

██████████,

STUDENT

v.

MONTGOMERY COUNTY PUBLIC

SCHOOLS

BEFORE BRIAN ZLOTNICK,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-MONT-OT-24-03392

DECISION

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STATEMENT OF THE CASE

On February 6, 2024, ██████████ (Parent), on behalf of her child, ██████████ (Student), filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by the Montgomery County Public Schools (MCPS) under the Individuals with Disabilities Education Act (IDEA).¹

A resolution conference was held on March 6, 2024, which did not resolve this matter. The MCPS declined to participate in a mediation.

On March 6, 2024, I held a pre-hearing conference (Conference) via the Webex video conferencing platform to schedule a due process hearing. The Parent was self-represented. Stacy Reid Swain, Esquire, represented the MCPS. After discussing the issues and proposed

¹ 20 U.S.C.A. § 1415(f)(1)(A) (2017); 34 C.F.R. § 300.511(a) (2022); Md. Code Ann., Educ. § 8-413(d)(1) (Supp. 2023); Code of Maryland Regulations (COMAR) 13A.05.01.15C(1). Unless otherwise noted, all citations to the U.S.C.A. are to the 2017 bound volume; all citations to the C.F.R. are to the 2023 bound volume; and all citations to the Education Article are to the 2023 Supplement. “U.S.C.A.” is an abbreviation for the United States Code Annotated. “C.F.R.” is an abbreviation for the Code of Federal Regulations.

witnesses, it was determined that the hearing would take six days to complete.

I advised the parties of the time requirements for issuing a decision. The applicable regulations state the following, in part:

- (a) The public agency must ensure that not later than 45 days after the expiration of the 30 day period under § 300.510(b), or the adjusted time periods described in § 300.510(c) –
 - (1) A final decision is reached in the hearing; and
 - (2) A copy of the decision is mailed to each of the parties.

34 C.F.R. § 300.515.

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

(b) Resolution period.

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

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

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

Id. § 300.510.

The Complaint was filed on February 6, 2024. As noted above, on March 6, 2024, the parties participated in a resolution session but were unable to reach a resolution. The MCPS declined to participate in a mediation. Therefore, the forty-five days began to run on March 7, 2024. *Id.* § 300.515. Accordingly, the timeframe for conducting the hearing and issuing a decision in this matter would ordinarily expire forty-five days later, on April 19, 2024.² *Id.* § 300.515(a). However, based on the parties' schedules, the Student and the MCPS jointly requested that I extend the timeline to allow the case to be heard on the selected dates and to allow sufficient time for me to consider the evidence, evaluate legal arguments, and draft a

² The forty-fifth day would have been Sunday, April 21, 2024; therefore, the decision would have been required to be issued on the preceding business day.

decision. *Id.* § 300.515(c). I may grant specific extensions of time at the request of either party. *Id.*; *see also*, Md. Code. Ann., Educ. §8-413(h) (2022).

A significant portion of the Conference was spent reviewing dates in order to schedule the hearing as soon as possible. Considering that the parties needed time to prepare and exchange documents in conformity with the five-day disclosure rule, as well as to request any witness subpoenas (*see* schedule below), we began looking at scheduling this matter onwards from March 14, 2024. Ms. Swain was on leave from March 14, 2024 through March 26, 2024. The MCPS was on spring break from March 27, 2024 through April 1, 2024. From April 2, 2024 through April 12, 2024, Ms. Swain was unavailable due to client and IEP meetings and scheduled hearings before the OAH. I had scheduled hearings in unrelated cases on April 16 and 17, 2024. On April 18, 2024, the Parent was away and unavailable. On April 19, 2024, I was unavailable due to a scheduled hearing before me. On April 22, 2024, the Parent was not available and on April 23, 2024, the MCPS had a holiday. On April 24 and 25, 2024, Ms. Swain was not available due to IEP meetings and an OAH hearing. I was unavailable on April 26, 2024. Ms. Swain was not available on April 30, 2024, due to IEP meetings, and the Parent was not available on May 1, 2024. Ms. Swain was not available on May 3, 6, 7, 8, 9, and 10, 2024 because she attended an out-of-state conference. The Parent was not available May 13-17, 2024 because she attended a work conference. All parties were available on April 29, 2024 and May 2, 2024, but the Parent requested a later start to the hearing in order to have it scheduled on consecutive days. Accordingly, we reviewed specific dates and scheduled the hearing for the

earliest date that six consecutive days³ were available. Therefore, the hearing was scheduled to begin on May 20, 2024, and be held on consecutive days through May 28, 2024.

