

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

BEFORE ANN C. KEHINDE,  
AN ADMINISTRATIVE LAW JUDGE  
OF THE MARYLAND OFFICE  
OF ADMINISTRATIVE HEARINGS  
OAH No.: MSDE-MONT-OT-24-01796

**DECISION**

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STATEMENT OF THE CASE  
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SUMMARY OF THE EVIDENCE  
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DISCUSSION  
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ORDER

**SUMMARY**

Montgomery County Public Schools' (MCPS) proposed placement of the Student in the ██████████ for the 2023-24 school year was reasonably calculated to provide her with a Free, Appropriate Public Education (FAPE). The ██████████ (Student), who prefers the name ██████, made meaningful progress in the MCPS ██████████ ██████████ in light of her unique circumstances as a Student with Autism Spectrum Disorder (██████), a cognitive disability, an expressive and receptive communication disability, and specific learning disorders in reading, math, and writing. As a result, ████████ and ██████████s (Parents) request for reimbursement for tuition and other expenses they paid for their daughter to attend the ██████████ ██████████), a nonpublic special education school for the 2023-24 school year, is denied.

## STATEMENT OF THE CASE

On January 18, 2024,<sup>1</sup> the Parents filed a Due Process Complaint (Complaint) with the OAH on the Student's behalf, requesting a hearing to review the identification, evaluation, or placement of the Student by the MCPS under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. §§ 1400-1419 (2017).<sup>2</sup>

On February 14, 2024, the parties waived their obligation to attend a resolution session and agreed instead to proceed directly to a hearing.<sup>3</sup>

The Complaint alleges that the MCPS violated the IDEA, by denying the Student a FAPE by failing to provide the Student with a reasonable opportunity to achieve meaningful educational benefit in light of her unique circumstances. The requested remedy is reimbursement of tuition and expenses for the Student at [REDACTED] for the 2023-24 school year.

On February 15, 2024, I conducted a remote pre-hearing conference (Conference) in the captioned matter. Stacy Reid Swain, Esquire, represented the MCPS. Brian Gruber, Esquire, represented the Parents and Student.

After extensive discussion of counsel's schedules, we agreed to begin the hearing on Friday, April 5, 2024, and continue on Monday, April 8, 2024, Tuesday, April 9, 2024, Wednesday, April 10, 2024, and Friday, April 12, 2024. Although counsel initially stated that they would need six days to complete the hearing, it was very difficult (based on schedule

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<sup>1</sup> Counsel for the Parents digitally signed the Complaint on January 12, 2024, but it was not faxed to the Office of Administrative Hearings (OAH) until January 17, 2023 at 1725 or 5:25 p.m. Code of Maryland Regulations (COMAR) 28.02.01.04D(1), (3) provides that a non-postmarked document delivered electronically to the OAH after the close of business is deemed to have been filed on the next day the OAH is open for business.

<sup>2</sup> "U.S.C.A." is an abbreviation for the United States Code Annotated.

<sup>3</sup> During the February 15, 2024 Pre-Hearing Conference, I requested the parties send the February 14, 2024 statement that the parties were waiving the resolution session. It was timely received by the OAH on February 16, 2024.

conflicts) to find five mutually agreeable hearing dates.<sup>4</sup> I asked Ms. Swain, based on her schedule of being out of the country from March 14, 2024, through March 26, 2024, and the overlapping MCPS Spring break through Monday, April 1, 2024, if there was any possibility of outside counsel representing the MCPS in this matter. Ms. Swain indicated that the MCPS budget was frozen and therefore it was highly unlikely outside counsel would be appointed in this case.

Under the regulatory timeline, the decision in this case normally would be due on Friday, March 29, 2024, which is forty-five days from the day after the parties agreed in writing, on February 14, 2024, that they would waive the resolution session.<sup>5</sup> 34 C.F.R. §§ 300.510(c)(1), 300.515(a).<sup>6</sup> However, the regulations authorize me to grant a specific extension of time at the request of either party. *Id.* § 300.515(c). In this case, counsel and I discussed our schedules in detail starting February 26, 2024, and it was impossible to obtain dates that everyone was available prior to Friday, April 5, 2024. The parties jointly requested an extension of time to conduct the hearing and issue a decision which I granted. At the request of the parties, I agreed to issue my decision within thirty days of the last hearing date; that is by Friday, May 17, 2024.<sup>7</sup>

I issued my Conference Report and Order on February 23, 2024.

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<sup>4</sup> I began with Ms. Swain's calendar because if she already had a conflict there was no need to check Mr. Gruber (who is equally busy with scheduled IEP meetings and hearings), or mine. Ms. Swain had multiple IEP meetings scheduled for February 26, 27, and 28, 2024. On February 29, 2024, I was unavailable due to an already scheduled medical appointment. On March 1, 2024, Ms. Swain had two meetings and a prehearing conference already scheduled. On March 4 and 5, 2024, Ms. Swain had multiple IEP meetings scheduled. Ms. Swain had a hearing scheduled at the OAH for March 6, 7, 8, 11, 12, and 13, 2024. From March 14 to 26, 2024, Ms. Swain was out of the country and the MCPS Spring break continued March 27 through April 1, 2024. On April 2 and 3, 2024, Ms. Swain had a hearing scheduled at the OAH. Therefore, the parties agreed to begin the hearing on Friday, April 5, 2024, and continue the hearing on April 8, 9, 10, and 12, 2024 (but not on April 11, 2024, as Ms. Swain had multiple IEP meetings already scheduled). Mr. Gruber noted that he was initially taking off on Friday, April 5, 2024, due to a family matter, but due to the difficulty in securing dates, he graciously agreed to begin the hearing on April 5<sup>th</sup>.

<sup>5</sup> The forty-fifth day is Sunday, March 31, 2024, so to be timely the decision would have to be issued by Friday, March 29, 2024.

<sup>6</sup> Unless otherwise noted, all citations herein to the C.F.R. are to the 2022 bound volume.

<sup>7</sup> The parties requested that I issue a decision within thirty days from the last date of hearing (Wednesday, April 17, 2024) which would be Friday, May 17, 2024.

On February 26, 2024, Craig S. Meuser, Esquire, filed a Request for Postponement on behalf of the MCPS. He noted that he had entered his appearance in this matter “late last week” and had a conflict on Tuesday, April 9, 2024, because he had a meeting on the Eastern Shore for a public agency client and no one from his firm could cover that monthly meeting. Mr. Meuser further stated that Mr. Gruber agreed to substituting April 16, 17 or 19, 2024, for April 9<sup>th</sup>.

On February 27, 2024, Mr. Meuser filed a Motion to Correct the Conference Report and Order because now that he was representing the MCPS, changes to discovery that were agreed to by counsel during the Conference to accommodate the MCPS attorney’s travel schedule, were no longer necessary. Again, Mr. Meuser represented that counsel for the parents agreed with the proposed revisions.

On February 29, 2024, I issued a Revised Conference Report and Order to reflect the revisions in hearing dates and discovery due dates due to the change in the MCPS counsel.

I held the hearing remotely on Friday, April 5, 2024, Monday, April 8, 2024, Wednesday, April 10, 2024, Friday, April 12, 2024, Tuesday, April 16, 2024, and Wednesday, April 17, 2024. Mr. Gruber represented the Parents and Mr. Meuser represented the MCPS.

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

### **ISSUES**

1. Whether the program offered by the MCPS for the 2023-24 school year was a continuation of a similar program offered to the Student during the past three school years, which the Parents maintain was insufficient to allow the Student to achieve meaningful educational benefit, because:

- a. the Applied Behavioral Analysis (ABA) component of the proposed program would not be implemented with sufficient fidelity, consistency, and appropriate staffing; and
  - b. the number of transitions in the Student's school day (for the purpose of enabling her to interact with her nondisabled peers) was inappropriate given the Parents' allegations that the transitions disrupted the Student from receiving meaningful educational benefit and provided minimal or no educational benefit to the Student.
2. If the MCPS proposed program for the 2023-24 school year would not have provided the Student with a FAPE, was [REDACTED] an appropriate placement for the Student and should the Parents be reimbursed for the tuition associated with her unilateral placement at [REDACTED]?

### SUMMARY OF THE EVIDENCE

#### Exhibits

The Parents offered 30 exhibits and 28 were admitted. They are detailed in an Appendix to this Decision.

MCPS offered 48 exhibits and 45 were admitted. They are also listed in an Appendix to this Decision.

#### Testimony

The Student's father testified and presented the following witnesses:

1. [REDACTED], [REDACTED], [REDACTED]<sup>8</sup>, [REDACTED]<sup>9</sup>, [REDACTED] ([REDACTED]), admitted as an expert in school psychology, psychology, [REDACTED], and conducting assessments

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<sup>8</sup>  
<sup>9</sup>

2. [REDACTED] Executive Director, [REDACTED], admitted as an expert in special education
3. [REDACTED],<sup>10</sup> Program Director, [REDACTED],
4. [REDACTED] Special Education Consultant, [REDACTED], admitted as an expert in special education and a [REDACTED]
5. The Student's mother testified in rebuttal

The MCPS presented the following witnesses:

1. [REDACTED], [REDACTED] Specialist, MCPS, admitted as an expert in special education and [REDACTED]
2. [REDACTED],<sup>11</sup> [REDACTED], School Psychologist, Services for Students with ASD, MCPS, admitted as an expert in school psychology, special education, autism, and conducting evaluations
3. [REDACTED], [REDACTED],<sup>12</sup> Occupational Therapist, MCPS, admitted as an expert in occupational therapy (OT) and sensory processing<sup>13</sup>
4. [REDACTED] Special Educator, MCPS, admitted as an expert in special education<sup>14</sup>

### STIPULATIONS<sup>15</sup>

1. The Student was born on [REDACTED], and is a sixth-grade student, who lives with her Parents in Montgomery County.
2. The Student received early intervention services and, upon transitioning to school based special education services, began attending [REDACTED] at [REDACTED]. She was then placed in the [REDACTED], a public school operated by the MCPS, for kindergarten, where she began attending at the start of the 2017-18 school year.

