seclusion*

The parties agreed on all aspects of the April 2022 IEP, including that he needed a therapeutic, nonpublic day school, specialized instruction outside of general education, and related occupational therapy and psychological services. Their principal disagreement was whether restraint and seclusion might be utilized either with the Student or (as the Parents later alleged in their Amended Complaint) with other students whom the Student might witness being restrained or secluded.

Md. Code Ann., Educ. § 7-1101(d) defines “physical restraint” as follows:

(d)(1) “Physical restraint” means a personal restriction that immobilizes a student or reduces the ability of a student to move their torso, arms, legs, or head freely that occurs during school hours.

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<sup>256</sup> P. Ex. 32-33; CCPS Ex. 16-17.

- (2) “Physical restraint” does not include:
  - (i) Briefly holding a student in order to calm or comfort the student;
  - (ii) Holding a student's hand or arm to escort the student safely from one area to another;
  - (iii) Moving a disruptive student who is unwilling to leave the area when other methods such as counseling have been unsuccessful; or
  - (v) Breaking up a fight in the school building or on school grounds.<sup>257</sup>

Section 7-1101(f) defines “seclusion” as follows:

- (f)(1) “Seclusion” means the confinement of a student alone in a room, an enclosure, or any other space from which the student is physically prevented from leaving during school hours.
- (2) “Seclusion” does not include a behavior intervention plan of separating a student by placing the student:
  - (i) Into a nonlocked room from which the student is allowed to leave; or
  - (ii) Within a separate location in a classroom from which the student is not physically prevented from leaving.

Section 7-1102(c) of the Education Article provides with respect to physical restraint that:

- Neither a public agency nor a nonpublic school may use physical restraint on a student as a behavioral health intervention unless:
- (1) Physical restraint is necessary to protect the student or another individual from imminent serious physical harm; and
  - (2) Other, less intrusive, nonphysical interventions have failed or been demonstrated to be inappropriate for the student.

Similarly, section 7-1101(d)(1) provides in relevant part with respect to seclusion that:

- A nonpublic school may not use seclusion as a behavioral health intervention for a student unless:
- (i) Seclusion is necessary to protect the student or another individual from imminent serious physical harm;
  - (ii) Other, less intrusive interventions have failed or been demonstrated to be inappropriate for the student[.]

COMAR 13A.08.04.05A and B also provide that restraint or seclusion are prohibited unless necessary to protect the student or another individual from imminent, serious physical harm, and

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<sup>257</sup> Section 7-1101



other less intrusive, nonphysical interventions have failed or been demonstrated to be inappropriate for the student.<sup>258</sup>

While [REDACTED] recommendation was that restraint and seclusion be avoided, he did not absolutely prohibit their use. He did not address whether they could be used as a last resort in order to prevent imminent harm. As [REDACTED] credibly testified, if a school is prohibited from using restraint in a situation involving an imminent safety risk to the Student himself or another child, school staff presumably would have to call 911 or the police, risking greater trauma.

The Parents argued that the CCPS violated COMAR 13A.08.04.05C(5)(b), by not including [REDACTED] letter in the referral packets it sent to eight nonpublic schools for the 2022-2023 school year. This regulation provides that restraint or seclusion may be included in a student's IEP, BIP, or Section 504 plan, provided that school personnel review any contraindications to the use of these techniques. Here, as restraint or seclusion were *not* included in the Student's April 2022 IEP or BIP, the CCPS did not violate the regulation. Moreover, the parties stipulated that there is no record of the Parents having informed the CCPS of their concern about third-party or vicarious trauma, which was not mentioned in [REDACTED] letter recommending the avoidance of restraint. And [REDACTED] testified that he would *not* say that there was a "very strong likelihood" that the Student's watching another student being restrained would cause the Student to experience new trauma, as distinguished from reexperiencing the old trauma he had.<sup>259</sup>

The Parents' abiding concerns regarding restraint and seclusion deserve to be taken seriously. But restraint and seclusion are not even included in the Student's IEP as techniques to be used, and the law only allows these techniques to be used as a last resort to protect the Student or others from

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<sup>258</sup> This regulation also deals with "mechanical restraints." The record contains no evidence that the Student was ever subjected to or witnessed another person subject to mechanical restraints.

<sup>259</sup> T. 52-53 ([REDACTED]).

imminent, serious physical harm. [REDACTED], [REDACTED], and [REDACTED] were each therapeutic programs capable of using positive de-escalation strategies with the Student and others, reserving only the right provided under Maryland law to use restraint as a last resort to prevent imminent harm. These schools (whose programs are expressly designed to educate students with behavioral difficulties) did not unreasonably decline to guaranty that the Student would never, under any possible circumstances, be exposed to restraint/seclusion, directly or vicariously.

The CCPS did not deny a FAPE by proposing that the IEP be implemented at those schools despite their unwillingness to provide the unrealistic guaranty that the Parents unreasonably requested. The requested guaranty would have put the schools in the position of either standing by and doing nothing in a situation involving imminent harm, or summoning armed police officers or emergency medical personnel for assistance. These unsatisfactory and unsafe alternatives would result in either a delayed response to an imminent risk, or a potentially even more traumatic response by armed police officers, as compared with restraint by trained personnel in a therapeutic school environment.

The CCPS did not deny a FAPE by referring the Student to schools that could have implemented his IEP, but which would not accede to the Parents' unreasonable request for a guaranty against the use of restraint or seclusion even in situations involving imminent risk of serious physical harm to the Student himself or others. Considering that restraint and seclusion were not even included in the Student's IEP, there is no basis to believe he would have been subjected to those techniques or witness them being used on another child unless as permitted under Maryland law they were necessary to protect him or others from imminent harm after less restrictive methods failed.

[REDACTED] was the only school other than [REDACTED] that accepted the Student for either the 2022-2023 or 2023-2024 school years. In 2022, the Student was not accepted by [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. Both parties ruled out [REDACTED]. [REDACTED] did not have room for

him. The Parents discontinued the [REDACTED] admission process when it would provide a guaranty against restraint and seclusion. Notwithstanding the Student's father's testimony that [REDACTED] building (from which it has since moved to a new location on [REDACTED]) was musty and dilapidated, had seclusion rooms, and that the Student was scared when the family visited [REDACTED], there is no evidence that [REDACTED], an MSDE-approved Type 1 therapeutic, nonpublic school, could not have implemented the IEP, thereby providing a FAPE.

While the Parents' expert [REDACTED] testified that [REDACTED] would be inappropriate and could cause the Student to regress, she never asked [REDACTED] if they could implement his IEP. Nor did she share with the CCPS in 2022, when the [REDACTED] admission process was underway, that she thought [REDACTED] was inappropriate. As the CCPS argued, it would therefore be pure speculation to suggest [REDACTED] could not provide a FAPE.<sup>260</sup> And there is no basis to conclude that [REDACTED] (for which the Parents abandoned the admission process when it declined to provide the requested guaranty) also could not have implemented the IEP.

### *LRE*

In addition to their concerns about restraint and seclusion, the Parents challenged the April 27, 2022 IEP on the ground that it called for a placement of the Student in a segregated setting (disabled students only), without access to his nondisabled peers. The Parents argued that placing the Student in a fully segregated school like [REDACTED] or [REDACTED] would be harmfully restrictive as compared to [REDACTED], where he has access to nondisabled peers in the homework café, during extracurricular activities, and between classes. By omitting [REDACTED] from its list of referred schools, the Parents assert that the CCPS violated the IDEA's LRE requirement.

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<sup>260</sup> See *A.H. v. Smith*, 367 F.Supp. 387, 417-18 (D. Md. 2019) (speculation that a school system "will not adequately adhere to the IEP is not an appropriate basis" to support a denial of FAPE claim where the proposed placement had "resources to implement the services and supports mandated by the [the child's IEPs....]").