Accordingly, based on the scheduling conflicts, I found that there was good cause to extend the regulatory timeframe as requested by the parties. The parties further requested that I issue a decision within thirty days after the conclusion of the hearing.

On April 16, 2024, the Parent filed a request to waive her right to appear in person for the scheduled hearing in this matter and instead have the matter decided on evidence. On April 29, 2024, I held a pre-hearing conference (Conference-2) by telephone to discuss the Parent's request to waive her appearance at the hearing. The Parent was self-represented, and Ms. Swain represented the MCPS. At Conference-2 Ms. Swain indicated that the MCPS did not join the Parent's request to waive its appearance at the hearing. The Parent, after learning of the MCPS' position, indicated that she did not want to unilaterally waive her appearance at the hearing and therefore, withdrew her request.

I held the hearing on May 20, 2024 and the hearing concluded on May 21, 2024. The Parent was self-represented. Stacy Reid Swain, Esquire, represented the MCPS.

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

³ There is no requirement that a hearing be held on consecutive dates. However, it was clear from Ms. Swain's calendar that while she was available on April 29, 2024 and May 2, 2024, she was not available for the third day of hearing until late May. Rather than have four hearing dates separated by several weeks, the parties agreed to the six consecutive dates in late May, as continuity makes for a fairer and more efficient hearing.

ISSUES

1. Did the MCPS fail to offer the Student a FAPE during the 2023-2024 academic year by placing him in the [REDACTED] at [REDACTED] for the 2023-2024 school year?
2. Did the Student fail to make meaningful progress in his individualized education program (IEP) academic goals and objectives during the 2023-2024 school year?
3. Did the Student fail to make meaningful progress in his IEP social and emotional behavioral goals and objectives during the 2023-2024 school year?
4. If the MCPS denied the Student a FAPE, is the Student entitled to non-public placement at the [REDACTED] or an equivalent non-public educational placement?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Parent:

- Parent Ex. 1 – Request for Mediation and Due Process Complaint, February 6, 2024 with attached typed statement
- Parent Ex. 2 - Amended IEP, November 2, 2023
- Parent Ex. 3 - Amended IEP, November 18, 2023
- Parent Ex. 4 - Amended IEP, December 6, 2023
- Parent Ex. 5 - Amended IEP, December 18, 2023
- Parent Ex. 6 - Prior Written Notices, November 28, 2023, December 13, 2023, and December 19, 2023
- Parent Ex. 7 - Parental Input for IEP, December 8, 2023
- Parent Ex. 8 - Progress Report on IEP Goals, November 13, 2023
- Parent Ex. 9 - Functional Behavioral Assessment Summary Report, November 7, 2023

- Parent Ex. 10 - MAP Student Progress Report, February 16, 2023
- Parent Ex. 11 - Teacher Reports, November 18, 2023
- Parent Ex. 12 - Letters from [REDACTED] and [REDACTED], January 18, 2024
- Parent Ex. 13 - [REDACTED] Evaluations, February 23, 2023
- Parent Ex. 14 - Student's first quarter for 2023-2024 school year behavioral raw data
- Parent Ex. 15 - Secondary Transition Report, April 18, 2024
- Parent Ex. 16 - Student's Report Card, April 11, 2024

Except when otherwise noted, I admitted the following exhibits on behalf of the MCPS⁴:

- MCPS Ex. 1 – Prior Written Notice, November 28, 2023
- MCPS Ex. 2 - Prior Written Notice, December 13, 2023 – **NOT OFFERED INTO EVIDENCE**
- MCPS Ex. 3 - Prior Written Notice, December 19, 2023
- MCPS Ex. 4 - Behavioral Intervention Plan, November 7, 2023 – **NOT OFFERED INTO EVIDENCE**
- MCPS Ex. 5 - Functional Behavioral Assessment, November 7, 2023 – **NOT OFFERED INTO EVIDENCE**
- MCPS Ex. 6 - Amended IEP, December 18, 2023
- MCPS Ex. 7 - [REDACTED] Resume, undated
- MCPS Ex. 8 - [REDACTED] Resume, undated – **NOT OFFERED INTO EVIDENCE**
- MCPS Ex. 9 - [REDACTED] Resume, undated

Testimony

The Parent testified and presented the following witness:

- [REDACTED], Special Education Teacher, [REDACTED]⁵

⁴ The MCPS submitted an exhibit binder that contained nine exhibits, but not all of the exhibits were offered into evidence. As the binder was submitted to the Parent and the OAH prior to the hearing in accordance with my March 14, 2024 Prehearing Order I will identify all of the exhibits but will note if an exhibit was not offered into evidence by the MCPS.