<sup>10</sup> [REDACTED] (State of MD).

<sup>11</sup> [REDACTED] (School Psychology).

<sup>12</sup> [REDACTED].

<sup>13</sup> The MCPS also offered [REDACTED] as an expert in autism and I sustained the Parents' objection for the reasons stated on the record.

<sup>14</sup> I qualified [REDACTED] as an expert over the Parents' objection for the reasons stated on the record.

<sup>15</sup> The Stipulations have been edited to redact names for confidentiality purposes. I have also edited for grammar and continuity. Any changes made were not substantive.

3. The Student attended the [REDACTED] at [REDACTED] [REDACTED] pursuant to her Individualized Education Program (IEP) from kindergarten through fifth grade, with the exception of a few weeks during her first grade year.

4. The global COVID-19 pandemic prevented the Student from accessing various private therapies, including ABA, speech/language, and occupational therapy, that she had been receiving at Parent expense.

5. The Student's learning was compromised by the shift to on-line learning necessitated by the pandemic.

6. In 2022, the Parents engaged [REDACTED], a former MCPS [REDACTED] [REDACTED] teacher and administrator, to observe the Student in her school setting and to assist with the revision of the Student's IEP.

7. The Student was evaluated by [REDACTED] and her colleague during the 2022-2023 school year.

8. [REDACTED] report was provided to the MCPS in 2023 for review and consideration as part of the revision of the Student's IEP.

9. MCPS and the Parents convened an IEP meeting on February 9, 2023, to review and revise the IEP.

10. On or about March 29, 2023, the MCPS provided the Parents with an IEP progress report.

11. The MCPS and the Parents convened an IEP meeting on April 28, 2023 to review and revise the IEP.

12. During the April 28, 2023 IEP meeting, team members considered current classroom data (present levels and progress goals and objectives), historical classroom data,

parental input and most recent formalized assessments (Speech and Language Assessment, OT status report, Functional Behavioral Assessment, [REDACTED] outside assessment).

13. At the April 28, 2023 IEP meeting, the MCPS and the Parents agreed to the following:

- A. [REDACTED] continues to be the most appropriate primary educational disability code to describe the Student's need for special education services.
- B. Add external [REDACTED] assessment data to present levels of performance section of the IEP.
- C. Add a pragmatic language goal/objectives to the IEP.
- D. Omit written language content as a domain area in the IEP and move the present levels and goals under that section to written language expression section of the IEP.
- E. Add the phrase "*fading prompt hierarchy, individualized reinforcement system*" to all given statements in the IEP.
- F. Add a given statement to reading goal areas in the IEP.
- G. Specify that the phonics goal in the IEP is targeting 20 grade 2 curriculum words.
- H. Add a new goal area under self-management section of the IEP to target independent skills using a task analysis from the recently conducted FBA.
- I. Add additional language to the IEP of immediacy of reinforcement, monitoring reinforcement effectiveness, reinforcement for functional communication, visuals to support expectations, building on previous knowledge and breaking down into small steps.
- J. Add a goal to the IEP related to functional life skill of telling digital time.
- K. Add a problem solving goal to the IEP that addresses emotions and coping strategies tied to the zones of regulation.
- L. Add a health and safety goal to the IEP.

14. At the April 28, 2023 IEP meeting the MCPS reviewed continuum of services and proposed the Student continue in [REDACTED] as her LRE.



15. On or about June 13, 2023, MCPS provided the Parents with an IEP progress report.

16. The Parents rejected the 2023-2024 IEP and placement and sought admission at [REDACTED].

17. The Student was accepted to [REDACTED], and she enrolled there at Parent expense on or about September 13, 2023.

### **FINDINGS OF FACT**

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

1. [REDACTED] is a neurodevelopmental disability that impacts all or most areas of an individual's functioning. (T. [REDACTED], p. 44). The Student's [REDACTED] is pervasive, affecting her in all areas: communication, interpersonal interactions, adaptive functioning behavior, and academics (reading, math, written language). (MCPS Ex. 6, p. 21).

2. ABA is a research-based methodology to improve the student's functioning across domains: learning from their environment; establishing relationships; and opportunities for independence. ABA methodology is also used to decrease or reduce the presence of interfering behaviors and reward or reinforce positive behaviors, skills, etc. (T. [REDACTED], p. 46).

3. Crucial to the ABA methodology is collecting data through 1:1 structured interactions with a student with [REDACTED], to determine the ABCs of the student's behavior. The ABCs stand for: (A) Antecedent (what happened before the behavior or event occurred); (B) the Behavior itself; and, (C) the Consequences that follow the behavior. (T. [REDACTED], p. 45).

4. Consistency across settings, people, and across all areas of teaching is necessary for a student with [REDACTED] to learn and, along with the collection of data, is one of the hallmarks of the ABA methodology. (T. [REDACTED], p. 47).

5. Generalization is the ABA principle of having a student demonstrate a specific skill across multiple settings and with multiple people. Generalization is important to demonstrate whether a student has truly learned a skill. (T. ██████████ 637-8).

6. The MCPS ██████████ are not full-time ABA programs but apply ABA principles throughout the day.

7. The MCPS ██████████ provided the Student with two and one-half hours of “intensive teaching” every day in a 1:1 ratio of provider to student. The intensive teaching followed this protocol:

- Starts with the behavioral momentum of reviewing mastered materials.<sup>16</sup>
- Present an “open target” which is a skill that has not been mastered yet. This is known as presenting a “cold probe.” No prompting is allowed when testing with a cold probe. The purpose is to see if the Student can follow the directions and perform the skill without prompting.
- If the Student is able to perform the cold probe, she gets an immediate, highly preferred reinforcer.
- If the Student is unable to perform the cold probe, the instructor re-presents the directions and gives the Student a full prompt to enable her to do the skill correctly. The skill is repeated and practiced with the hope that the next day when it is presented as a cold probe (without any prompting), the Student is able to perform the skill.

(T. ██████████, p. 586).

8. Every day the Student had a period of whole group instruction that consisted of five students, the special education teacher, a teaching assistant, and a paraeducator. The special education teacher presented the lesson with visuals and the assistants prompted students as needed.

9. The total school week was thirty-two hours and five minutes. Of that, in fifth grade the Student was in special education twenty-six hours and fifty-five minutes per week and

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<sup>16</sup> ██████████ testified that when the Student mastered a particular skill, that skill was placed in the bin of acquired skills and was used to start the 1:1 intensive teaching to make sure a skill was retained and to also get the Student into the rhythm of answering correctly.

in general education for five hours and ten minutes per week. The time the Student spent in general education with her typically developing peers was for lunch, recess, and some assemblies. There was always a teacher, assistant, or paraeducator present. (MCPS Ex. 6, p. 57).

10. The Student is not working towards a high school diploma. She is in the [REDACTED] ([REDACTED]) track, which means that a certificate of completion is awarded and not a high school diploma when the student finishes high school.

11. For a student to be eligible for the [REDACTED] track, the student must have a significant cognitive disability<sup>17</sup> and it must be pervasive. To determine if a student has a “significant cognitive disability,” an IEP team looks at the student’s performance on measures of cognitive functioning in comparison to their same-age peers, as well as other factors. Standard Scores are obtained from the tests and a score of 100 is average, with some students falling below a 100 and some students scoring above a 100 (as in a “bell curve.”) If a student’s score is 70 +/- 5 points, the student’s score is two standard deviations below the mean and is considered to have a significant cognitive disability. “Pervasive” means that it impacts the student’s performance across all areas of their functioning. (T. [REDACTED], pp. 737-9).

12. The participation criteria to determine if a student remains eligible for [REDACTED] must be reviewed annually. The most recent [REDACTED] review by an IEP team for the Student was on February 10, 2022, when all members of the IEP team agreed that the Student continued to be eligible for [REDACTED]. (MCPS Ex. 7).

13. The MCPS uses several forms of communication to report to parents and guardians about [REDACTED] student progress. Both the State and the MCPS require an “Addendum” to the regular MCPS quarterly report card for [REDACTED] students. The purpose of the Addendum report

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<sup>17</sup> Significant cognitive disability is then further subdivided into mild, moderate, or severe.

card is to show what elements of the MCPS curriculum they are focusing on in school. It is not necessarily related to the goals and objectives of the students' IEPs.

14. Maryland and the MCPS require schools to send out quarterly progress reports to explain what progress the Student is making on the goals and objectives of their IEPs.

15. For students in the MCPS [REDACTED], a third communication method was developed to inform student's families regarding their progress. A "Curriculum, Community, and Career Access Skills" report was developed and sent to families on a quarterly basis. (MCPS Ex. 4, pp. 60-73). This report is a more "user friendly" summary of the information found in the voluminous IEP progress reports.

16. In 2020, when the Student was eight years old, her Parents took her to [REDACTED] for a comprehensive neuropsychological evaluation. In 2022, when the Student was ten years old, the Student returned for another neuropsychological evaluation.

17. In both neuropsychological evaluations, [REDACTED] used standardized tests to obtain a measure of the Student's general intellectual functioning and a measure of the Student's academic achievement. [REDACTED] interviewed the Parents and gave rating scales to the Student's Parents and the Student's teacher to gauge the Student's attention, executive functioning, and adaptive functioning.

18. The Differential Ability Scale (DAS) Early Years Form measures general intellectual functioning but is not "language heavy." The DAS is not dependent on the student having a certain level of background language knowledge. This is particularly important for the Student who has an Expressive and Receptive Language Disorder. (T. [REDACTED], p. 52).

19. The DAS provides three index scores: Verbal, Nonverbal, and Spatial. The Student's Verbal Index score was 46, or in the very low range (< 1<sup>st</sup> percentile). The Student's Nonverbal Index score was 64, or in the very low range (1<sup>st</sup> percentile). Based on the Student's

inattention and lack of engagement, these scores are probably an underestimate of her abilities. When instructions were modified to better engage the Student, her performance improved significantly, and she was more in the average range (34<sup>th</sup> percentile). (P. Ex. 12, p. 00137).