With respect to LRE, the IEP and PWN for April 2022 show that after considering the team members' views and the documentation of the Student's abilities and deficits, the team proposed *without parental dissent* that he "requires his entire school day to be out of general education to address his social emotional/behavior, self-management, and executive functioning needs."<sup>261</sup> At the April 2022 IEP meeting, the Parents and their representatives did not argue that the Student had to be educated in a separate, private day school that afforded access to nondisabled peers. The April 27, 2022 PWN establishes that the IEP team carefully considered multiple LRE options, cogently and responsively explaining why it accepted a private, separate day school outside general education as the LRE able to meet his needs, and rejected several other options.<sup>262</sup>

The April 2022 IEP and PWN establish that at the April IEP meeting [REDACTED] and others considered five placement options, including the four non-segregated options: all services in regular education; a combination of services both in and out of a regular education setting; all services out of regular education setting at the Student's home school; and all services out of general education setting at the [REDACTED] program. The team rejected these non-segregated options because they did not have integrated behavioral/therapeutic supports including crisis counseling, did not provide all instruction outside the general education setting, and (as to two options) would not provide the Student art and fitness classes.

The team agreed to a placement, also without dissent from the Parents or their representatives, with "services to be provided in private separate day school that does not house programs for nondisabled students."<sup>263</sup> The team determined that the Student needed a small, structured special education classroom setting with a focus on consistent access to crisis intervention, wrap-around

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<sup>261</sup> CCPS Ex. 17, p. 3, emphasis added.

<sup>262</sup> CCPS Ex. 17, pp. 4-5.

<sup>263</sup> CCPS Ex. 16, p. 40.

behavior supports/services, specialized instruction throughout the entire day, and therapeutic counseling. The team acknowledged that separating the Student from nondisabled peers for the entire school day would have a potentially harmful effect, but determined that “the benefits of the proposed placement outweigh the potential harmful effects”.<sup>264</sup>

In April 2022, the CCPS had a cogent, indeed compelling, reason to recommend a segregated setting, namely that the Student had been demonstrably unsuccessful in his earlier, less restrictive settings at the CCPS’s [REDACTED], [REDACTED], and the [REDACTED] [REDACTED] program. While the Parents’ witnesses, [REDACTED], [REDACTED], and [REDACTED], testified that the Student can successfully interact with nondisabled peers in the [REDACTED] setting, their testimony was informed by their hindsight knowledge of the Student’s performance at [REDACTED] after the April 2022 IEP was written, and therefore shines little light on whether the April 2022 IEP’s placement of the Student in a segregated school setting prospectively comported with the LRE requirement. I conclude with respect to this issue that the CCPS did not fail to offer a FAPE for the 2022-2023 school year by adopting the April 2022 IEP that called for the Student to be separated from his nondisabled peers for the entire school day.

#### *Small group instruction*

The Parents also challenged the April 2022 IEP because it called for small group instruction, not the one-to-one instruction that the Student later experienced at [REDACTED]. But no school or parent expert who attended the April 2022 IEP meeting asserted that the Student could only learn in a one-to-one setting, as distinguished from a small group of students. On this issue, I give significant weight to the opinion of the Parents’ own neuropsychology consultant [REDACTED] who recommended, in her March 4, 2022 psychoeducational evaluation, that the Student be educated in a classroom with a “small group and one-on-one with a teacher or skilled paraeducator,” and “[w]henver possible he should sit

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<sup>264</sup> CCPS Ex. 16, p. 41.

near, and/or work in a small group with peer models who have a good attention span and task focus.<sup>265</sup> Also persuasive was [REDACTED] recommendation of a small, structured learning environment.<sup>266</sup> He did not recommend a one-to-one setting.

Moreover, at the hearing, the CCPS experts [REDACTED] and [REDACTED] cogently explained the advantages, in terms of socialization, of small group over one-to-one instruction. They explained that in a small group, students will learn to take their turn, engage in rich discussion with classmates, and model their behavior on that of their peers. I find the views of [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] concerning small group instruction are more persuasive than [REDACTED] [REDACTED] opinion that one-to-one classes would be more beneficial for the Student than small group instruction. And as the CCPS argued, in addition to not raising this issue at the April 2022 IEP meeting, the Parents did not allege in their Amended Complaint that the IEP was deficient because it did not offer one-to-one instruction. I conclude the omission of one-to-one instruction from the April 2022 IEP does not amount to a denial of FAPE.

#### *MSDE Type I schools*

The Parents also argued that the CCPS rejected [REDACTED] for an improper motive: that the MSDE does not share [REDACTED] cost with county school systems because [REDACTED] is not a Type 1 special education school. The evidence showed that the MSDE only shares the cost of a nonpublic placement in Type 1 schools. But there is zero direct evidence that the CCPS rejected [REDACTED] for this reason, and I decline to draw an inference to that effect, because the CCPS provided a cogent explanation for including in its criteria for nonpublic school placement that the schools should be Type 1 special

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<sup>265</sup> P. Ex. 18, pp. 004-005. The CCPS argued that I should draw an adverse inference against the Parents because they did not call [REDACTED] as a witness. I decline to do so, because both of her detailed reports were admitted in evidence, and she was equally available to be subpoenaed by the CCPS if it wanted her testimony in addition to her reports.

<sup>266</sup> CCPS Ex. 17, p. 4.

education schools. That explanation was that the MSDE provides oversight to Type 1 schools to ensure that they provide special education services, document IEP progress, have certified teachers and licensed/certified related service providers, and notify the local school district if related services required in an IEP are not provided. The MSDE has specialists who visit Type 1 schools and review student records to ensure compliance with their IEPs.<sup>267</sup>

In a similar vein, no evidence supports the Parents' suggestion that [REDACTED] was improperly motivated by financial considerations to accept the Student because [REDACTED] had excess capacity in its program.

The laudable fact that the Student made progress at [REDACTED], particularly by increased school attendance and an absence of aggressive or threatening behavior, is not legally relevant to the question of whether the CCPS offered a FAPE for the 2022-2023 school year. As *Andrew F.* teaches, crafting an appropriate IEP “requires a prospective judgment by school officials.”<sup>268</sup> In April 2022, when the CCPS created a reasonable IEP, it could not foresee the Student's future performance at [REDACTED].

For the foregoing reasons, I conclude: (a) the CCPS did not deny the Student a FAPE for the 2022-2023 school year, and (b) the CCPS did not fail to act in accordance with the procedural requirements of the IDEA by failing to offer a placement in which the Student could receive a FAPE by the start of the 2022-2023 school year. Therefore, I will not order reimbursement of [REDACTED] tuition or grant other relief with respect to the 2022-2023 school year. As I do not find that the CCPS denied a FAPE for the 2022-2023 school year, it is unnecessary to address whether [REDACTED] is an appropriate placement or whether equitable considerations support reimbursement for that school year.

### *2023-2024 School Year*

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<sup>267</sup> See FOFs 92-95.

<sup>268</sup> 137 S.Ct. at 999. See also *Pavelko v. Dist. of Columbia*, 288 F.Supp.3d 301, 307 (D.D.C. 2018) (neither the IDEA nor reason countenance “Monday Morning Quarterbacking” in evaluating a child's placement).

*Introduction.*

The Parents contended that the CCPS denied the Student a FAPE for the 2023-2024 school year because: (a) the August 22, 2023 IEP was a draft, not a final approved IEP, and was not provided to the Parents until September 25, 2023, (b) the inclusion on the April 22, 2023 IEP of seventeen hours and twenty minutes of weekly classroom instruction outside of general education was more than the Student could handle and was therefore improper, (c) the inclusion in the April 22, 2023 IEP of occupational therapy services was unnecessary and was therefore improper, (d) the inclusion on the April 22, 2023 IEP of counseling services was unnecessary and therefore improper, (e) the CCPS did not offer the Student a nonpublic school location in which the April 22, 2023 IEP could be implemented because after the CCPS sent referrals to [REDACTED], [REDACTED], and [REDACTED] and received no response from any of those schools, the CCPS failed to follow up with the schools or send additional referrals, essentially leaving the Parents and Student to fend for themselves, (f) the parental placement of the Student at [REDACTED] is appropriate because it is reasonably calculated to enable the Student to receive educational benefits, and (g) equitable considerations support reimbursement of [REDACTED] costs, which are not unreasonable.