⁵ The Parent called [REDACTED] as a witness after the MCPS presented its case.

The MCPS presented the following witnesses:

- [REDACTED], Behavioral Support Teacher, [REDACTED], admitted as an expert in special education
- [REDACTED], Special Education Teacher, [REDACTED], admitted as an expert in special education

FINDINGS OF FACT

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

1. The Student is seventeen years old (born in 2007) and lives with the Parent, his father, and an older sister. (Parent Ex. 13).
2. The Student moved from [REDACTED] to Montgomery County Maryland just prior to the beginning of the Student's sixth grade year. (Parent testimony).
3. The Student is identified by the MCPS as a student eligible for special education services under the IDEA. His disability is identified as [REDACTED]. (MCPS Ex. 6).
4. The Student has been enrolled in the [REDACTED] since he entered the MCPS system in his sixth-grade academic year. The [REDACTED] is a social/emotional special education program that utilizes a three-prong approach consisting of academic, social/emotional, and behavioral components that support students accessing general education and working toward a high school diploma. [REDACTED] is located in a comprehensive middle or high school building but in a self-contained small classroom setting within that school building. (Testimony of [REDACTED]).
5. The Student has received special education instruction and related services at all times relevant to this matter and has been eligible for extended school year services because "[the Student's] academic goals of math, written language, and reading are related to critical life

skills. There is a likely chance of regression in [his] critical life skills caused by a normal school break.” (MCPS Ex. 6).

6. The Parent has participated in all IEP meetings and was informed of her *Procedural Safeguards and Parental Rights* under the IDEA.

7. In addition to the services provided by MCPS, the Student receives private applied behavior analysis (ABA) therapy four to five days per week in two-hour sessions through [REDACTED]. (Parent Ex. 13).

[REDACTED] ([REDACTED]) Evaluations

8. On October 14, 2022, [REDACTED] performed a Psychological Assessment (PA) of the Student. [REDACTED] maintained diagnoses of [REDACTED] ([REDACTED]) and [REDACTED] ([REDACTED]) for the Student. [REDACTED] noted that the Student should remain eligible for the services and supports outlined in his IEP. (Parent Ex. 13).

9. On February 22, 2023, [REDACTED],⁶ and [REDACTED], performed a PA of the Student. [REDACTED] noted the following strengths for the Student based on his evaluation:

- Age appropriate verbal abilities
- Age appropriate vocabulary knowledge
- Age appropriate reading comprehension skills
- Age appropriate auditory working memory
- Age appropriate learning and recall for rote verbal information

[REDACTED] noted the following weaknesses for the Student:

- Social functioning
- Attention and executive functioning
- Processing speed is below age level expectations

⁶ [REDACTED]

- Notable difficulties in math computation and math word problem solving
- Emotional functioning

(Parent Ex. 13).

10. [REDACTED] diagnosed the Student with [REDACTED]; a specific learning disorder with impairment in mathematics; and irritability. (Parent Ex. 13).

11. [REDACTED] indicated that the Student would continue to benefit from classroom accommodations and services that aim to improve his math skills, attention and executive functioning, and psychosocial functioning. [REDACTED] noted that the Student is in a self-contained setting for core academic subjects and is in general education for electives, which appears to be appropriate for his needs. (Parent Ex. 13).

12. On February 22, 2023, [REDACTED], Speech-Language Pathologist, conducted a Speech-Language evaluation of the Student. [REDACTED] diagnosed the Student with other symbolic dysfunction, which reflect higher-order language needs and pragmatic language deficits related to a diagnosis of [REDACTED]. (Parent Ex. 13).

13. On February 23, 2023, the Student received an Occupational Therapy (OT) Evaluation from [REDACTED].⁷ [REDACTED] identified the Student with having [REDACTED] and [REDACTED]. [REDACTED] found that the Student demonstrated OT areas of need in manipulation of fasteners, toileting, motor planning, personal hygiene and grooming and sensory processing skills related to executive functioning. (Parent Ex. 13).

2022-2023 Academic Year

14. The Student was enrolled in the [REDACTED] during the 2022-2023 academic year for tenth grade.

15. [REDACTED] is designed to meet the needs of students with disabilities who may have social emotional challenges that impact their ability to access the general

⁷ [REDACTED]

education curriculum. These challenges may include emotional social vulnerability, problem solving, abstract thinking, organizing and planning, interpreting social cues, establishing relationships with peers, coping with anxiety, sensory sensitivity, pragmatic language and attention. (Parent Ex. 9).