20. The Student's performance on the Spatial Index subtests was highly variable, ranging from a < 1<sup>st</sup> percentile to a 66<sup>th</sup> percentile. (P. Ex. 12, p. 00137).

21. The Student had relative strengths in non-verbal, spatial, and visual domains and significant weaknesses in receptive and expressive communication such that she met the diagnostic criteria for a Mixed Receptive-Expressive Language Disorder. (P. Ex. 12, p. 00137).

22. The Student was also administered the Kaufman Assessment Battery for Children – Second Edition (KABC II). The Student's score in the KABC-II Learning Index was in the 0.1<sup>st</sup> percentile; meaning that 99.9% of her same-age peers performed better than the Student. The Student's ability to learn a large amount of information with constant feedback fell in the very low range of below .1 percent. (P. Ex. 12, p. 00139; T. ██████████, p. 781-2).

23. To assess the Student's attention and executive functioning, questionnaires were given to the Student's parents and teachers. Executive functioning includes the Student shifting her attention between tasks, getting started on tasks, organizing her emotions, and regulating her sensory responses. The Student has significant weaknesses in executive functioning, including working memory, flexibility, organization, initiation, and self-monitoring. (P. Ex. 12, p. 00143).

24. ██████████ and her colleague noted that the Student lost attention after about ten to fifteen minutes on a task; if she was particularly engaged in a task, she might be able to work for twenty minutes before she needed a break.

25. Adaptive functioning is sometimes referred to as "home-living skills" or activities of daily living such as the ability to dress, shower, take care of personal hygiene, health and safety, and the ability to navigate independently in the community, etc. The Student's adaptive

functioning was evaluated based on questionnaires that were given to the Parents as well as an interview with the Parents. The Student's overall adaptive functioning was in the very low range (1<sup>st</sup> percentile), well below age level expectation, and recommendations were made to develop her daily living skills. (P. Ex. 12, p. 00142).

26. ██████ assessed the Student's academic achievement by administering the Woodcock Johnson IV (WJ-IV).

27. The Student was assessed in her sight-word reading skills, phonetic decoding abilities, and comprehension of short reading passages. The Student was at the late-Kindergarten/first grade level in these skills. She met the diagnostic criteria for a Specific Learning Disorder in Reading. (P. Ex. 12, p. 00139).

28. In math, the Student was assessed in math reasoning and math calculations. The Student scored in the < .1 percentile, which was less than kindergarten level. (P. Ex. 12, p. 00140).

29. As the Parents and the Student's tutor told ██████ that the Student was able to perform single digit addition using manipulatives, ██████ asked the Parents to bring the Student's manipulatives on a different day and the testing was re-administered.

30. On the re-administered test, the Student performed significantly better using manipulatives and was able to correctly answer all single digit addition problems. Using manipulatives, the Student's performance was in the borderline range (3<sup>rd</sup> percentile), but the WJ-IV does not allow examinees to use manipulatives, so the improved performance scores were not official scores. The Student met the diagnostic criteria for a Specific Learning Disorder in Mathematics. (P. Ex. 12, p. 00140).

31. In written language, the Student was in the 4<sup>th</sup> percentile and met the diagnostic criteria for a Specific Learning Disorder in Written Language. (P. Ex. 12, p. 00140).

32. █████ confirmed the Student's diagnosis of █████ and also diagnosed her with Developmental Coordination Disorder. (P. Ex. 12, p. 00144).

33. In 2022, the Student was re-evaluated by █████ to gauge her progress over the past two years and to obtain recommendations for the Student's middle school programming.

34. As in her first evaluation, █████'s first step in evaluating the Student was to conduct an interview with the Parents. The Parents reported to █████ that they had noticed an improvement in the past two years of the Student's:

- a. Receptive language;
- b. Decreased anxiety; and,
- c. Flexibility to changes in the schedule.

(P. Ex. 13, p. 00152).

35. The Parents reported to █████ that the Student could:

- a. Independently read a simple book (five to six words per page);
- b. Answer specific questions using text or pictures;
- c. Continues to use "Touch Math" for addition and subtraction problems and recently began to learn multiplication; the Student cannot do mental math problems and was being introduced to the use of a calculator;
- d. In writing, the Student can write a simple sentence to answer a question;
- e. The Student is able to correctly spell familiar words but has difficulty with spelling new words; and,
- f. The Student's handwriting has improved but she still has difficulty with letter size and spacing between words.

(P. Ex. 13, p. 00153).

36. [REDACTED] administered the DAS-II School Age Form to again measure the Student's general intelligence. The Verbal Cluster subtests were too demanding for the Student in terms of language, so [REDACTED] administered the DAS-II Early Years Form to compare her abilities with the 2020 evaluation. As the Student was out of the age-range for the Early Years Form, [REDACTED] was unable to calculate a General Conceptual Ability score. (P. Ex. 13, p. 00160).

37. The Student's scores on the DAS-II were consistent with a mild intellectual impairment but some of her scores approached a moderate intellectual impairment. (P. Ex. 13, p. 00160).

38. [REDACTED] also administered the WJ-IV to obtain a measure of the Student's academic achievement and compare the results with her 2020 achievement scores.

39. The WJ-IV produces a Relative Proficiency Index (RPI). The RPI shows the examinee's performance compared to the level of their peers who are 90% proficient in whatever is being measured (usually accuracy but could be speed, etc.).

An RPI of 95/90 would indicate that the examinee was 95% proficient at the same level at which peers were only 90% proficient. An RPI of 75/90 would mean that the examinee was only 75% proficient at the same difficulty level at which peers were 90% proficient.

(P. Ex. 13, pp. 00162-3).

40. The Student's Academic Skills cluster RPI decreased from 2/90 in 2020, to 0/90 in 2022. (P. Ex. 13, p. 00164).

41. The decrease in the Student's Academic Skills cluster RPI from 2/90 to 0/90 is not a meaningful difference. It shows that a task which was nearly impossible for the Student in 2020, was still nearly impossible for her in 2022. Both scores are in the extremely limited proficiency range. (T. [REDACTED], p. 785).



42. The Student's Brief Achievement cluster RPI decreased from 1/90 in 2020, to 0/90 in 2022. (P. Ex. 13, p. 00164).

43. The decrease in the Student's Brief Achievement cluster RPI from 1/90 in 2020, to 0/90 in 2022 is not a meaningful difference. (T. of [REDACTED], p. 785).

44. In mathematics, the Student's standard score was < 40 in 2020 and it was < 40 in 2022.<sup>18</sup>

45. During the Written Language tests of the WJ-IV, the Student was highly distracted and required frequent redirection. [REDACTED] was unable to calculate a Written Language RPI for the Student. The Student's RPI for spelling dropped from 8/90 in 2020 to 1/90 in 2022. (P. Ex. 13, p. 00164).

46. As part of her neuropsychological evaluation, [REDACTED] observed the Student for an hour on February 6, 2023. She did not observe the Student during a time in which she was receiving 1:1 instruction of a new skill, instead she observed the Student during a "dyad" time,<sup>19</sup> a movement break, in whole group instruction and in transition to recess. [REDACTED] did not observe the staff performing a "cold probe"<sup>20</sup> with the Student and did not discuss with the staff how that data is collected or where it is found.

47. In a progress note dated January 12, 2022, the results of the CORE Phonics Survey were shared with the Parents.

48. The CORE Phonics Survey presents a number of words for the student to identify or decode. Pseudowords, or made-up words are included, because students must

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<sup>18</sup> [REDACTED] did not state how much less than 40 the Student's standard score was in either 2020 or 2022.

<sup>19</sup> Dyad instruction is when the teacher, teacher assistant, or paraeducator, is working with two students together. [REDACTED] testified that she sits with two students and while she is actively teaching the one student, the other student is receiving their reinforcer for having completed their individualized task. Then she reverses and works with the second student while the first one is having their reinforcer or break.

<sup>20</sup> A "cold probe" is similar to obtaining a baseline in which the Student is given directions to perform a skill and no other prompting or assistance. The response is recorded as "yes," or a "+" (performed the skill), or "no," or a "-" (could not perform the skill).

use decoding skills to correctly pronounce these words and cannot simply memorize them.

49. On the CORE Phonics Survey, the Student decoded consonant-vowel-consonant (CVC) words and made-up words with 100% accuracy. She decoded short vowels and consonant blends with 80% accuracy but was unable to decode made-up words. The Student decoded short vowels, digraphs, and -tch trigraphs with 50% accuracy and made-up words with 40% accuracy. (MCPS Ex. 6, p. 6)

50. In a June 2022 progress note, it was documented that the Student could calculate addition problems with sums less than twenty, independently 80% of the time when she was given a number line to use. On standardized assessments like the WJ-IV, students are not permitted to use materials such as number lines to calculate. (T. ██████████, p. 599).

51. The majority of ██████████’s recommendations in her 2022 neuropsychological report were already being implemented in the Student’s MCPS ██████████ ██████████, were added during two IEP meetings,<sup>21</sup> and were contained in the MCPS ██████████ ██████████ proposed for the Student.

Recommendations from ██████████’s 2022 evaluation:	2022-23 ██████████	Proposed MCPS ██████████
Individualized programming staffed by educators and ancillary service providers with specialized training and experience in working with ██████████. (P. Ex. 13, p. 00168).	██████████ with certified special education teachers specializing and experienced in working with students with ██████████. Program specialist performs “integrity checks” by observing all staff and holding in-service training days. (T. ██████████, p. 572-3).	██████████ with certified special education teachers specializing and experienced with working with students with ██████████. (T. ██████████, p. 793)
Educators and providers experienced in expressive and receptive language disorders. (P. Ex. 13, p. 00168).	██████████ uses Assessment of Behavior Language Learning Skills	The ██████████ continues to use a similar program to the ██████████

<sup>21</sup> The two IEP meetings at issue were the February 9, 2023 and the April 28, 2023 meetings as noted above in Stipulations numbers 9 and 11.