The CCPS responded to the Parents' contentions as follows: (a) the fact that the August 22, 2023 IEP was provided to the Parents on September 25, 2023 in draft form did not actually interfere with the provision of FAPE, (b) the inclusion of seventeen hours and twenty minutes of instructional time outside of general education, occupational therapy services and psychological services in the IEP was proper, (c) the CCPS did not deny FAPE by failing to follow up with [REDACTED], [REDACTED], and [REDACTED] or send additional referrals after those three schools failed to respond to the referrals, because the Parents were not open to considering any private school except [REDACTED], (d) even if the CCPS denied a FAPE, [REDACTED] is not an appropriate school because it cannot provide the special education and related



services included in the IEP, and (e) equitable considerations require the denial of or reduction in any reimbursement of [REDACTED] costs because the Parents' conduct was unreasonable, and [REDACTED] cost is unreasonably high. These issues will be discussed in turn.

*The April 22, 2022 IEP was a draft, not a final IEP, and was not submitted until September 25, 2023.*

The IEP form or template used by the CCPS has three “buttons” on its first page: “Draft,” “Approved,” and “Amended.” On the April 22, 2023 IEP, the draft button was selected. On September 25, 2023, [REDACTED] sent what she called the finalized, draft IEP to the Parents. She testified that she could not hit the close button on the CCPS e-system to finalize the IEP because the Student was not fully registered after his Parents unilaterally enrolled him in [REDACTED]. To be fully registered meant the CCPS needed proof of his birthday, vaccinations, and residency. As a result, she could not close the IEP in the CCPS system. It seems, however, that this problem could easily have been solved by [REDACTED] obtaining the necessary demographic information from the Parents or asking the CCPS registrar to do so.

In addition to its draft status, the Parents argued that the CCPS violated COMAR 13A.05.01.09D(2) and 20 U.S.C.A. § 1414(d)(2), by submitting the draft almost three weeks after the start of the school year. “[T]he failure of a school district to have a final IEP in place at the beginning of the school year is a procedural defect.” *MM ex rel. DM v. School District of Greenville County*, 303 F.3d 523, 533-34 (4th Cir. 2002). Nevertheless, “to the extent that the procedural violations did not actually interfere with the provision of a free appropriate public education, these violations are not sufficient to support a finding that an agency failed to provide a free appropriate public education.” *Gadsby v. Grasmick*, 109 F.3d 940, 956 (4th Cir.1997).

The CCPS's failure to have a final IEP in place at the beginning of the school year was a procedural violation. It did not, however, actually interfere with the provision of a FAPE. The draft

included all changes from the Student’s prior IEP, and was the IEP that ██████████ said she sent to ██████████, ██████████, and ██████████ in 2023. The Parents never expressed concern over its “draft” designation or the time they received it at the time of the nonpublic school referrals. There is no evidence that the three referred-to schools failed to respond to the referrals because the IEP was a draft.

In closing argument, the Parents’ counsel stated he did not know how the Parents’ situation would have been different from where they are now if they had been timely provided an approved IEP, except that if they had wanted to follow up with ██████████ they did not have a final IEP to show ██████████.<sup>269</sup> This assertion of possible prejudice from the September 25, 2023 submission of the draft IEP is too speculative to support a finding that the procedural violation caused a denial of FAPE.

The CCPS argued that the submission of the draft IEP did not interfere with the provision of FAPE and, in any event the Parents did not raise the draft vs. final IEP issue in their Complaints, so the issue is precluded under the IDEA, 20 U.S.C.A. § 1415(f)(3)(B). For completeness, however, I have considered this issue, concluding that the CCPS’s delivery of a draft rather than final, approved IEP on September 25, 2023, did not result in actual interference with the provision of a FAPE or otherwise prejudice the Student.

*The IEP’s inclusion in the August 22, 2023 IEP of seventeen hours and twenty minutes of classroom instruction outside of general education.*

The Parents objected to the IEP’s provision of seventeen hours and twenty minutes of classroom instruction outside of general education because, as of August 2022 when the IEP was written, the Student was attending ten hours of instruction at ██████████ and was not ready to do over seventeen hours a week of instruction.

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<sup>269</sup> T. 2174-75 (closing argument).

The CCPS's expert [REDACTED] credibly explained that considering that a typical school week is thirty-two hours and fifty-five minutes in middle school (about six-and-a-half hours a day for a full middle school day), the Student's school day of one to two hours at [REDACTED] is limiting. As of August 2023, he was attending [REDACTED] about ten hours a week after a slower start. The IEP sought to increase his time from twelve to twenty hours a week and build from there, but the twenty hours would not commence immediately. The team agreed to seventeen and twenty minutes of instruction, plus forty minutes of counseling and two hours of occupational therapy services, for a total of twenty hours.

The Parents challenge the CCPS's position that the seventeen plus hours would not start immediately, by arguing that the CCPS was improperly deviating from the four corners of the IEP. *See SS v. Board of Education of Harford County*, 498 F.Supp.3d 761, 785 (D. Md. 2020) (testimony may not support a modification that is materially different from the IEP, and thus a deficient IEP may not be effectively rehabilitated or amended after the fact through testimony regarding services that do not appear in the IEP).

The CCPS first responded by arguing that as the issue of seventeen plus hours was not included in the Parents' Complaint, it need not be addressed. However, in their Amended Complaint at page 7, the Parents alleged "[the] CCPS also insisted on 17 hours, 20 minutes per week of special education instruction which [the Student's] parents opposed." Accordingly, this issue is not precluded, as it was expressly raised in the Amended Complaint.

On the merits of the issue, [REDACTED] credibly testified that it was reasonable to provide in the IEP that, as the Student went from one to ten hours in his first year at [REDACTED], he could increase his instructional hours from ten to twenty hours over the next school year. The *SS* decision is distinguishable. There, the school system sought to retroactively modify through hearing testimony an

IEP that called for inadequate hours of instruction. Here, by contrast, the CCPS witnesses essentially viewed the seventeen plus hours as a target to be gradually reached by the Student.

The IEP did not require the seventeen plus hours to be reached immediately. As the August 22, 2023 PWN stated, “this service considers [the Student’s] current instructional day where he is attending approximately 10 hours a week and considers his rate of progress and *aims* to double the amount of time he is engaged in academic instruction *across the IEP school year.*” (Emphasis added).<sup>270</sup> I conclude on this issue that the CCPS provided a cogent and responsive rationale for including seventeen hours and twenty minutes of classroom instruction in the IEP. Its inclusion was not arbitrary, misleading, or otherwise improper, and therefore was not a denial of FAPE.

*Inclusion in the August 22, 2023 IEP of two, twenty-minute sessions per week of occupational therapy services and occupational consultation.*

The Parents objected to the inclusion of occupational therapy services in the August 22, 2023 IEP on the basis that the Student did not need them because [REDACTED] has a sensory-controlled environment with carpeting and low lighting levels, that there is no data to support a need for occupational therapy services, and that [REDACTED], a CCPS OT, commented at the August 22, 2023 IEP meeting that some things [REDACTED], which does not have an OT, was doing were helpful to the Student.

In response, the CCPS relied on the testimony of two experts licensed in occupational therapy: [REDACTED] and [REDACTED]. The Parents did not offer an occupational therapy expert. [REDACTED] noted that the Parents did not object to the inclusion of occupational therapy services in the April 2022 IEP. She agreed with [REDACTED] who stated in her 2022 report that the Student needed occupational therapy services.

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<sup>270</sup> CCPS Ex. 44, p. 4.