16. Students in the [REDACTED] attend their academic core classes of science, English, social studies, and math in a self-contained small setting in which they are instructed by a special education teacher with para educator support in the classroom. Resource teachers are also assigned to those [REDACTED] classes in which they focus on helping students with executive functioning, organization, completion of assignments and supporting academic needs through re-teaching. [REDACTED] is the most restrictive public-school setting in a comprehensive school in the MCPS. (Testimony of [REDACTED]).

The Student's 2023 IEP, Amended IEPs and Progress Reports

17. The Student's annual IEP meeting was held on May 25, 2023. The IEP team reviewed the February 2023 PA and determined that the Student meets the criteria of a student with [REDACTED]. The May 25, 2023 IEP team determined that the Student continues to be a student eligible for special education services under the disability category of [REDACTED]. The Student's [REDACTED] impacts him in the areas of reading comprehension, math problem solving, written language expression, speech and language expressive language, social emotional/behavioral, and self-management. (Parent Exs. 3, 4, & 5; MCPS Ex. 6).

18. The Student's teacher reports, parental input, the Student's grades, MAP scores, and his [REDACTED] evaluations were considered and incorporated into his IEPs. [REDACTED] has been the Student's case manager and social studies teacher for the past three years and has drafted all of the Student's 2023-2024 IEPs. (Testimony of [REDACTED]).

19. The Student's May 25, 2023 IEP goals included:

Academic - Reading Comprehension: By May 2024, given modified instruction, materials and accommodations, including rubrics, models and graphic organizers, the student will analyze and evaluate elements of narrative texts to facilitate understanding and interpretation.

Academic - Math Problem Solving: By May 2024, given modeling, blank scratch paper, extended time, frequent checks for understanding, strategies to initiate and sustain attention, preferential seating, and step-by-step instructions, [the Student] will make use of tools and strategies to solve problems involving building, interpreting, and solving linear, quadratic, and exponential functions/equations.

Behavioral - Self-Management: By May 2024, given staff supports and supplementary aids and services, [the Student] will demonstrate on task behaviors.

Academic - Speech and Language Expressive Language: Given sentence starters and verbal cues (e.g., a list), [the Student] will summarize, problem-solve, and ask for clarification especially related to longer pieces of verbal information related to academics and discussions in 2 out [of] 3 conversations.

Behavioral - Social Emotional/Behavioral: By May 2024, given verbal prompts and reminders, the student will effectively participate in classroom discussions and activities at least once per class period.

Academic – Written Language Expression: By May 2024, given an at grade level assigned writing task with the support of a graphic organizer, rubric, teacher models, feedback, scribe when needed, and fading support, [the Student] will compose effective, expressive, informational and persuasive writing in class.

(MCPS Ex. 6; Parent Exs. 3, 4, and 5).

20. Under the Student's IEP, the Student attends five classes (45 minutes each class) per day outside the general education setting in which he receives primary instruction from a special education classroom teacher with assistance from an instructional assistant. The Student attends one class (45 minutes) per day inside the general education setting in which he receives primary instruction from a general education teacher with assistance from an instructional assistant. The Student receives two counseling sessions (45 minutes each session) per month provided by a social worker and two speech/language therapy sessions (45 minutes each session) per month provided by a Speech/Language Pathologist. (MCPS Ex. 6; Parent Exs. 3, 4, and 5).

21. The social worker assigned to the [REDACTED] does not provide therapeutic services such as [REDACTED]⁸ or individual therapeutic sessions that are typically provided by a psychologist or a psychiatrist. The MCPS does not provide therapeutic services in its public-school settings. (Testimony of [REDACTED]).

22. The IEP team considered the following placement options:

- General education
- [REDACTED]⁹
- [REDACTED]

23. The Student's May 25, 2023 IEP continued his placement at the [REDACTED] [REDACTED] for the remainder of the 2022-2023 academic year and for the 2023-2024 academic year.

24. The Student's IEP was amended on November 2, 2023, November 18, 2023, December 6, 2023 and December 18, 2023. (MCPS Ex. 6; Parent Exs. 2, 3, 4, and 5).

25. In the Reading Comprehension Goal from the May 25, 2023 IEP and the amended IEPs through December 18, 2023, the Student measured the following in his progress reports:

- 6/16/23 – making sufficient progress to meet goal; achieved 50% accuracy
- 10/31/23 – making sufficient progress to meet goal; achieved 60% accuracy
- 1/26/24 – making sufficient progress to meet goal; achieved 70% accuracy
- 4/9/24 – making sufficient progress to meet goal; achieved 70% accuracy

(MCPS Ex. 6).