	(ABLLS). <sup>22</sup> (T. ██████████, p. 571) ██████████ is “language rich” in modeling and expanding language. Speech-Language Pathologist works collaboratively with classroom staff strategies, suggestions and visuals. (T. ██████████ p. 754).	██████████ and has Speech-Language Pathologists.
Intensive, systematic instruction, using principles of ABA: <ul style="list-style-type: none"> <li>• Prompt hierarchies<sup>23</sup></li> <li>• Errorless teaching strategies<sup>24</sup></li> <li>• Reinforcement systems when needed (P. Ex. 13, p. 00169).</li> </ul>	Prompt hierarchies (including fading prompts), errorless teaching strategies and a token economy <sup>25</sup> were used throughout the program and throughout the day (T. of ██████████ and ██████████). Prompt hierarchies visual reminders in the classroom. (T. ██████████ p. 753).	The ██████████ continues the strategies used in the MCPS elementary school ██████████.
Small, supportive class size (four to six students). (P. Ex. 13, p. 00169). Individual and small group (two to four students) for all academic subjects.	There were five students in the Student’s class in 2022-23.	The MCPS ██████████ classrooms are capped at six students. There is a special education teacher, a teaching assistant and a paraeducator.
Hands on learning using manipulatives, visual media, modeling and shaping with behavioral principles. (P. Ex. 13, p. 00169).	Extensive Supplementary Aids and Services (SAS) in the Student’s IEP addressed using manipulatives, visual media, modeling and more. <sup>26</sup> “Chaining” or “shaping” is taught by breaking a task into its discreet parts and teaching each part step by step. At the	During whole group instruction, the lesson is projected on a screen using simplified text, pictures, and visuals. (P. Ex. 15, p. 00184).

<sup>22</sup> A program that systematically checks for all language milestones necessary for the development of more complex language.

<sup>23</sup> Prompt hierarchies are methods to get a student to respond correctly and range from the highest amount of prompting (hand-over-hand; literally physically doing the correct answer with the student) to a nonverbal gestural prompt (eye gaze, etc.).

<sup>24</sup> Errorless teaching strategies are giving the student the correct answer as she is learning something so that there is no opportunity for her to get the wrong answer. With repetition, the student learns the correct answer and can then give the correct answer without it being supplied.

<sup>25</sup> A “token economy” is individualized for each student based on the high-preference item the student wants. The Student prefers time on the iPad so she is given a token for each time she responds at a pre-determined variable interval. Then after she earns the designated number of required tokens (e.g., five) she is given a set amount of time to use the iPad as a break. The research has shown that a varying interval (as opposed to a set interval) results in better responsiveness.

<sup>26</sup> The Student had a visual schedule that was comprised of Velcro pieces. In the morning, the Student set up her visual schedule for the day with assistance from the board. As the day progressed, the Student took the parts of the visual schedule that were completed off of her schedule. (P. Ex. 13, p. 00170).

	end, each step is “chained” together so the entire task can be performed. (T. ██████, p. 592).	
<p>Data:</p> <ul style="list-style-type: none"> <li>• Binders immediately available to all staff</li> <li>• Data collected on all objectives at least weekly</li> <li>• Reviewed at least weekly so modifications can be made quickly and efficiently</li> </ul> <p>(P. Ex. 13, p. 00169).</p>	<p>Every goal on the IEP is accompanied by an explanation of how the data will be collected (e.g., “cold probe” or “task analysis.”).<sup>27</sup> Each student has a rolling cart with three bins. “Cold Probe” data is kept in the Student’s binder in the rolling cart and the data sheets for task analysis are sometimes in the Student’s binder but more often task analysis sheets are kept where the routine is being performed. (e.g., task analysis sheets for the morning routine were kept near the Student’s locker where she was performing that task). (T. ██████, p. 589). Data not graphed but reviewed at least weekly.</p>	<p>██████ and ██████ testified that the MCPS ██████ continue the same protocols as the ██████</p>
<p>Systematic teaching steps:</p> <ul style="list-style-type: none"> <li>• Baseline measurement of skills</li> <li>• Clear definition of mastery of skills</li> <li>• Data collection methods</li> <li>• Prompting hierarchies (and fading of hierarchies)</li> <li>• Reinforcement strategies</li> <li>• Examples of correct vs. incorrect responses<sup>28</sup></li> </ul>	<ul style="list-style-type: none"> <li>• “Cold probes” are baseline measurements</li> <li>• Given statements in IEP define mastery</li> <li>• See above for data collection</li> <li>• See above for prompting hierarchies</li> <li>• The Student is on a token economy throughout her school day. She receives a token on a variable interval schedule of</li> </ul>	<p>The MCPS ██████ continues the same systematic teaching methods as the ██████ (T. ██████ and ██████).</p>

<sup>27</sup> “Task analysis” might be the best way to collect data for a routine such as arriving at school in the morning, a classroom job, or buying an item in the store. The task is broken down into discreet parts and then data is collected on whether the Student is able to perform each part of the task and if so, with what level of prompting. (T. ██████, p. 589).

<sup>28</sup> ██████ did not elaborate as to exactly what examples of correct vs. incorrect responses meant; however, given the level of the Student’s work, it would not appear that any service provider would need to be told what the correct

(P. Ex. 13, p. 00169)	sixty seconds. After she earns five tokens, she earns a sixty second-break. (P. Ex. 13, p. 00156).	
Social-emotional learning integrated throughout the daily curriculum. (P. Ex. 13, p. 00171).	<ul style="list-style-type: none"> <li>• Whole group learning (morning meeting) (T. ██████, p. 756).</li> <li>• Zones of Regulation (T. ██████, pp. 758-9).</li> <li>• Social Stories (T. ██████ p. 758).</li> <li>• Buddies Program (T. ██████, p. 757).</li> </ul>	

52. During the last two IEP meetings, the parties collaboratively included any additional SAS in the Student’s IEP that ██████, ██████, and the Parents wanted added or clarified.<sup>29</sup>

53. ██████, ██████, and the Parents raised concerns about the Student’s “██████” behaviors. “██████,” or self-stimulatory behaviors, are repeated behaviors that students with ██████ frequently engage in because the behaviors provide the student with

response to an academic task would be and the behavioral or social-emotional goals, etc., would be self-explanatory as to a correct response.

<sup>29</sup> At least thirty SAS were included in the Student’s IEP: orienting the Student to the operational sign (addition or subtraction, etc.) before she computes a math problem; adapted/structured paper for all writing activities; fading prompt hierarchy across all academic and social goals\*; task analysis for classroom jobs\*; monitoring her independent work; picture schedule (including words and icons on Velcro pieces)\*; opportunities to practice; use of a word bank to reinforce vocabulary and when extended writing is required; repetition of directions; frequent and immediate feedback\*; use of manipulatives during math and science (as appropriate) and multisensory materials; wait time; direct/scaffolded instruction\*; simplified sentence structure, vocabulary and graphics on assignments and assessments; reduced number of answer choices; break down assignments into smaller units\*; pictures to support reading passages whenever possible\*; home-school communication at least twice per week; daily schedule; encourage Student to ask for help; token economy\*; use of positive/concrete reinforcers\*; provide manipulatives and sensory activities to promote listening and focusing skills; frequent reminder of rules; encourage/reinforce appropriate behavior in academic and nonacademic settings; advance preparation for schedule changes\*; adult facilitation of social interactions and play; social stories and video modeling; advance notice for noisy situations (e.g., prior to fire drills and sirens); encourage Student to wear noise cancelling headphones when leaf blowers are outside of classroom and if a child is crying; frequent change in activities and movement breaks; and, adult proximity. (MCPS Ex. 6, pp. 27-36). The SAS denoted by an asterisk are specifically based on ABA principles. (T. ██████, p. 771).

automatic positive reinforcement (the self-stimulatory behavior feels good), or the behaviors are done to avoid engaging in a task that they dislike.<sup>30</sup> Some of the “ [REDACTED] behaviors” the Student engages in are [REDACTED], [REDACTED], or [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

54. The Parents requested a Functional Behavioral Assessment (FBA) be conducted to collect data on the Student’s [REDACTED] behaviors and then, if appropriate, develop a Behavioral Intervention Plan (BIP) to address the behaviors. School staff collected data on the Student’s [REDACTED] behaviors and shared it with the IEP team.

55. A BIP was not developed because when the Student was engaged in [REDACTED] behaviors, she was simultaneously engaging in on-task work. (T. [REDACTED], p. 644).<sup>31</sup>

56. Both the MCPS [REDACTED] provide opportunities for the Student to engage with neurotypical peers which provides social and linguistic enrichment to the Student.

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<sup>30</sup> Several of the MCPS witnesses used the term “motor stereotypy” to describe the same behavior.

<sup>31</sup> Although a BIP was not developed, there was an additional goal included in the Student’s IEP to reduce the “[REDACTED]” and there were also SAS put in place to address her [REDACTED]. The goal was to address delays (whether caused by [REDACTED] or not) between when the Student was asked to perform a task and when she began the task. (T. [REDACTED] p. 775).

57. In elementary school, there were opportunities at lunch, recess, and when neurotypical peers who received training as “buddies” came to the Student’s classroom and engaged in specific activities with the Student such as games focusing on developing the Student’s reciprocal turn-taking skills.

58. In middle school, students do not have recess but have a longer lunch and there are also opportunities during assemblies for the Student to interact with neurotypical peers. [REDACTED] began in the 2022-23 school year and was in the process of establishing a “buddies’ program.”

59. The Student prefers to interact with adults and older children, as they are more predictable. She prefers being with other girls and enjoyed when neurotypical peers come to her classroom as part of her school’s “buddies’ program.” (P. Ex. 13, pp. 00154-5).