██████████, who has an impressive educational and employment background in occupational therapy, testified as an expert in occupational therapy, sensory processing, and emotional regulation. After extensively testing the Student in November 2021, she found he had difficulty in sensory processing which affected him in school. She supported and recommended inclusion of IEP services in his IEP. She heard the CCPS's ██████████ say at one of the August 2023 IEP meetings that ██████████ was doing some things that were helpful to the Student. But ██████████ noted that ██████████ has never evaluated the Student or provided any services to him. Nor did ██████████ testify at the hearing.

The Parents argued that ██████████ does not need an OT to tell them what to do, because they have matters under control. ██████████ testified about ██████████ sensory-controlled environment, but did not describe a sensory or occupational therapy plan for the Student at ██████████. She is not an OT.

On this issue, I found the testimony of the two CCPS occupational therapists more persuasive on this issue than that of the Parents' witnesses, none of whom are OTs. Based on extensive, credible testimony and documentation that the Student needs occupational therapy services to address his sensory processing needs, specifically his needs to learn to self-identify when he may be feeling dysregulated, and for tools to calm his body and to increase his executive functioning skills, I conclude that the CCPS has provided a cogent, responsive explanation for its inclusion of occupational therapy services in the August 2023 IEP. Their inclusion did not render the IEP improper or otherwise constitute a denial of FAPE.

*Inclusion in the August 22, 2023 IEP of four, thirty-minute counseling services and psychological consultation.*

The Parents objected to the inclusion of four, thirty-minute counseling sessions in the August 22, 2023 IEP, primarily on the basis that because he has weekly therapy sessions with his psychologist, ██████████ ██████████, and has not manifested aggressive or threatening behavior at ██████████, counseling in

school is unnecessary. [REDACTED], [REDACTED], and [REDACTED] each testified that the Student does not need in-school counseling because his social-emotional and behavior needs are being met at [REDACTED]. The Student's father testified that the Parents disagreed with the IEP's recommendation of counseling services because the Student has access to [REDACTED].

As the August 22, 2023 PWN cogently and responsively noted, the psychological consult and counseling services were included to support the Student's social-emotional needs in the classroom and school environment. The consultation would include training and modeling of a variety of responsive and preventative strategies considering his unique learning needs. The consult may result in unified responses across staff and/or development of a set of strategies that staff could consider to assist the Student in engagement with instructional tasks and address his social-emotional needs.

The August 22, 2023 IEP and PWN also cogently and responsively explained the rationale for direct counseling services. With the Student's reduction in dangerous behaviors, he would be more available for counseling services. He required the proposed level of service (four, thirty-minute counseling sessions per week) to develop skills to identify when he is frustrated or overwhelmed, state what he needs, select a coping strategy, and return from breaks. The team reviewed the Student's teacher reports from [REDACTED], determining that [REDACTED] staff were providing support, but the Student had not shown progress in the social-emotional/behavioral needs identified in the IEP. The [REDACTED] teacher reports documented behavioral incidents including the Student's screaming, leaving the work area, pushing items off his desk, and shutting a teacher in the classroom. These behaviors demonstrated his continued need to develop coping skills in the classroom. The team recommended counseling services to

address these needs in order to improve his access to instruction, because the needs adversely impact his ability to access his educational program.<sup>271</sup>

The CCPS's witness [REDACTED], an expert in expert in special education, inclusive practices for children with complex needs, and developing IEPs for students with significant behavioral needs, also opined that psychological counseling services were included to implement the Student's August 22, 2023 IEP after his BIP was removed.

The CCPS school psychologist, [REDACTED], opined that the August 2023 IEP included direct psychological services to help the Student maintain emotional regulation. His triggers are being asked to perform nonpreferred tasks, misreading social cues, perseveration, and demands placed on by adults resulting in power struggle and redirection. She attended the August 2023 IEP meetings and did not see in the information reviewed by the team a consistent strategy or data for lessening or eliminating his behavior. [REDACTED] noted that [REDACTED] also recommended frequent work with a mental health professional. She also opined that the Student needs psychological consultation.

The CCPS's witness, [REDACTED], an expert in special education, IEP development, and general education for middle school language arts and math, also opined that the Student needs psychological services to target coping skills and identify behavioral triggers. She did not think that [REDACTED] was dishonest, and they are doing their best with their model, but [REDACTED] is working around the Student's deficits. I note that the Parents' expert [REDACTED] testified that while at [REDACTED] he has not shown insight into his behaviors.<sup>272</sup>

Weighing the evidence with respect to the IEP's inclusion of psychological consultation and direct counseling services, I found the CCPS witnesses' testimony more persuasive than the Parents'

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<sup>271</sup> CCPS Ex. 44, pp. 4-5.

<sup>272</sup> T. 223-24 ([REDACTED]).

witnesses. While the Student has behaviorally and academically improved at [REDACTED], the evidence shows he still has social-emotional/behavior issues for which both direct assistance to him from a mental health professional, and consultative services to school staff who work with him, would help the Student progress toward his goals. This was the CCPS's rationale for including counseling services and consultation in the IEP. I find that rationale cogent and responsive to the Student's needs. I decline to substitute my judgment for that of the CCPS educators on this point. Accordingly, I conclude that the CCPS did not deny a FAPE by including psychological consultation and direct counseling services in the August 22, 2023 IEP. I further conclude that the August 22, 2023 IEP was reasonable and proper in its entirety.

*Failure to implement the August 22, 2023 IEP by not providing a school location to implement the IEP.*

On July 2, 2023, the Student's mother executed a Contract Supplement with [REDACTED]. The Contract Supplement required payment of a [REDACTED] Installment Convenience Fee, in consideration of [REDACTED] permitting the tuition to be deferred (borrowed) and paid in installments. The Contract Supplement provided that the total tuition, including the amount deferred (borrowed) by the Parents for the 2023-2024 school year would be [REDACTED], allocated as follows: [REDACTED] for the fall semester; [REDACTED] for the winter semester, and [REDACTED] for the spring semester. Pursuant to the Contract Supplement, the Parents agreed to pay installment payments as follows: [REDACTED] due July 17, 2023, and [REDACTED] due September 1, 2023; and [REDACTED] due November 1, 2023, and [REDACTED] due December 1, 2023. The total cost for the 2023-2024 school year would be [REDACTED].<sup>273</sup>

On July 8, 2023, the Student's mother electronically signed a Contract for the Student at [REDACTED] for the 2023-2024 school enrollment year, with an estimated start date of August 21, 2023. The contract

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<sup>273</sup> CCPS Ex. 39. The record does not disclose when (or if) the Parents paid the installment payments for the 2023-2024 school year, but does show that the Student attended [REDACTED] that school year.



required payment of a [REDACTED] registration fee, which was due on July 7, 2023, and which was paid on a date not contained in the record. The [REDACTED] reenrollment contract for the 2023-2024 school year provided that once paid, “Deposits, convenience fees and registration fees are non-refundable.”<sup>274</sup> A [REDACTED] planning document for the 2024-2025 school year for the Student provides that his math course would be taken remotely from home, which [REDACTED] attributed to the Student’s experience that math is stressful.

The following month, at the August 2023 IEP meeting, [REDACTED], the CCPS’s nonpublic school coordinator, identified three schools to which the IEP was recommending referral: [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] is a Type 1 special education program. It has a special educator on staff. It does not endorse the use of restraint or seclusion. [REDACTED] provides instruction in a one-to-one format, with opportunities for small group counseling or other social-emotional opportunities.<sup>275</sup> [REDACTED] provides instruction in community settings like a public library, where one teacher instructs the student in all subjects during the course of the day.

At the August 2023 meeting, when the CCPS recommended [REDACTED], [REDACTED], and [REDACTED], the Parents said the Student should go to [REDACTED]. [REDACTED] testified that the Student’s mother “shook her head and appeared to hold up an email, stating that [REDACTED] was not able to guaranty that restraint couldn’t be used, so he couldn’t go there, *and that [REDACTED] was the only appropriate placement.* (Emphasis added).<sup>276</sup> The Student’s mother, whom [REDACTED] quoted at the hearing as having said at the August 2023 meeting that [REDACTED] was the only appropriate placement, attended all or most of the remote hearing, but did not testify.