26. In the Math Problem Solving Goal from the May 25, 2023 IEP and the amended IEPs through December 18, 2023, the Student measured the following in his progress reports:

- 6/16/23 – making sufficient progress to meet goal; achieved 60% accuracy
- 10/31/23 – making sufficient progress to meet goal; achieved 60% accuracy
- 1/26/24 – making sufficient progress to meet goal; achieved 70% accuracy
- 4/9/24 – not making sufficient progress to meet goal; achieved 60% accuracy

(MCPS Ex. 6).

⁸ Applied behavior analysis

⁹ [REDACTED]

27. In the Behavioral – Self Management Goal from the May 25, 2023 IEP and the amended IEPs through December 18, 2023, the Student measured the following in his progress reports:

- 6/16/23 – making sufficient progress to meet goal; achieved one out five trials
- 10/31/23 – making sufficient progress to meet goal; achieved two out of five trials
- 1/26/24 – making sufficient progress to meet goal; achieved four out of seven trials
- 4/9/24 – not making sufficient progress to meet goal; achieved three out of seven trials

(MCPS Ex. 6).

28. In the Written Language Expression Goal from the May 25, 2023 IEP and the amended IEPs through December 18, 2023, the Student measured the following in his progress reports:

- 6/16/23 – making sufficient progress to meet goal; percentage of accuracy not reported
- 10/31/23 – making sufficient progress to meet goal; percentage of accuracy not reported
- 1/26/24 – making sufficient progress to meet goal; achieved 70% accuracy
- 4/9/24 – not making sufficient progress to meet goal; achieved 60% accuracy

(MCPS Ex. 6).

29. In the Speech and Language Pragmatics Goal from the May 25, 2023 IEP and the amended IEPs through December 14, 2023, the Student measured the following in his progress reports:

- 1/26/24 – making sufficient progress to meet goal
- 4/9/24 – making sufficient progress to meet goal

30. At the December 18, 2023 IEP meeting, the IEP team considered the Student’s MAP-R scores, current grades, input from the IEP team, and input from the Parent. (MCPS Ex. 3).

31. As a result of the December 12, 2023 IEP, the IEP team added supplemental aids to the Student's IEP which included the following:

- Social/Behavioral Support – Check in with trusted adult
- Instructional Support – Criteria for Success including rubrics for long term projects and assignments, and multi-paragraph writing tasks
- Physical/Environmental Support – Preferential seating; visual checklists

(MCPS Ex. 2).

32. At the Parent's request during the December 18, 2023 IEP meeting, the IEP team agreed to move the Student to an inclusive mainstream math class with a para-educator. (MCPS Ex. 3).

Functional Behavioral Assessment

33. The MCPS completed a functional behavioral assessment (FBA) of the Student on November 7, 2023.

34. The Student's FBA identified the following targeted behaviors of the Student:

- Off task behaviors – lack of engagement and completion of tasks and lack of independent work completion
[The Student] often takes longer than other students to initiate and/or complete tasks, when assigned to work independently, he engages in a variety of behaviors which limited his work completion, such as using the internet for unrelated search purposes, listening to music, talking to himself, wearing headphones during instruction (outside of required sensory needs), accessing personal devices such as a phone, etc.
- Negative response to staff redirection

When redirected, prompted, or within close proximity of staff (for purpose of reminding [the Student] to stay on task), [the Student] often responds in a negative or inappropriate tone of voice, makes comments to staff to leave him alone, and sometimes uses inappropriate language (such as swear words).

(Parent Ex. 14).

35. Staff at [REDACTED] reported that the Student struggles with attention to task and that he often has many tabs open on his computer leading him to engage in

non-preferred classroom tasks. The Student's teachers indicated that the Student does not initiate work, but when given support he understands and completes work with prompts when someone is directly monitoring him. (Parent Ex. 14).

36. Data collected from the Student's teachers in the first quarter of the 2023-2024 academic year showed that he is meeting behavioral expectations with success in his physics and period eight resource classes. The Student is meeting his behavioral expectations with moderate success in his English, modern world history, and geometry classes. The Student is not meeting behavioral expectations in his period seven resource class. No data was obtained regarding the Student's behavioral progress from his digital art class and from his lunch period. (Parent Ex. 14).