60. There are no opportunities for the Student to interact with neurotypical peers at [REDACTED].

61. In the [REDACTED], there are two [REDACTED] classrooms next to each other in their own hall. Bathrooms are across the hall from the classrooms but a bathroom in between the two [REDACTED] classrooms was built during the summer of 2023.

62. There is a community room used only by the [REDACTED] classes for focusing on daily living skills such as cooking. The program offers OT and Speech-Language Pathologist “push in” to the classroom for whole group instruction and pull students out for 1:1 for working on expressive goals. (P. Ex. 15). There is a special education resource teacher on site who also works with the teachers, assistant teachers, and paraeducators in the [REDACTED].

## DISCUSSION

### Burden of Proof

The standard of proof in this case is a preponderance of the evidence. COMAR 28.02.01.21K(1). To prove an assertion or a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002). The burden of proof rests on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005). The Parents are seeking relief and bear the burden of proof to show that the challenged actions by the MCPS did not meet the requirements of the law and that they are entitled to reimbursement for tuition at [REDACTED] for the 2023-24 school year.

### Parents’ Position

The Parents noted that they have been able to work collaboratively with the MCPS since the Student entered the [REDACTED]. They acknowledge that the IEP team at [REDACTED] incorporated most of the recommendations in [REDACTED] 2020 and 2022 neuropsychological reports. The substance of their complaint, however, is that the Student has not made meaningful progress during the past two years at [REDACTED] and that she is capable of making progress. They argue that without a full-time ABA program, the Student will not achieve meaningful progress in light of her circumstances. To place her in the [REDACTED] [REDACTED], which is essentially a continuation of the same program as in the [REDACTED] [REDACTED], will not provide her with educational benefit.

### MCPS’ Position

The MCPS disputes the claim that the Student has not made meaningful progress in light of her circumstances in the [REDACTED]. It argues that standardized testing is only one data point in assessing progress and that when all of the data is considered, the Student



made meaningful progress in light of her circumstances. Moreover, MCPS argues, the IDEA requires that a student be educated in the least restrictive environment (LRE), which in the Student's case is the [REDACTED], and not a separate non-public school for students with [REDACTED].

#### The 2020 and 2022 Neuropsychological Evaluations

[REDACTED] testified in detail about the two neuropsychological evaluations she conducted for the Student in 2020 and in 2022. Based on her education, training, and experience, [REDACTED] was a persuasive expert in psychology, [REDACTED], and conducting assessments. As a psychologist specializing in working with students with [REDACTED], she is clearly dedicated to evaluating and providing recommendations that she opines will provide students with [REDACTED] the best chance to make meaningful progress. She is a [REDACTED], which means that she is certified by the [REDACTED] [REDACTED] independently provide ABA services.<sup>32</sup>

Although she was qualified as an expert in school psychology, [REDACTED] has never worked in a school setting; she has practiced in a clinical setting since she obtained her [REDACTED] in 2017 and completed her [REDACTED] at the [REDACTED] from September 2017 to August 2018. Although she observed the Student in her [REDACTED] [REDACTED], I considered [REDACTED] lack of experience in a school setting in weighing her opinion regarding the Student's lack of progress.

[REDACTED] opined that the Student's progress in academics was largely stagnant or even regressed during the two years between testing sessions. She suggested or hypothesized that the Student did not make the expected progress because of the lack of fidelity to ABA principles in the [REDACTED]; specifically, the failure to fully operationalize the goals and objectives, specify how the data would be collected to determine if the Student was meeting her

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<sup>32</sup>“The [REDACTED] is not a separate certification and does not grant any privileges beyond [REDACTED] certification.”  
[REDACTED] (last accessed May 3, 2024).

goals and objectives; inconsistency in how the teaching staff were working with the Student; and improperly analyzing the Student's data and making changes in her programming. [REDACTED] testified about various aspects of the MCPS reports as well as her classroom observation that caused her to be concerned about the Student's progress.

[REDACTED] largely relied on the WJ-IV to obtain a measure of the Student's academic achievement in 2022 and compared those results with the Student's 2020 achievement scores.

[REDACTED] also testified about an RPI that is derived from the WJ-IV. The RPI does not show the amount of progress the *examinee* made during the time between testing. Instead, it shows the examinee's performance *compared to the level of their peers* who are 90% proficient in whatever is being measured.

In 2020, the Student's Academic Skills cluster RPI was 2/90, meaning she was only 2% proficient at tasks that her peers were 90% proficient at. In 2022, her RPI dropped to 0/90. (P. Ex. 13, p. 00164).<sup>33</sup> In contrast, [REDACTED] testified that the decrease in the Student's Academic Skills cluster RPI from 2/90 to 0/90 is not a meaningful difference. She explained that it shows that a task which was nearly impossible for the Student in 2020, was still nearly impossible for her in 2022. Both scores are in the extremely limited proficiency range. (T. [REDACTED], p. 785).

I found [REDACTED] explanation logical and based on her experience of evaluating students with [REDACTED] and working with school teams to interpret and explain how results of evaluations impact students accessing the curriculum in a school setting. Since 2010, [REDACTED] [REDACTED] has been a School Psychologist with the Services for Students with [REDACTED] [REDACTED]. She is not assigned to specific schools but works only with students with [REDACTED] throughout the MCPS from age three to twenty-one. (T. [REDACTED], pp. 724-5). Therefore, I gave

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<sup>33</sup>Similarly, the Student's Brief Achievement cluster RPI decreased from 1/90 in 2020, to 0/90 in 2022. (P. Ex. 13, p. 00164). [REDACTED] testified that, again, this was not a meaningful difference.

great weight to her opinion that the Student's decreases in the RPIs were not a meaningful difference.

Although an RPI was not provided in mathematics, I noted that the Student's standard score was < 40 in 2020 and it was < 40 in 2022. How much less than 40 her standard score was in either year was not provided; therefore, I do not know for certain if there was any meaningful difference in the scores. Considering [REDACTED] testimony, I infer that in a test yielding a Standard Score of < 40, any difference in scores of such limited proficiency would not be meaningful.

[REDACTED] was unable to calculate a Written Language RPI for the Student. The Student's RPI for spelling dropped from 8/90 in 2020 to 1/90 in 2022. However, during the Written Language tests of the WJ-IV, the Student was highly distracted and required frequent redirection. (P. Ex. 13, p. 00164).

[REDACTED], [REDACTED], also disagreed with [REDACTED] conclusion from the standardized testing that the Student had not made any progress or had regressed. Although Counsel for the Parents objected to [REDACTED] offering her opinion on the results of the WJ-IV Achievement tests, I disagreed. Clearly, [REDACTED] would not be qualified to administer or score standardized assessments because she is not a school psychologist; but, as a [REDACTED] special education teacher, as an [REDACTED] specialist, and in her many years of experience with programming for [REDACTED] students, she has a working knowledge of the purpose of standardized tests for [REDACTED] students with [REDACTED] and the limitations of those tests in assessing [REDACTED] students. [REDACTED] explained her disagreement as follows:

I respect that [REDACTED] put a lot of time into her reports and working with [the Student]. However, many of our students working in alternate learning outcome programs do not perform well on standardized assessments by the nature of you're

not able to modify the assessment that's given. And they -- assessments scores are compared to the norm population.

(T. [REDACTED], p. 650).

Moreover, [REDACTED] appeared to acknowledge the limitations of standardized tests because in several places in her reports, she clearly stated that the raw scores might not be an indicator of what the Student actually knew. For example, when [REDACTED] tested the Student in math calculations and the Student did not appear to know any single digit subtraction, the Parents informed [REDACTED] that the Student used manipulatives in solving those math problems. When [REDACTED] had the Parents bring the Student's manipulatives with her on a different day of testing, [REDACTED] found the Student's performance was significantly better when she used the manipulatives. [REDACTED] noted that she was unable to use the scores achieved by the Student when she was using the manipulatives. (P. Ex.12, p. 00140).

This is exactly the point [REDACTED] was making. If the Student was unable to solve math problems with manipulatives, and then is able to solve those problems with manipulatives, that is demonstrated progress even if she still cannot solve the math problems without manipulatives on a standardized test.<sup>34</sup>

[REDACTED] also observed the Student in her [REDACTED] for one hour on February 6, 2023. She did not observe the Student during a time in which she was receiving 1:1 instruction of a new skill, instead she observed the Student during a "dyad" time, a movement break, in whole group instruction, and in transition to recess. [REDACTED] did not observe the staff performing a "cold probe" with the Student and did not discuss with the staff

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<sup>34</sup> [REDACTED] also noted that the Student could calculate addition problems when the sum is twenty or less, independently 80% of the time when she was given a number line to use. On standardized assessments like the WJ-IV, students are not permitted to use materials such as number lines to calculate. (T. [REDACTED] p. 599).

how that data is collected or where the data is maintained. As a result, [REDACTED] testified that some of the data she saw was not meaningful because it was missing critical elements.

For example, [REDACTED] objected to the fact that rarely on the data sheets was the column for “retained” filled in. Therefore, although she could see what date a skill was introduced to the Student, and by which date it was acquired, there was no information as to whether the skill was retained.

However, [REDACTED] explained that not all data pertaining to a specific student is kept only in their binders. She described a system in which all previously mastered targets were placed in one of the bins of a three-drawer cart (each student has their own cart and is individualized based on what goals and objectives they are working on in their IEP) and used at the beginning of the 1:1 work with the Student to make sure previously acquired skills were being retained. Additionally, although there was a binder for each student kept on the cart that contained data, if there were skills in which data was being collected for task analysis, those data sheets were usually kept in the area where that skill was being worked on (e.g., near the lockers for collecting data on morning arrival routines).