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<sup>274</sup> *Id.*

<sup>275</sup> T. 946-47. ([REDACTED]).

<sup>276</sup> T. 936-37 ([REDACTED]).

On cross-examination, [REDACTED] stated that though the Parents at the meeting “clearly indicated the only placement they wanted to consider was [REDACTED],” she did not recall if they specifically stated they would not consider [REDACTED].<sup>277</sup>

The PWN for the August 2023 meeting states that:

Parents shared their input regarding the location of [the Student’s] private day school and shared they feel he should attend [REDACTED]. They shared that he should attend a private separate day school that does not utilize restraint and seclusion. The IEP team noted that restraint and seclusion was not considered by the IEP team and is not a part of his IEP.”<sup>278</sup>

The PWN also notes that “Parents proposed [the Student] attend [REDACTED].<sup>279</sup>

In [REDACTED] September 25, 2023 letter to the Parents, she informed the Parents that she had sent referrals for the Student to [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] stated that she sent the August 22, 2023 draft IEP to the three schools. None of the schools responded. [REDACTED] did not send follow-up letters to any of the schools when she did not hear from them. Neither the Parents nor their educational advocate [REDACTED] reached out to [REDACTED] to ask how the referral process was going with any of the three schools.<sup>280</sup> [REDACTED] was the only school that accepted the Student for the 2023-2024 school year.<sup>281</sup>

Based on her knowledge of how other school systems work, [REDACTED] did not believe the reason she never heard back from the schools was that the IEP was in draft rather than approved format. She noted that other school systems such as Montgomery County always send a draft as part of their referral process. Based on her expertise in nonpublic placements, she stated that private schools to whom students are referred do not need an approved IEP to accept a student and implement the IEP.

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<sup>277</sup> T. 1001-02 ([REDACTED]).

<sup>278</sup> CCPS Ex. 44, p. 6.

<sup>279</sup> CCPS Ex. 44, p. 5.

<sup>280</sup> T. 945 ([REDACTED]).

<sup>281</sup> T. 878-878-90. ([REDACTED]).

The Student's father testified. He stated that the Student is "thriving academically, emotionally, socially at [REDACTED]." <sup>282</sup> He was only willing to consider [REDACTED] or [REDACTED] "if they changed their policy on restraint and seclusion." <sup>283</sup> Asked on direct examination if he and his wife were willing to consider [REDACTED] as a possible placement, [REDACTED] said, "Yes," adding that [REDACTED] one-to-one setting and lack of restraint and seclusion "are two qualities that we liked." <sup>284</sup> Beyond that, they did not know anything about [REDACTED], and made no effort to contact [REDACTED] or make other efforts to learn about its program. [REDACTED] denied saying at any time during the August 2023 IEP meeting that he was unwilling to consider any school but [REDACTED]. <sup>285</sup> He acknowledged requesting at the meeting that the CCPS agree to the Student's placement at [REDACTED], but said he was open to the possibility of [REDACTED], considering they were similar to what [REDACTED] does. <sup>286</sup> The only other thing he knew about [REDACTED] was that the educational setting could be at their house or a community area like a library, and that one teacher would teach the Student all the subjects the entire day.

The Parents did not receive any further communications from the CCPS regarding referrals to nonpublic schools, and did not hear from the schools. [REDACTED] simply assumed that [REDACTED] rejected the Student, but took no action to follow up. Nor did [REDACTED].

On cross-examination [REDACTED], after being pressed, eventually acknowledged that the IEP called for direct psychological services, which he and his wife had opposed at the August 2023 IEP meeting because the Student was getting counseling once a week from [REDACTED] outside of school. When asked by CCPS counsel, "would you have accepted P [REDACTED] with two hours per week of direct psychological counseling, [REDACTED] responded, "*Really, I can't answer* because I don't know

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<sup>282</sup> T. 1120 ([REDACTED]).

<sup>283</sup> T. 1121 ([REDACTED]).

<sup>284</sup> T. 1124-25 ([REDACTED]).

<sup>285</sup> T. 1125 ([REDACTED]).

<sup>286</sup> T. 1126 ([REDACTED]).

the programming at [REDACTED]. I don't know how well he would be doing. I don't know if it addresses his needs without having to be a cost burden to the school system or implement an outside another outside therapist.” (Emphasis added).<sup>287</sup> He reiterated that as of August 2023, the Student was not in need of psychological services because he was able to get to obtain therapy from [REDACTED].<sup>288</sup> As previously noted, [REDACTED] does not offer psychological services or occupational therapy services, to which the Parents objected, both of which are included in the IEP.

[REDACTED] stated that back in 2022, [REDACTED] had assisted him in communicating with [REDACTED], one of the CCPS referrals in 2022. He acknowledged that in connection with the 2023 referrals, no one on the Parents' behalf reached out to [REDACTED] as they had reached out to [REDACTED] in 2022. [REDACTED] himself never emailed or called [REDACTED] after the August 2023 IEP meeting to say they would consider [REDACTED].<sup>289</sup> On redirect, [REDACTED] stated that neither [REDACTED] nor anyone else at the CCPS told him that he should reach out to [REDACTED] and let them know he would be willing to consider their program.<sup>290</sup>

Considering the record as a whole, I find as a fact that the Parents were so committed to continuing the Student's placement at [REDACTED], which they understandably considered a vast improvement over his dismal experience at the CCPS schools, that they were never open to considering [REDACTED], [REDACTED], [REDACTED], or any other school except [REDACTED]. [REDACTED] vividly recalled in her testimony that the Student's mother stated at the August 2023 IEP meeting that “[REDACTED] was the only appropriate placement.”<sup>291</sup> And the Student's mother, who attended remotely most or all of the nine-day hearing, did not testify to refute [REDACTED] account that the Parent said that [REDACTED]

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<sup>287</sup> T. 1223 ([REDACTED]). [REDACTED] said that his reference to “another outside therapist” referred to another therapist “[b]eside [REDACTED].” T. 1223.

<sup>288</sup> T. 1223-24 ([REDACTED]).

<sup>289</sup> T. 1223-1225, 1236-37 ([REDACTED]).

<sup>290</sup> T. 1239-40 ([REDACTED]).

<sup>291</sup> T. 935-36 ([REDACTED]).

was the only appropriate [REDACTED]. The absence of any refutation of [REDACTED] account by the Student's mother added weight to [REDACTED] testimony.

The Parents rejected [REDACTED] and [REDACTED] out of hand at the August 2023 meeting because those schools would not provide a guaranty of no restraint or seclusion. Nor were the Parents open to considering [REDACTED] as a replacement for [REDACTED]. When the Student's father was reminded on cross examination that the IEP included psychological services (which [REDACTED] does not provide), he was not able to say he would have considered [REDACTED] with psychological services, that are expressly called for in the IEP.

The credible evidence shows the Parents were and continue to be highly motivated to keep their child at [REDACTED]. They were not truly open to considering [REDACTED], where instruction would have taken place at home or in a community setting like a [REDACTED] rather than [REDACTED] sensory-controlled school environment, without the [REDACTED] teachers (particularly his trusted adult [REDACTED]) whom they appreciated. The Parents' lack of interest in considering [REDACTED], [REDACTED], or [REDACTED] is shown by: (a) the Student's mother's statement, credibly quoted by [REDACTED], unrefuted by [REDACTED], that [REDACTED] was the only appropriate placement; (b) the Parents' out-of-hand rejection of [REDACTED] and [REDACTED] at the August 2023 IEP meeting unless they changed their restraint policy, (c) the Parents' rejection of [REDACTED], [REDACTED], and [REDACTED] the year before, in 2022, indicating a continuing pattern of rejection or non-consideration of any school except [REDACTED]; (d) the Student's father's unwillingness or inability to answer in the affirmative when asked whether the Parents would accept [REDACTED] with direct psychological services as the IEP called required; (e) the Parents' failure to reach out to [REDACTED] or the CCPS to gain information about [REDACTED]; (f) the Parents' high regard for [REDACTED]; and (g) the July 2023 reenrollment of the Student in [REDACTED] for 2023-2024.