Student's MAP Progress Report

37. The Student achieved the following percentile range scores in the MAP-M (Math) standardized assessment:

- Winter – 2022-2023 – grade 10 - second percentile¹⁰
- Fall – 2021-2022 – grade 9 - third percentile
- Spring- 2020-2021 – grade 8 - fourth percentile
- Fall – 2020-2021 – grade 8 - first percentile
- Winter – 2019-2020 – grade 7 - first percentile
- Fall – 2019-2020 – grade 7 - fourth percentile

38. The Student achieved the following percentile range scores in the MAP-R (Reading) standardized assessment:

- Winter – 2022-2023 – grade 10 - eighth percentile
- Fall – 2022-2023 – grade 10 - twenty-fourth percentile
- Fall – 2021-2022 – grade 9 - nineteenth percentile
- Spring – 2020-2021 - grade 8 - sixth percentile
- Fall – 2020-2021 – grade 8 - tenth percentile

¹⁰ A score in the second percentile means that 98% of all other students who took this assessment scored higher. (Testimony of [REDACTED]).

- Winter – 2019-2020- grade 7 - fifteenth percentile
- Fall – 2019-2020 – grade 7 - twenty-seventh percentile

(Parent Ex. 10)

Student’s April 11, 2024 Report Card

39. During the first marking period in the 2023/2024 academic year, the Student received the following grades:

- Digital Art 1A - B
- English 11A - D
- Geometry A - D
- Resource Program A¹¹ - C
- Resource Program A¹² - D
- Physics A - D
- Modern World History A - C

(Parent Ex. 16)

40. During the second marking period in the 2023/2024 academic year, the Student received the following grades:

- Digital Art 1A - D
- English 11A - D
- Geometry A - C
- Resource Program A¹³ - B
- Resource Program A¹⁴ - C
- Physics A - D
- Modern World History A - B

(Parent Ex. 16)

41. During the third marking period in the 2023/2024 academic year, the Student received the following grades:

- Photography 1B - B
- English 11B - D
- Geometry B - E

¹¹ This resource class was taught by [REDACTED]

¹² This resource class was taught by [REDACTED]

¹³ This resource class was taught by [REDACTED]

¹⁴ This resource class was taught by [REDACTED]

- Math 180 HS - A
- Resource Program B¹⁵ - B
- Physics B - E
- Modern World History B - C

(Parent Ex. 16)

The Student's Diploma Track

42. The Student is working toward a high school diploma. He has completed 16.5 of his required 22 academic credits for graduation. The Student has met his algebra I and English 10 test requirements. The Student still has to meet the government and science test requirements. (Testimony [REDACTED]).

43. The Student must pass geometry-B to graduate. The Student did not receive para educator support in his geometry class. The Student failed geometry-B during the 2022-2023 academic year and is failing geometry-B for a second time during the 2023-2024 academic year. (Testimony of [REDACTED]).

44. The Student is failing geometry-B, English, and physics in the 2023-2024 academic year. (Testimony of [REDACTED]).

Teacher Reports for 1st Marking Period of 2023-2024 Academic Year¹⁶

45. [REDACTED], the Student's Digital Art 1A teacher reported the following observations in these categories:

- **Reading** – on grade level
- Reads accurately and fluently – noted concern
- Understands class readings – noted concern
- Is able to interpret lengthy text – noted concern
- Able to keep up with longer reading – noted concern

- **Written Language** – on grade level
- Ideas and development – noted concern
- Organization – noted concern

¹⁵ This resource class was taught by [REDACTED]

¹⁶ The following teacher reports provided three outcomes that each teacher could rate for the Student for each sub-category– “Strength”, “Satisfactory”, and “Concern.”

- Voice – noted concern
- In written assessments – noted concern
- Sentence fluency – noted concern
- Conventions – noted concern
- Title and grade of writing sample
- No data gathered because [Student] has submitted 0/2 assignments incorporating writing
- **Math: progress**
- Math concepts – not applicable to this course
- Basic operations – not applicable to this course
- Math application – not applicable to this course
- Title and Grade of Two Math Assessments
- NA – Data not gathered for course
- **Oral Communication**
- Understands information presented orally – noted concern
- Understands class readings – noted concern
- Speaks in complete sentences to express ideas – noted concern
- Speaks clearly – noted concern
- **Organization**
- Materials organization – noted concern
- Completes assignments by due date – noted concern
- Arrives with necessary materials – noted concern
- **Participation**
- Contributes during class discussions – noted concern
- Socializes at appropriate times – noted satisfactory
- Requests accommodations – noted concern
- Focuses on instruction/activity – noted concern
- Works collaboratively with team members – noted concern
- **Social Emotional**
- Interactions with staff – noted concern
- Interactions with students – noted satisfactory
- Problem solves when stressed – noted concern
- Raises hand/waits to be called on – noted concern
- Comments – [The Student] refuses to participate in class discussion, coursework, projects, and assignments. I have verbally requested that he visit me during office hours consistently to catch him up on coursework and have supplied the resource department with a laptop in hopes that he will work on and submit assignments.