The Parents cited *Falmouth School Department v. Mr. & Mrs. Doe*, 44 F. 4<sup>th</sup> 23 (1st. Cir. 2022), as an instructive case on the relationship between methodology and progress. I find the facts in *Falmouth* dissimilar to this case. In *Falmouth*, the student was diagnosed with dyslexia but also had orthographic processing as one of his “biggest challenges.” The parties in *Falmouth* disagreed as to whether the program offered by the school district, SPIRE, addressed orthographic processing, or whether the student required Lindamood Bell programming. The school district implemented Lindamood Bell for approximately six months with the student, but he was taught by a teacher who was not certified in Lindamood Bell and the teacher lacked

recent experience with the Lindamood Bell methodology. The teacher was overseen by an outside literacy expert, Ms. Binder. However:

Binder's testimony demonstrated that she was dismissive towards and relatively unfamiliar with the program that she was hired to oversee. Binder's testimony also indicated that, despite [the school district's] awareness of the seriousness of [the student's] orthographic processing deficit, [the school district] did not communicate to Binder when it proposed to hire her that orthographic processing was a challenge for [the student], let alone that it was his "biggest challenge." Indeed, the record shows, Binder planned to help [the teacher implementing the program] stress phonological processing and phonemic awareness in [the student's] programming, rather than orthographic processing.

*Falmouth School Department v. Mr. & Mrs. Doe*, 44 F. 4<sup>th</sup> 23, 37-8 (1st. Cir. 2022).

In contrast, I found both [REDACTED] and [REDACTED] testimony very persuasive as to how ABA principles were implemented in the two and one-half hours of 1:1 intensive work in the [REDACTED], as well as how ABA principles were implemented throughout the day in whole group (five students) and small group (dyad) instruction. [REDACTED] has [REDACTED] certification and extensive experience supervising ABA programs. She testified that she was at the [REDACTED] on at least a weekly basis, periodically discussed each student in the program and that she reviewed this particular Student's IEPs, progress reports, report card addendums, neuropsychological reports, work samples, etc., as well as consulting with the teacher and other service providers in preparing for IEP meetings.

Further, [REDACTED] is familiar with [REDACTED] and testified that it is basically a continuation of the [REDACTED] with ABA principles used throughout the day. (T. [REDACTED], pp. 732, 793).

The Parents agree that the [REDACTED] uses ABA principles but contends the Student needs full-time ABA instruction to make progress. [REDACTED], an associate of [REDACTED], observed the [REDACTED] when [REDACTED] was unable to do so. She noted that in the two [REDACTED] classrooms there were four students each and there was a special education teacher, a teacher's assistant, and a paraeducator.

She also noted that there was a special education resource teacher on site who “goes into the classroom frequently.” She also observed that the “physical set-up of the classroom was appropriate for students with [REDACTED] students were actively engaged, and the school itself has wonderful resources and space.” (P. Ex. 15, p. 00184). [REDACTED] noted several ABA principles implemented in the autism classrooms such as individualized visual schedules, token economies, structured teaching, and structured tabletop work tasks. (P. Ex. 15, p. 00183). [REDACTED] objection to the [REDACTED] was that it was not a full-time ABA program. [REDACTED] has never tested, taught, or even met the Student. She based her opinion on the Student’s perceived lack of progress on [REDACTED] and [REDACTED] reports. The Student is making progress considering her unique circumstances:

The MCPS argued that standardized testing is only one data point and that there was other data that demonstrated that the Student was making progress. For example, the MCPS argued that the quarterly reports documented progress that the Student made on her IEP goals and objectives. The Parents’ disagreement with MCPS’ contention that the progress reports showed progress, was two-fold: (1) the goals are roughly the same from year to year until the Parents’ experts became involved in drafting the April 2023 IEP; and (2) the Student did not make progress on these goals.

After carefully reviewing the IEPs and considering the testimony, I disagree with the Parents. The Parents argued that the April 2023 IEP, drafted with input from the Parents’ experts, included “the conditions, the measurement and the given statements” and that this information was lacking in prior IEPs.

However, I found the Academic – Reading Phonics goal in the February 10, 2022, IEP to contain those elements and to be fairly representative of how other goals in the February 10, 2022 IEP were written:

By 2/9/2023, given evidence-based phonics intervention programs<sup>[35]</sup> and strategies, visual supports, and opportunities to practice, [the Student] will apply phonics and words analysis skills in decoding high frequency words, words with short vowels and consonant blends, digraphs and trigraphs with 100% accuracy for 3 out of 3 trials.

(MCPS Ex. 14, p. 7). The Academic – Reading Phonics goal is further divided into smaller objectives, such as “objective 2: [The Student] will decode words with digraphs, trigraphs and short vowels.” (MCPS Ex. 14, p. 8).

The Phonics goal also states how it will be measured: by “cold probes, classroom performance, teacher observation,” as well as what the criteria will be used for measuring mastery and retention: “3 out of 3 trials.”<sup>36</sup> (MCPS Ex. 14, p. 7).

The progress report dated April 1, 2022, notes that the Student was able to read seven sh- digraph and five ch-digraph words. In the progress report dated June 17, 2022, it was noted that the Student was able to read nine th-digraph words. (MCPS Ex. 14, p. 8). In the progress report dated November 4, 2022, it was reported that the Student was able to read ten digraph and trigraph words in three out of three trials with 100% accuracy. Finally, on February 1, 2023, it was noted that the Student was able to read eight different digraph and trigraph words in three out of three trials with 100% accuracy. (MCPS Ex. 14, p. 9).

Objective two also included reading short vowels. A review of the Student’s quarterly progress reports also show she made progress: on November 4, 2022, the Student was able to read six short vowel consonant blends in three out of three trials with 100% accuracy; on February 1, 2023, the Student was reported to read eleven short vowel consonant blends in three

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<sup>35</sup> [REDACTED] was unable to specify which evidence-based reading program was being implemented which is concerning as the IEP specifies that an evidence-based reading program would be used. However, the Student appears to have made progress and achieved this goal despite the fact that an evidence-based reading program could not be named.

<sup>36</sup> 34 C.F.R. § 300.320(a)(3) requires a written explanation as to how the child’s progress toward meeting the annual goals will be measured.



out of three trials with 100% accuracy; and the objective was noted to have been achieved. (MCPS Ex. 14, p. 9).

During the hearing and in closing, the Parents questioned why “sight words” were included under a phonics goal. ██████████ testified that the Fry 100, Fry 200, etc., lists of sight words are similar to the Dolch list of sight words and are presented in increasing grade level difficulty. (T. ██████████, pp. 711-2). ██████████ did not explain why the sight words were included in a section on phonics but as she was not involved in the development of that IEP, she would not have had firsthand knowledge.

However, I do not agree with the Parents that these words were randomly introduced and have no connection to the Student. Using a systematic approach such as the Fry or Dolch sight word lists seems reasonable, and I note that many of the other words that were introduced appear to have been drawn directly from the modified curriculum being worked on with the Student.

In a section that does relate to phonics, a word in that group clearly relates to the Student: “slime.” It was reported the Student enjoys playing with slime as an activity at home (along with water) and can stay very engaged in that activity. Teaching the Student to read a word that is of high-interest to her appears to have been a deliberate effort to engage her in learning phonics (albeit not under the short-i vowel pattern<sup>37</sup> being taught).

Although the Parents argued the Student did not meet many of her goals and objectives, at least six of the goals or objectives on the Student’s February 2022 IEP were achieved as follows:

Goal or objective:	Achieved by:	Exhibit:
Write sentences with appropriate sizing, placement of letters to adhere to the baseline	January 26, 2023	MCPS Ex. 14, p. 5

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<sup>37</sup> Although I have no training in teaching phonics, I am reasonably certain as a reader that the words “slime,” “sleep” and “seem,” are not words with short-i vowels.

Add whole numbers within 1,000 using a calculator and add decimals within 100 using a calculator	June 17, 2022	MCPS Ex. 14, p. 10
Adding one-digit numbers with decimal numbers to the tenth place and hundredths place using a calculator	November 4, 2022	MCPS Ex. 14, p. 10
Rounding to the next dollar up to \$5 and \$10	February 1, 2023	MCPS Ex. 14, p. 11
Identify the correct operation (+ or -) in a two-step word problem, set up the equation, and solve using a calculator	February 1, 2023	MCPS Ex. 14, p. 13
Maintain a conversation across two or more turns with a peer or adult	January 26, 2023	MCPS Ex. 14, p. 21

No witness disputed that the Student achieved these objectives and goals or that they were not sufficiently ambitious goals for the Student.

On some goals, the Student did not achieve the overall goal, but she made partial progress by achieving objectives within the goals. For example, her reading comprehension goal included the Student being able to “identify the main idea, key details, and summarize eight different texts through oral or written response with 100% accuracy for 4 out of 5 trials.” (MCPS Ex. 14, p. 5). On April 1, 2022, it was reported that the Student was able to identify the main idea with 100% accuracy for 3/5 trials in one text and 4/5 trials for a second text. On November 4, 2022, the Student was able to identify the main idea with 100% accuracy for 5/5 trials in one text. (MCPS Ex. 14, p. 5).

The Parents argued that the fact that the “present levels of performance” stayed the same on her IEP year after year, and that her skills were in the same band of “kindergarten to second grade” shows that she did not make meaningful progress.

The Parent pointed to MCPS Exhibits 3, 6, 7<sup>38</sup> and 25 and requested that I closely compare the present levels of performance and note that they were the same year after year. This was especially so in the area of answering questions that begin with “wh” (e.g., What, When and Why).

It is true that the wording of the “present levels of performance” seem similar in different years, but I do not agree that it shows the Student’s performance was stagnant. For example, during the February 10, 2022 IEP team meeting, the Parents’ input into the Student’s educational program was summarized as: “Parents noted that the ‘why’ questions are hard for [the Student]. Would like her to be able to self-advocate for a break or ask for her head phones to block aversive noises/sounds. ... Would like the team to work on yes/no questions.” (MCPS Ex. 6, p. 21).

Even though prior IEPs also included answering “why” questions about texts (books), the February 2022 IEP again included “why” questions and in the February 9, 2023, the present levels of performance noted that the Student could answer “why” questions for seven different texts (books) on 4/5 trials. MCPS staff apparently agreed with the Parents that it was important for the Student to be able to answer “why” questions that were not related to books she read and the present levels of performance documented that the Student was also able to answer “why” questions that were not related to a text: “Why do you use a blanket?”; “Why do you go to school”; “Why do you use lights?”; “Why do you use a knife?”; “Why do you use a tissue?”; and, “Why do you use a washing machine?” (MCPS Ex. 17, p. 8).