Taken together, these facts outweigh the Student's father's statement that the Parents would have considered [REDACTED]. The force of the Student's father's statement was undercut on cross-examination, when he could not say the Parents would have considered [REDACTED] with the psychological services included in the IEP, and by the unrebutted testimony that the Student's mother said at the August 2023 IEP meeting that [REDACTED] was the only appropriate placement.

I conclude, however, that the CCPS procedurally violated IDEA when [REDACTED] failed to follow up with [REDACTED], [REDACTED], and [REDACTED], and failed to notify the Parents that she had received no response. This lack of follow-up with the schools and lack of communication with the Parents connotes an inadequate effort to implement the August 2023 IEP, or achieve closure with respect to the status of the mutually-agreed nonpublic school placement.

Nevertheless, I conclude that this procedural violation did not interfere with the provision of FAPE or result in a loss of educational opportunity for the Student, because the evidence shows it was a foregone conclusion that the Parents would not have agreed to a placement at [REDACTED], [REDACTED], [REDACTED], or [REDACTED] despite those schools' ability to provide a FAPE. The preponderance of the evidence shows that in 2023 they believed that [REDACTED] was the only appropriate placement, and were unwilling to consider alternatives to [REDACTED].

Under analogous circumstances, federal courts in the Fourth Circuit and the District of Maryland have held that there was no denial of a FAPE. *See T.B. ex rel. T.B. v. Prince George's Cnty. Bd. of Educ.*, 897 F.3d 566, 573 (4th Cir. 2018) (school district's failure to develop an IEP in a timely manner is not a denial of FAPE if the child would not have utilized the IEP anyway); *MM ex rel. D.M. v. Sch. Dist. of Greenville Cnty.*, 303 F.3d 523, 534-35 (4th Cir. 2002) (school district's failure to finalize a proposed IEP was not a denial of FAPE because the parents had indicated they would not have accepted the IEP had it been finalized, based on their lack of cooperation with the process after the initial IEP had

been proposed; the court stated, “there is no evidence that MM’s parents would have accepted any FAPE offered by the District that did not include reimbursement for [their chosen school] ... In these circumstances, MM suffered no prejudice from the District’s failure to agree to her parents’ demands. Because this procedural defect did not result in any lost educational opportunity for MM, the Proposed 1996–97 IEP did not contravene the IDEA.”<sup>292</sup> *M.K. v. Starr*, 185 F.Supp.3d 679 (D. Md. 2016) (court determined there was no denial of FAPE from a school district's failure to notify parents of a student's acceptance at a private school that the district had proposed the student attend, because the parents indicated they would not have accepted that placement anyway, based on their lack of cooperation in the application process and pursuit of another placement), *cf. M.G. v. McKnight*, 653 F.Supp. 3d. 202 (D. Md. 2023) (court found no evidence of parents’ intent to reject any placements that were not the Grove School, beyond defendants' mere speculation).

A school district does not deny a FAPE when, as here, it creates an IEP that offers FAPE, but the parents reject or have no real interest in considering placement locations reasonably suggested by the school system to implement the IEP, insisting on their own preferred school placement. Here, unlike in *M.G. v. McKnight*, there is evidence beyond mere speculation that the Parents would have rejected any placements that were not [REDACTED].

The Parents relied on *Kitchelt v. Weast*, 341 F.Supp.2d 553, 557 n. 1 (D.Md. 2004), for the proposition that just because parents believe that the best education the public school system can provide is not a FAPE, does not mean they have acted in bad faith as long as they engage in the IEP process in good faith. While the parents in *Kitchelt* had a private placement in mind from the start of the IEP process, they considered public school placements in good faith and did not enroll the student in the

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<sup>292</sup> In *K.I v. Durham Public Schools Board of Education*, 54 F.4th 779 (4<sup>th</sup> Cir. 2022), the Fourth Circuit declined to follow *MM ex rel. D.M. v. Sch. Dist. of Greenville Cnty*, on other grounds, relating to an issue of jurisdiction not present here.

private placement until the district failed to make an IEP placement by the start of the school year. Here, by contrast, the Parents reenrolled the Student in [REDACTED] on July 8, 2023, with an expected [REDACTED] start date of August 21, 2023, the day *before* the August 2023 IEP meeting concluded. At the meeting, the Student's mother said [REDACTED] was the only appropriate placement.

In *M.C. v. Starr*, 2014 WL 7404576, at \*12 (D.Md. 2014), the student's mother stated at the August 2023 IEP meeting that her preferred school (Glenholme School) "is the only school that could meet [M.C.'s] needs." *M.C. v. Starr* held that the parents' conduct there demonstrated that they had made up their minds about M.C.'s proposed placements before they even visited, and were determined that Glenholme was the only placement suitable for M.C. The present case resembles *M.C. v. Starr* more than *Kitchelt*.

Finally, in terms of the CCPS's lack of follow-up with the three schools or with the Parents, I considered whether the rationale of *Sam K. ex rel. Diane C. v. Hawaii Dept. of Educ.*, 788 F.3d 1033 (9th Cir. 2015) applies to this case. There, the court held the student's family was entitled to reimbursement for the school year since the department of education tacitly consented to his enrollment in a private school by failing to provide an alternative. The disabled student had been in private school for three years based on a settlement with the district in which it agreed to reimburse tuition for the Loveland School. *Id.* at 1036. The parents and district agreed to meet to discuss placement for a fourth year, but the meetings extended through the school year and no placement was agreed upon until January. *Id.* Meanwhile, the student remained in the same private school, Loveland. *Id.* The issue was whether the fourth-year placement was unilateral under state law. *Id.* at 1038. The Ninth Circuit found the placement was bilateral, not unilateral.

*Sam K.* involved different facts and issues from the present case. Here, unlike in *Sam K.*, there was no prior settlement agreement by which the CCPS agreed to fund the Student's placement at [REDACTED].



And here, unlike in *Sam K.*, the CCPS stated its intention of referring the Student to three alternative private schools at the August 2023 IEP meeting, not months later as in *Sam K.* While none accepted him, the Parents were only willing to agree to a placement at their preferred school, [REDACTED]. The evidence here, unlike in *Sam K.*, fails to show that the CCPS tacitly consented to the Student's placement at [REDACTED], or that his placement there was bilateral rather than unilateral.

In summary, in 2023 the CCPS developed an appropriate IEP and while it did not secure a school acceptance for the Student for the 2023-2024 school year, the Parents were only interested in continuing his attendance at [REDACTED]. As a result, the CCPS did not fail to offer the Student a FAPE. Therefore, the Parents' claim for reimbursement and other relief must fail. As I have determined that there was no violation that resulted in a denial of FAPE, it is not necessary to address whether [REDACTED] was an appropriate placement, or whether it would be equitable to grant the Parents' requested relief.

### **CONCLUSIONS OF LAW**

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

1. The Student was not denied a Free Appropriate Public Education (FAPE) for the 2022-2023 or 2023-24 school years. 20 U.S.C.A. §§ 1400(d)(1)(A), 1414(d)(1)(A)(i)(I)-(V); 1415(f)(1)(A), 1415(f)(3)(E)(ii), and 1412(a)(5) (2017); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117.34, and 300.511(a) (2023); Md. Code Ann., Educ. §§ 7-1101(d), 7-1101(f), 7-1102(c), 8-403 (2002); Md. Code Ann. Educ. § 8-413(d)(1) (Supp. 2023); COMAR 13A.05.01.15C(1); COMAR 13A.05.01.09; COMAR 13A.08.04.05A, B; *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); *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985); *Florence County School District Four v. Carter*, 510 U.S. 7 (1993); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005); *MM ex rel. DM v. School District of Greenville County*, 303 F.3d 523 (4th Cir. 2002); *Gadsby v. Grasmick*, 109 F.3d 940, 956 (4th

Cir.1997); *T.B. ex rel. T.B. v. Prince George's Cnty. Bd. of Educ.*, 897 F.3d 566, 573 (4th Cir. 2018); *M.K. v. Starr*, 185 F.Supp.3d 679 (D. Md. 2016); *M.C. v. Starr*, 2014 WL 7404576 (D.Md. 2014); *M.G. v. McKnight*, 653 F.Supp. 3d. 202 (D. Md. 2023); *Pavelko v. Dist. of Columbia*, 288 F.Supp.3d 301, 307 (D.D.C. 2018).