The few assignments he has received credit for have been observed but not actually submitted.

(Parent Ex. 11)

46. [REDACTED], the Student's English 11A teacher reported the following observations in these categories:

- **Reading** – above grade level
- Reads accurately and fluently – noted satisfactory
- Understands class readings – noted satisfactory
- Is able to interpret lengthy text – noted concern
- Able to keep up with longer reading – noted concern

- **Written Language** – on grade level
- Ideas and development – noted satisfactory
- Organization – noted satisfactory
- Voice – noted satisfactory
- In written assessments – noted concern
- Sentence fluency – noted satisfactory
- Conventions – noted strength

- **Title and grade of writing sample**
- 11.1 Narrative Task (15/25 pts); 11.1 Analysis Task (15/30 pts-incomplete)

- **Math: progress**
- Math concepts – not applicable to this course
- Basic operations – not applicable to this course
- Math application – not applicable to this course

- **Title and Grade of Two Math Assessments**
- No data

- **Oral Communication**
- Understands information presented orally – noted satisfactory
- Understands class readings – noted satisfactory
- Speaks in complete sentences to express ideas – noted satisfactory
- Speaks clearly – noted satisfactory

- **Organization**
- Materials organization – noted satisfactory
- Completes assignments by due date – noted concern
- Arrives with necessary materials – noted concern

- **Participation**
- Contributes during class discussions – noted concern
- Socializes at appropriate times – noted satisfactory
- Requests accommodations – noted concern
- Focuses on instruction/activity – noted concern
- Works collaboratively with team members – noted concern

- **Social Emotional**
- Interactions with staff – noted concern
- Interactions with students – noted satisfactory
- Problem solves when stressed – noted concern
- Raises hand/waits to be called on – noted concern

- Comments – San Diego Quick Independent [Reading Level]: 11th grade (highest grade the assessment goes up to). In English 11, we are reading *The Great Gatsby*. Based on his confusion during some of the class discussions, I chose “concern” for lengthier texts. His answers to questions prior to class discussion does not reflect any reading of the text prior to class. During class, he says, “what?” frequently in response to questions. When I give a repetition of the direction/question and/or a quick summary of the pertinent information, [the Student] has answered correctly and occasionally made an insightful comment. He understands inferences and when he follows the class discussion, his comments can be deep and thoughtful.

[The Student’s] writing: [The Student] enjoys writing narratives and likes to look into many fantasy worlds/characters using Wikipedia. He varies his sentences in narrative writing. [The Student] will identify appropriate evidence. He is still developing how to analyze a quote thoroughly.

[The Student] consistently brings his Chromebook; he rarely has a pencil. When reminded to respond during class, [the Student] has watched me more and responded to a question. Then his eyes have drifted back to the Chromebook screen. When staff walk around to check in with students, he will say, “I don’t need help,” “I know where I’m supposed to be,” and “Could you step away?” I’ve used GoGuardian to check where he is when we are on an electronic document. When I say, “I can see where everyone is” and/or “I see you finding the correct document” or other similar phrases, [the Student] hears me, and I can see him switch between tabs to the English canvas tab and open up the assignment. He accepts virtual check ins better than in person/proximity check ins. [The Student] does not raise his hand to share and often will speak to me but hasn’t called my name. We are working on this social etiquette. [The Student] occasionally has requested support/help-usually after students have been working on the assignment for ten minutes.