### Functional Behavioral Assessment

One area in which the Parents disagreed with the MCPS proposed program is that the MCPS did not develop a BIP. On February 9, 2023, the IEP team discussed the Student’s self-

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<sup>38</sup> The Transcript states MCPS Ex. 7 but that exhibit is the MCPS Alternate Appendix A, the Participation Criteria and Checklist for participating in [REDACTED].

stimulatory behaviors. The Parents asked that an FBA be developed to collect data on the Student's self-stimulatory behaviors.

The MCPS recognized that the Student engaged in self-stimulatory behaviors across all areas,<sup>39</sup> but believed the more important question to be answered was whether the self-stimulatory behaviors interfered with the Student's learning. After staff collected data on the Student's self-stimulatory behaviors, they analyzed the data to see if the self-stimulatory behaviors had any impact on the Student's "on task" behaviors. ██████ testified that the team found:

There were many times where [the Student] would be engaging in that ██████ or ██████, for example, while she was seated at her desk during instruction, and she was still able to respond to a question that was asked of her or to respond to a target that was presented to her during instruction. So she was still engaged in instruction while she was demonstrating that behavior.

(T. ██████, p. 764). As a result, the IEP team determined that the Student did not need a BIP but would benefit from an additional goal on her IEP to address decreasing self-stimulatory behavior and they also added SAS to address these behaviors as well.<sup>40</sup>

The Student does not need a full-time ABA program to make educational benefit in light of her unique circumstances

The Parents' position is that the Student requires a full-time ABA program to make meaningful progress. ██████ was uniquely qualified to compare full-time ABA programs with the MCPS ██████. ██████ had seven years of increasingly responsible positions with the ██████, a full-time ABA program, prior to becoming an ██████ for the MCPS in September 2021. She explained that the MCPS'

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<sup>39</sup> For example, in the IEP developed on February 3, 2021, one of the Student's social-emotional behavioral goals was related to decrease self-stimulatory behaviors by 15% from baseline. Her IEP noted that her current baseline was 18% with a range of 6% to 30% during large group activities. (MCPS Ex. 4, p. 47). Clearly, in order to develop this goal, the school staff had to collect data on her self-stimulatory behaviors in order to establish her baseline.

<sup>40</sup> The reasoning behind adding an SAS to address self-stimulatory behaviors is also based on ABA principles; specifically, the observation that if the Student is using a device such as a "█████" she cannot simultaneously ██████ (which is one of the Student's self-stimulatory behaviors to the point that she was developing ██████).

autism programs use ABA principles whereas full-time ABA Program (such as the [REDACTED] [REDACTED] or [REDACTED]) are more like clinical programs. She further explained her rationale as to why the MCPS' [REDACTED] are not all-day ABA programs:

[ABA programs are like a] clinic based in the sense that students often have cubbies with barriers up to reduce the distractions. It is more one-on-one, which, you know, we talk about in ABA is a great early intervention for many students but is also not a sustainable model of instruction because it is not normal for a student to be followed around their whole life with a one-on-one person. We want them to function in the world around them with many types of experiences. So it is more clinical in that sense of that direct one-on-one approach. And more cubbies, like, with lots of drilling of academics.

(T. [REDACTED], p. 374-5).

One of the types of experiences that the MCPS [REDACTED] provides is opportunities to see if the Student can “generalize” the skills they have learned in the classroom. The Student needs these opportunities to determine if she can generalize the skills she has been learning to other environments and with other people. For example, in a progress note dated January 12, 2022, it was documented that in the classroom the Student can independently open her wallet, take out money, hand money to adult, take money from adult, put money in her wallet, and close her wallet with 100% accuracy for 5 out of 5 trials.” (MCPS Ex. 6, p. 16). However, in a Giant or a Target, although the Student can open her wallet independently for 5 out of 5 trials, she “needs gestural or full physical prompts to take money out of her wallet, hand the money to the cashier, receive money from the cashier and put them in her wallet for 5 out of 5 trials.” (MCPS Ex. 6, p. 16).

In sum, because the evidence does not support the Parents’ contention that the Student failed to make progress in the elementary [REDACTED], the Parents’ corollary -- that the Student must be provided with a full-time ABA program in order to make progress -- is also

without evidentiary support. [REDACTED] offered a cogent and responsive explanation as to why she believed the Student would make progress appropriate in light of her circumstances on the proposed IEP in the MCPS [REDACTED]. I therefore accord deference to [REDACTED] opinion consistent with *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1002 (2017).

### Least Restrictive Environment

In addition to the IDEA's requirement that a disabled child receive educational benefit, the child must be placed in the "least restrictive environment" to achieve a FAPE, meaning that, ordinarily, disabled and non-disabled students should, when feasible, be educated in the same classroom. 20 U.S.C.A. § 1412(a)(5); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117. Indeed, mainstreaming children with disabilities with non-disabled peers is generally preferred if the disabled student can achieve educational benefit in the mainstreamed program. *DeVries v. Fairfax Cty. Sch. Bd.*, 882 F.2d 876, 878-79 (4th Cir. 1989). At a minimum, the statute calls for school systems to place children in the "least restrictive environment" consistent with their educational needs. 20 U.S.C.A. § 1412(a)(5)(A). Placing disabled children into regular school programs may not be appropriate for every disabled child, and removal of a child from a regular educational environment may be necessary when the nature or severity of a child's disability is such that education in a regular classroom cannot be achieved.

The parties agree that the Student cannot be educated in a regular classroom. She needs a highly structured, small student to teacher ratio, with ABA principles throughout her daily instruction, which cannot be accomplished in a regular classroom. The MCPS [REDACTED] [REDACTED] provide for that programming throughout the vast majority of the Student's time in school. Both the past IEPs and the IEP developed for the 2023-24 school year proposed a minimal (approximately five hours and ten minutes) amount of time in the

general education setting. In elementary school, the time in the general education setting was in lunch and recess with neurotypical peers. In middle school, students do not have recess, but they have a longer lunch and there would be opportunities for the Student to interact with neurotypical peers during assemblies or other special events.

During the April 28, 2023 IEP meeting, ██████████ argued that “[b]ased on [the Student’s] lack of progress and the lack of interaction I observed during her recess period, we believe that she now needs a full-time special education placement.” (P. Ex. 16, p. 00198).

██████████ conclusion that the Student was not making progress in the ██████████ ██████████ was chiefly based on ██████████ neuropsychological reports. Although ██████████ ██████████ has been a special educator for over forty years, his teaching experience was not with students with ██████████ but with emotional disorders. ██████████ last taught in a classroom in the 1977-78 school year. (T. ██████████, p. 317).

I had two other concerns about ██████████ testimony that the Student did not make meaningful progress. First, on direct examination, ██████████ testified that the Student was unable to answer questions correctly in whole group instruction (five students) when he observed her in the MCPS ██████████. Later, on cross-examination, he qualified his answer and stated that the Student was unable to answer questions correctly in whole group instruction “without a lot of prompting.” There were then a series of questions to ██████████ to define what he meant by “prompting” and he did not have a specific recollection or notes other than the teacher calling the Student’s name again or repeating directions. (T. ██████████, p. 331). It did not appear to be prompting as in the hierarchy of prompting but prompting to gain the Student’s attention. As experts for both the Parents and the MCPS agree the Student needs extensive prompting, I do not understand why this was noted by ██████████ and suggests that

he was reporting on the Student's performance in whole group instruction as being more problematic than it actually was.

Also, on cross-examination, [REDACTED] was asked to explain what he meant when he testified that the Student has the potential for making good "meaningful progress." After several questions trying to elicit a definition, [REDACTED] agreed that he meant making meaningful progress means advancing from grade to grade. [REDACTED] also conceded that in the over twenty goals included in the Student's proposed IEP, none of them contain advancing a grade or even a half-grade as the standard for achieving the goal. (T. [REDACTED], pp. 363-4). Therefore, it is unclear to me as to why [REDACTED] would define progress as grade progression when the Student is in the [REDACTED] program and the criteria for whether she has achieved her goals are not based on grade levels.

Furthermore, the evidence does not support the conclusion that the Student did not receive any educational benefit from her interactions with neurotypical peers. In fact, the Parents' own expert, [REDACTED], based recommendation number thirteen in her 2022 report on the ability of the Student to have access to neurotypical peers:

Currently, [the Student] has demonstrated good responsiveness to socially and linguistically enriched environments when joined by her neurotypical peers through the school's "buddy program." Having the opportunity to interact with peers whose language and social skills are on par and somewhat beyond [the Student's] is essential as this will give her an opportunity to "step up" her language skills.

(P. Ex. 13, p. 00171).

The Parents in their testimony, minimized the benefits of interactions with her neurotypical peers and suggested that it was distressing to the Student (i.e., she became dysregulated) and even potentially unsafe. The record does not support this testimony. In [REDACTED] [REDACTED] interview with the Parents during the 2022 re-evaluation, the Parents noted that the Student was more flexible with changes to her schedule and the Student was able to go to an



airport in addition to grocery stores, and that “[a]lthough she still dislikes crowded areas, she no longer walks away from her caregivers.” (P. Ex. 13, p. 00155). Further, [REDACTED] and [REDACTED] testified how the Student was doing so well in her classroom jobs, as well as jobs that required her to navigate around the building, that the IEP team was considering discontinuing the SAS of close adult proximity for jobs where the Student had to travel to different parts of the building because they felt confident the Student could travel throughout the building more independently.

There is no credible evidence that the Student would not receive educational benefit from the limited amount of time she would be in a general education setting in the proposed 2023-24 IEP. The preponderance of the credible evidence is that the proposed IEP could be implemented in the MCPS [REDACTED]. The IEP, which includes the time in the general education setting, was reasonably calculated to provide the Student with the opportunity to receive educational benefit and make appropriate progress in light of her unique circumstances.