2. The CCPS did not fail to act in accordance with the procedural requirements of the IDEA by failing to offer a placement in which the Student could receive a FAPE by the start of the 2022-2023 school year because its acts or omissions did not impede the Student's right to a free appropriate public education, significantly impede the Parents' opportunity to participate in the decision making process regarding the provision of a FAPE to the Student, or cause a deprivation of educational benefits. 20 U.S.C.A. §§ 1400(d)(1)(A), 1414(d)(1)(A)(i)(I)-(V); 1415(f)(1)(A), 1415(f)(3)(E)(ii), and 1412(a)(5) (2017); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117.34, and 300.511(a) (2023); Md. Code Ann., Educ. §§ 7-1101(d), 7-1101(f), 7-1102(c), 8-403 (2002); Md. Code Ann. Educ. § 8-413(d)(1) (Supp. 2023); COMAR 13A.05.01.15C(1); COMAR 13A.05.01.09; COMAR 13A.08.04.05A, B; *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); *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985); *Florence County School District Four v. Carter*, 510 U.S. 7 (1993); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005); *MM ex rel. DM v. School District of Greenville County*, 303 F.3d 523 (4th Cir. 2002); *T.B. ex rel. T.B. v. Prince George's Cnty. Bd. of Educ.*, 897 F.3d 566, 573 (4th Cir. 2018); *Gadsby v. Grasmick*, 109 F.3d 940, 956 (4th Cir.1997); *M.K. v. Starr*, 185 F.Supp.3d 679 (D. Md. 2016); *M.C. v. Starr*, 2014 WL 7404576 (D.Md. 2014); *M.G. v. McKnight*, 653 F.Supp. 3d. 202 (D. Md. 2023); *Pavelko v. Dist. of Columbia*, 288 F.Supp.3d 301, 307 (D.D.C. 2018).

3. The CCPS did not fail to act in accordance with the procedural requirements of the IDEA in developing an appropriate IEP for the Student leading up to the 2023-2024 school year, because its

acts or omissions did not impede the Student’s right to a free appropriate public education, significantly impede the Parents’ opportunity to participate in the decision making process regarding the provision of a FAPE to the Student, or cause a deprivation of educational benefits. 20 U.S.C.A. §§ 1400(d)(1)(A), 1414(d)(1)(A)(i)(I)-(V); 1415(f)(1)(A), 1415(f)(3)(E)(ii), and 1412(a)(5) (2017); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117.34, and 300.511(a) (2023); Md. Code Ann., Educ. §§ 7-1101(d), 7-1101(f), 7-1102(c), 8-403 (2002); Md. Code Ann. Educ. § 8-413(d)(1) (Supp. 2023); COMAR 13A.05.01.15C(1); COMAR 13A.05.01.09; COMAR 13A.08.04.05A, B; *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); *Sch. Comm. of Burlington v. Dep’t of Educ.*, 471 U.S. 359, 370 (1985); *Florence County School District Four v. Carter*, 510 U.S. 7 (1993); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005); *MM ex rel. DM v. School District of Greenville County*, 303 F.3d 523 (4th Cir. 2002); *T.B. ex rel. T.B. v. Prince George’s Cnty. Bd. of Educ.*, 897 F.3d 566, 573 (4th Cir. 2018); *Gadsby v. Grasmick*, 109 F.3d 940, 956 (4th Cir.1997); *M.K. v. Starr*, 185 F.Supp.3d 679 (D. Md. 2016); *M.C. v. Starr*, 2014 WL 7404576 (D.Md. 2014); *M.G. v. McKnight*, 653 F.Supp. 3d. 202 (D. Md. 2023); *Pavelko v. Dist. of Columbia*, 288 F.Supp.3d 301, 307 (D.D.C. 2018).

4. The Parents are not entitled to reimbursement of [REDACTED] or other relief for either the 2022-2023 or 2023-2024 school year. 20 U.S.C.A. §§ 1400(d)(1)(A), 1414(d)(1)(A)(i)(I)-(V); 1415(f)(1)(A), 1415(f)(3)(E)(ii), and 1412(a)(5) (2017); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117.34, and 300.511(a) (2023); Md. Code Ann., Educ. §§ 7-1101(d), 7-1101(f), 7-1102(c), 8-403 (2002); Md. Code Ann. Educ. § 8-413(d)(1) (Supp. 2023); COMAR 13A.05.01.15C(1); COMAR 13A.05.01.09; COMAR 13A.08.04.05A, B; *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); *Sch. Comm. of Burlington v. Dep’t of Educ.*, 471 U.S. 359, 370 (1985); *Florence County School District Four v. Carter*, 510 U.S. 7

(1993); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005); *MM ex rel. DM v. School District of Greenville County*, 303 F.3d 523 (4th Cir. 2002); *T.B. ex rel. T.B. v. Prince George's Cnty. Bd. of Educ.*, 897 F.3d 566, 573 (4th Cir. 2018); *M.K. v. Starr*, 185 F.Supp.3d 679 (D. Md. 2016); *M.C. v. Starr*, 2014 WL 7404576 (D.Md. 2014); *M.G. v. McKnight*, 653 F.Supp. 3d. 202 (D. Md. 2023); *Pavelko v. Dist. of Columbia*, 288 F.Supp.3d 301, 307 (D.D.C. 2018).

### **ORDER**

I **ORDER** that the April 1, 2023 Amended Due Process Complaint filed by the Parents is hereby **DENIED**.

June 21, 2024  
Date Decision Mailed

Robert B. Levin  
Administrative Law Judge

RBL/emh  
#212106

### **REVIEW RIGHTS**

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

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

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

**Copies Mailed and Emailed To:**

[REDACTED]

Cheryl Steedman, Esquire  
Wayne Steedman, Esquire  
Elana M. Krupka Simha, Esquire

[REDACTED]

Craig S. Meuser, Esquire

[REDACTED]

[REDACTED]

[REDACTED]

**██████████ AND ██████████**  
**PARENTS,**  
**ON BEHALF OF ██████████,**  
**STUDENT,**  
**v.**  
**CARROLL COUNTY PUBLIC SCHOOLS**

**BEFORE ROBERT B. LEVIN,**  
**AN ADMINISTRATIVE LAW JUDGE**  
**OF THE MARYLAND OFFICE**  
**OF ADMINISTRATIVE HEARINGS**  
**OAH No.: MSDE-CRRL-OT-24-02944**

**APPENDIX: EXHIBIT LISTS**<sup>293</sup>

I admitted (except where otherwise indicated) the following exhibits offered by the Parents:

<b>Exhibit:</b>	<b>Date:</b>	<b>Description:</b>
1.	2024.03.27	AMENDED Due Process Complaint
2.	2024.03.18	Parents' Request for Production of Documents
3.	CV	██████████, ██████
4.	CV	██████████, ██████
5.	CV	██████████
6.	CV	██████████
7.	Resume	██████████
8.	2018.01.31	██████ Neuropsychological Evaluation, ██████████
9.	2019.10.16	CCPS PWN
10.	2020.06.05	CCPS Approved IEP
11.	2020.06.05	CCPS Revised BIP

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<sup>293</sup> The exhibit lists are in the format provided by each party. The exhibits not offered into evidence or offered but not admitted will remain in the file as part of the administrative record. COMAR 28.02.01.22C.

12. 2021.11.12 CCPS BIP
13. 2021.11.12 CCPS Final BIP
14. 2022.02.02 CCPS Approved IEP- Grade 5
15. 2022.02.26 ██████████ Counseling Letter re Seclusion-Restraint, ██████████, ██████████
16. 2022.02.28 Email from ██████████ (NOT OFFERED)
17. 2022.03.03 CCPS Disciplinary Incident Notification- Physical Contact (NOT OFFERED)
18. 2022.03.04 Psychoeducational Evaluation Summary, ██████████
19. 2022.03.07 CCPS Disciplinary Incident Notification-Unsafe Behavior (NOT OFFERED)
20. 2022.03.09 Email to ██████████ re ██████████ Absence
21. 2022.03.10 Email from ██████████ re ██████████ Absence
22. 2022.03.11 CCPS Disciplinary Incident Notification-Disruption (NOT OFFERED)
23. 2022.03.15 Email to ██████████ re ██████████ Absence
24. 2022.03.16 CCPS Disciplinary Incident Notification-Disruption (NOT OFFERED)
25. 2022.03.17 CCPS Disciplinary Incident Notification-Unsafe Behavior
26. 2022.03.17 Email from ██████████ re ██████████ Absence
27. 2022.03.17 Counseling Logs (NOT OFFERED)
28. 2022.03.18 Email to ██████████ re ██████████ Refusal
29. 2022.03.24 Email to ██████████ re Response for a Parent Meeting
30. 2022.03.29 Email to ██████████ re ██████████ Refusal
31. 2022.04.27 CCPS BIP
32. 2022.04.27 CCPS Updated Draft IEP
33. 2022.04.27 CCPS Prior Written Notice

34. 2022.06.09 CCPS Referral Letter, ██████████, Coord of SpEd-Nonpublic Placements
35. 2022.09.27 CCPS Response to 10 Day Notice Letter
36. Oct 22-July 23 ██████████ Calendar
37. Fall 22-23 ██████████ Progress Reports and Session Notes
38. Winter 22-23 ██████████ Progress Reports and Session Notes
39. Sept 23-Feb 24 ██████████ Calendar
40. Spring 22-23 ██████████ Progress Reports and Session Notes
41. 2023.07.20 CCPS Consent for Release of Information
42. 2023.07.20 CCPS Consent for Observation
43. 2023.07.27 Summary of Behaviors Noted by ██████████ Staff
44. 2023.08.18 ██████████ Unofficial Middle School Transcript
45. 2023-2024 Fall Progress Report
46. Fall 23-24 ██████████ Progress Reports and Session Notes
47. 2023-2024 Winter Progress Report
48. Winter 23-24 ██████████ Progress Reports and Session Notes
49. 2023.08.22 CCPS Draft IEP
50. 2023.08.22 CCPS PWN
51. 2022-2023 ██████████ 6<sup>th</sup> grade attendance
52. 2023.09.25 Letter re Private Separate Day Schools, ██████████
53. 2023-2024 ██████████ 7<sup>th</sup> grade attendance
54. 2023.08.29 CCPS Notice of Documents
55. ██████████ Graduation Speech (**NOT ADMITTED**)



I admitted (except where indicated otherwise) the following exhibits offered by CCPS:

<b>EX. #</b>	<b>Date</b>	<b>Title</b>
	<b>2018 to 2021 Assessments</b>	
1	3/2018	██████ Evaluation Report
2	05/2018 to 02/2020	Speech and Language Assessment Reports and Eligibility Tool
3	5/5/2021	Other Health Impairment (OHI) Eligibility Tool
4	11/5/2021	Functional Behavior Assessment (FBA)
5	11/8/2021	Occupational Therapy Evaluation Report
	<b>2021-2022 IEP Docs.</b>	
6	11/12/2021	Behavior Intervention Plan (BIP
7	11/12/2021	Prior Written Notice for 11-12-2021 IEP Mtg.
8	11/12/2021	Amended IEP
9	2/2/2022 - 4/2022	IEP and IEP Progress Report
10	2/9/2022	Prior Written Notice (PWN) for 2-2-22 and 2-9-22 IEP Mtgs.
11	4/2/2022	Draft Present Levels of Academic Achievement and Functional Performance
12	4/21/2022	Parent email re NonPublic placement for █████
13	4/25/2022	Parent email to ████████ re HHT Application
14	4/26/2022	Parent email re: █████ IEP Mtg Participation
15	4/27/2022	BIP
16	4/27/2022	IEP for NonPublic Placement
17	4/27/2022	PWN
	<b>Non-Public Referral</b>	
18	5/19/2022	NonPublic Referral Letter and ROI Forms
19	Undated	Type 1 Special Education School Requirements
20	5/25/2022	Parent ROI for One NonPublic School
21	6/9/22 to 6/13/22	CCPS Communication re NonPublic Referral Packets
22	6/22/2022	CCPS Email re Next Steps

23	7/7/2022	Advocate Email re Responses by Additional NonPublic Schools
24	6/1/22 to 8/16/22	CCPS Communication with NonPublic Schools
25	8/11/2022	CCPS Email re Next Steps for NonPublic Schools
26	8/22/2022	Parent email with [REDACTED]
27	7/15/2022 to 9/5/2022	[REDACTED] Communication with Parents re Visits, Admission, Etc.
28	6/24/2022 to 9/9/2022	[REDACTED] Communication with Parents
29	08/15/22 to 09/15/22	[REDACTED] Communication with Parents
	<b>Unilateral Placement</b>	
30	8/9/22 to 8/16/22	Parent Communication with [REDACTED]
31	8/17/2022	Parent Communication with [REDACTED]
32	8/31/2022	Parent Communication with Advocate
33	9/27/2022	CCPS Response to Parent Notice of Unilateral Placement
34	2022-2023	MS 2D Art - [REDACTED] Course Documents
35	2022-2023	PreAlgebra - [REDACTED] Course Documents
36	2022-2023	22-23 SY [REDACTED] Weekly Class and Tutorial Hours
37	2022-2023	Academic and Tutoring Calendar and Daily Attendance
38	8/10/2023	[REDACTED] 2022-2023 Transcript
	<b>Summer 2023 IEP Development</b>	
39	6/6/23 to 7/6/23	23-24 SY [REDACTED] Enrollment Contracts and Tuition Deposits
40	7/14/2023	IEP Meeting Notice
41	8/10/2023	CCPS Notes re: [REDACTED] Conversation
42	8/14/2023	Draft IEP
43	8/21/2023	CCPS Summary of Behaviors Noted by [REDACTED]
44	8/22/2023	PWN and IEP
45	9/25/2023	Letter to NonPublic Schools

	<b>2023-2024 School Year</b>	
46	Fall 2023	Daily Calendar of ██████████ Classes
47	9/2023 to 1/2024	English 7A and Lang. Arts 7A - ██████████ Course Documents
48	9/2023 to 1/2024	Algebra - ██████████ Course Documents
49	2/1/2024	2024-2025 Class and Tuition Plan at ██████████
50	2/14/2024	24-25 SY Non-refundable Deposit for ██████████
	<b>Miscellaneous</b>	
51	12-2022 to 2-2024	██████████ Fees for Academic Classes and Tutoring
52	2/9/24; 3/11/24; and 4/8/2024	Legal Correspondence - Response to ██████████; Record Request & Resolution Session
53	2/14/2024	Parent Email re Sharing ██████████ April 2022 Report with CCPS
54	4/4/2024	Parent Email Confirming No Sharing of Third Party Trauma Information ( <b>NOT OFFERED</b> )
55	2021-2023	MSDE Restraint and Seclusion Data for Non-Public Schools
56	2023-2024	██████████ ELA and Math Frameworks
57	2023-2024	MSDE MCCR ELA and Math Standards ( <b>NOT OFFERED</b> )
	<b>Resumes</b>	
58	Undated	██████████
59	Undated	██████████
60	Undated	██████████
61	Undated	██████████
62	Undated	██████████