From the Parents’ testimony and demeanor during the hearing, it is clear that they are loving, dedicated parents to the Student and her siblings. They clearly want to do what is best for her to prepare her as much as possible for her future. They explained that they do not have any expertise in the areas of education or autism and have had to educate themselves along the way as to what their daughter needs. It is understandable that they were quite concerned when [REDACTED] opined that the Student’s progress in the intervening two years between testing was “stagnant” or had even regressed. But, it is also clear that they thought their daughter had made progress prior to [REDACTED] 2022 neuropsychological report. The Parents are entitled to their opinion that a full-time ABA program will provide the Student with more benefit than the

MCPS' [REDACTED] that are based on ABA principles but are not full-time.<sup>41</sup> However, for the reasons discussed above, I conclude the Student has made progress in light of her circumstances and has received a FAPE; therefore, the Parents request for the Student to be placed and funded at [REDACTED] (a full-time ABA program) must be denied.<sup>42</sup>

### CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the [REDACTED] proposed by the Montgomery County Public Schools for the Student in the 2023-23 school year was calculated to provide her with educational benefits in the Least Restrictive Environment. *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988, 1002 (2017); 20 U.S.C.A. § 1412(a)(5); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117; *DeVries v. Fairfax Cnty. Sch. Bd.*, 882 F.2d 876, 878-79 (4th Cir. 1989).

I further conclude as a matter of law that as the Student was provided a Free Appropriate Public Education, the Parents are not entitled to reimbursement for tuition at the [REDACTED]. *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985); *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993).

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<sup>41</sup>The Parents understandably relied on [REDACTED] opinion that a full-time ABA program was necessary for their daughter to make progress. [REDACTED] testified several times that ABA is the "gold standard" for teaching children with [REDACTED]. (T. [REDACTED], pp. 43, 45, 47). But caselaw is clear that even if the Parents' nonpublic placement would provide the student with more benefit, it does not therefore mean that the proposed public placement is inappropriate or would deny the student a FAPE. *Hessler v. State Bd. of Educ.*, 700 F.2d 134, 139 (4th Cir.,1983); *Hanson v. Smith*, 212 F. Supp. 2d 474, 488 (D. Md. 2002).

<sup>42</sup> Parents may recover the cost of private education if the school system failed to provide a FAPE, the private education services obtained by the parent were appropriate to the child's needs, and the overall equity of the case favors reimbursement. *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985); *Florence Cnty. School District Four v. Carter*, 510 U.S. 7 (1993). *See id.* at 12-13. The private education services need not be provided in the LRE. *M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009). The Parents failed to demonstrate that the Student was denied a FAPE; therefore, the analysis must end at that point.

**ORDER**

I **ORDER** that the Parents request for reimbursement of tuition and other fees at the

 is **DENIED**.

May 17, 2024  
Date Decision Issued

Ann C. Kehinde  
Administrative Law Judge

ACK/ckc  
#211359

**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) (2018). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence. A party appealing this decision must notify the Assistant State Superintendent for Special Education, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, in writing of the filing of the appeal. The written notification must include the case name, docket number, and date of this decision, and the court case name and docket number of the appeal. The Office of Administrative Hearings is not a party to any review process.

**Copies Mailed To:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED],  
STUDENT  
v.  
MONTGOMERY COUNTY  
PUBLIC SCHOOLS

BEFORE ANN C. KEHINDE,  
AN ADMINISTRATIVE LAW JUDGE  
OF THE MARYLAND OFFICE  
OF ADMINISTRATIVE HEARINGS  
OAH No.: MSDE-MONT-OT-24-01796

**APPENDIX: EXHIBIT LISTS**

The Parents offered the following exhibits which were admitted into evidence:

- P. Ex. 1: Due Process Complaint And Addendum
- P. Ex. 2: E-Mail Exchange Re: Notice Of Unilateral Placement
- P. Ex. 3: MCPS Meeting Notes
- P. Ex. 4: 2022-23 Progress Monitoring: Reading
- P. Ex. 5: 2022-23 Progress Monitoring: Math
- P. Ex. 6: 2022-23 Progress Monitoring: Writing
- P. Ex. 7: 2022-23 Progress Monitoring: Intraverbal
- P. Ex. 8: 2022-23 Progress Monitoring: Behavior
- P. Ex. 9: Grade 5 (2022-23) [REDACTED] Report
- P. Ex. 10: Grade 5 Progress Information Report
- P. Ex. 11: Identified but not admitted (Brigance Educational Report (2017))<sup>43</sup>
- P. Ex. 12: Neuropsychological Assessment Report (2020)
- P. Ex. 13: Neuropsychological Assessment Report (2023)
- P. Ex. 14: Observation Report [REDACTED]

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<sup>43</sup> “Identified but not admitted” denotes that the exhibit was shared with the other side as part of the five-day disclosure but was not stipulated to by the parties. Further, it was either not offered during the hearing, or was offered but an objection to its admissibility was sustained. The document is part of the record for appeal purposes. *See*, COMAR 28.02.01.22C.

- P. Ex. 15: [REDACTED] Observation Report ([REDACTED])
- P. Ex. 16: Final Reactions To IEP ([REDACTED])
- P. Ex. 17: Parent Application To [REDACTED]
- P. Ex. 18: [REDACTED] Acceptance Letter
- P. Ex. 19: [REDACTED] Tuition Contract
- P. Ex. 20: Educational Report
- P. Ex. 21: Identified but not admitted (Present Levels)
- P. Ex. 22: [REDACTED] IEP
- P. Ex. 23: [REDACTED] Progress Report
- P. Ex. 24: [REDACTED] Program Outline School year 2023-24
- P. Ex. 25: Observation Report ([REDACTED])
- P. Ex. 26: Bio And CV: [REDACTED]
- P. Ex. 27: CV: [REDACTED]
- P. Ex. 28: CV: [REDACTED]
- P. Ex. 29: CV: [REDACTED]
- P. Ex. 30: CV: [REDACTED]

MCPS offered the following exhibits which were admitted into evidence:

- MCPS Ex. 1: Identified but not admitted (List of Home Providers, September 4, 2019)
- MCPS Ex. 2: Identified but not admitted (Parent Statement re: Virtual Learning, February 1, 2021)
- MCPS Ex. 3: Amended IEP, April 13, 2021
- MCPS Ex. 4: Progress Info. (IEP, Quarterly & Addendum), November 2021, January 2022
- MCPS Ex. 5: IEP team meeting documents (5-day letters, PWN, attendance), February 10, 2022
- MCPS Ex. 6: IEP, February 10, 2022
- MCPS Ex. 7: Appendix A Worksheet & Appendix C Parental Consent, February 15, 2022

MCPS Ex. 8: Progress Info. (IEP, Quarterly & Addendum) (April 2022, June 2022)

MCPS Ex. 9: Report Card 2021-22

MCPS Ex. 10: Dynamic Learning Profile, July 15, 2022

MCPS Ex. 11: Progress Info. (IEP, Quarterly & Addendum), November 1, 2022

MCPS Ex. 12: Parent, Evaluator & Advocate Email Messages, November 2022 to December 2022

MCPS Ex. 13: Evaluator and Parents Email Messages, January 2023

MCPS Ex. 14: Progress Info. (IEP, Quarterly & Addendum), January 21, 2023

MCPS Ex. 15: Advocate Observation Report and MCPS Response, February 8, 2023

MCPS Ex. 16: IEP team meeting documents (5-day letters, PWN), February 9, 2023

MCPS Ex. 17: IEP, February 9, 2023

MCPS Ex. 18: Communication with External Speech Provider, March 2023

MCPS Ex. 19: Email messages re: School Tours, March 28, 2023

MCPS Ex. 20: Consent and Speech Evaluation (MCPS), April 1, 2023

MCPS Ex. 21: Five Day Documentation for IEP Meeting, April 2023

MCPS Ex. 22: FBA, April 17, 2023

MCPS Ex. 23: OT Evaluation Report, April 20, 2023

MCPS Ex. 24: IEP team meeting docs. (Notes, External Report Form, PWN), April 28, 2023

MCPS Ex. 25: Amended IEP, May 5, 2023

MCPS Ex. 26: MCPS Responses to Advocates Reaction to Draft IEP, May 11, 2023

MCPS Ex. 27: Progress Info. (IEP, Quarterly & Addendum) (March 2023 and June 2023)

MCPS Ex. 28: Email messages between Teacher and Parents, Spring 2023

MCPS Ex. 29: Report Card, June 1, 2022

MCPS Ex. 30: Sample Science Lesson Boards, 2021-22

MCPS Ex. 31: Sample Math Skills Data, 2021-22

MCPS Ex. 32: Sample Reading Skills Data, 2021-22

- MCPS Ex. 33: Sample Writing Skills Data, 2021-23
- MCPS Ex. 34: Sample Why Question Data, 2022-23
- MCPS Ex. 35: Sample Communication Exchanges Data
- MCPS Ex. 36: Sample Prompt Task Analysis Data, 2022-23
- MCPS Ex. 37: Sample Behavioral Analysis Data, 2022-23
- MCPS Ex. 38: Data Binders
- MCPS Ex. 39: ABA Folder
- MCPS Ex. 40: Identified but not admitted (Home Behavioral Services Report, September 10, 2023)
- MCPS Ex. 41: Signed [REDACTED] Contract, October 22, 2023
- MCPS Ex. 42: MCPS Response to Parents' Complaint, March 5, 2024
- MCPS Ex. 43: MCPS Discovery Request, March 1, 2024 to March 19, 2024
- MCPS Ex. 44: Resume [REDACTED]
- MCPS Ex. 45: Resume [REDACTED]
- MCPS Ex. 46: Resume [REDACTED]
- MCPS Ex. 47: Resume [REDACTED]
- MCPS Ex. 48: Resume [REDACTED]