(Parent Ex. 11)

47. [REDACTED], the Student's Geometry teacher reported the following

observations in these categories:

- **Reading** – on grade level
- Reads accurately and fluently – noted satisfactory
- Understands class readings – noted satisfactory
- Is able to interpret lengthy text – noted satisfactory
- Able to keep up with longer reading – noted satisfactory

- **Written Language** – on grade level
- Ideas and development – noted satisfactory
- Organization – noted satisfactory
- Voice – noted satisfactory
- In written assessments – noted satisfactory
- Sentence fluency – noted satisfactory
- Conventions – noted satisfactory

- Title and grade of writing sample
- n/a

- **Math: progress**
- Math concepts – noted concern
- Basic operations – noted satisfactory
- Math application – noted concern

- Title and Grade of Two Math Assessments
- Proof Quiz #2: 5/10; CPCTC Quiz: 5/10

- **Oral Communication**
- Understands information presented orally – noted satisfactory
- Understands class readings – noted satisfactory
- Speaks in complete sentences to express ideas – noted satisfactory
- Speaks clearly – noted satisfactory

- **Organization**
- Materials organization – noted concern
- Completes assignments by due date – noted concern
- Arrives with necessary materials – noted satisfactory

- **Participation**
- Contributes during class discussions – noted concern
- Socializes at appropriate times – noted satisfactory
- Requests accommodations – noted satisfactory
- Focuses on instruction/activity – noted concern
- Works collaboratively with team members – noted satisfactory

- **Social Emotional**
- Interactions with staff – noted satisfactory
- Interactions with students – noted satisfactory
- Problem solves when stressed – noted satisfactory
- Raises hand/waits to be called on – noted satisfactory
- Comments – [The Student] requires near-constant prompting to stay on task. He does not make notations in his work packets as directed. He is typically unaware of what problem we are working on that I am demonstrating for the class. He does not have adequate notes that would support him during assessments. He gets very defensive when prompted to stay on task. He completes very little classwork, and even less homework. He needs to be prompted multiple times to bring out his work packet to a specific page.

He is not able to apply taught processes to independent work, including assessments. He is often distracted and focused on personal pursuits at the expense of classroom engagement.

(Parent Ex. 11)

48. [REDACTED], the Student's Modern World History teacher reported the following observations in these categories:

- **Reading** – on grade level
- Reads accurately and fluently – noted satisfactory
- Understands class readings – noted satisfactory
- Is able to interpret lengthy text – noted satisfactory
- Able to keep up with longer reading – noted satisfactory
- **Written Language** – on grade level
- Ideas and development – noted concern
- Organization – noted concern
- Voice – noted concern
- In written assessments – noted concern
- Sentence fluency – noted concern
- Conventions – noted concern
- Title and grade of writing sample
- CWT 1 – 12.5/25
- **Math: progress**
- Math concepts – not applicable to this course
- Basic operations – not applicable to this course
- Math application – not applicable to this course

- Title and Grade of Two Math Assessments
- NA – Data not gathered for course

- **Oral Communication**
- Understands information presented orally – noted concern
- Understands class readings – noted satisfactory
- Speaks in complete sentences to express ideas – noted satisfactory
- Speaks clearly – noted satisfactory

- **Organization**
- Materials organization – noted satisfactory
- Completes assignments by due date – noted concern
- Arrives with necessary materials – noted satisfactory

- **Participation**
- Contributes during class discussions – noted satisfactory
- Socializes at appropriate times – noted satisfactory
- Requests accommodations – noted satisfactory
- Focuses on instruction/activity – noted concern
- Works collaboratively with team members – noted satisfactory

- **Social Emotional**
- Interactions with staff – noted satisfactory
- Interactions with students – noted satisfactory
- Problem solves when stressed – noted satisfactory
- Raises hand/waits to be called on – noted satisfactory

- Comments – [The Student] struggles with maintaining focus during class. His electronics are a major distraction. He will frequently open an assignment and then simply stare at it for a minute or two and then switch to another tab which he has open to a preferred activity. Writing is marked as an area of concern because even though he filled out the graphic organizer for the only significant writing assignment, he failed to complete the final product which consisted of simply copying information on the graphic organizer to a document. He struggled with the writing assignment and when offered help, he would frequently respond with “I got this”. His constant distraction by his electronics is also why “focus on instruction” is marked as an area of concern. [The Student] will respond when asked a question during class. Since the beginning of the 2nd quarter, [the Student] has shown increased participation and focus. We seem to have entered a content area [the Student] has a great deal of prior knowledge and he likes sharing it.

(Parent Ex. 11)

49. [REDACTED], the Student’s Physics teacher reported the following observations in these categories:

- **Reading** – on grade level
- Reads accurately and fluently – noted satisfactory
- Understands class readings – noted satisfactory
- Is able to interpret lengthy text – noted concern
- Able to keep up with longer reading – noted concern

- **Written Language** – below grade level
- Ideas and development – noted concern
- Organization – noted concern
- Voice – noted concern
- In written assessments – noted concern
- Sentence fluency – noted concern
- Conventions – noted concern

- Title and grade of writing sample
- N/A

- **Math: progress**
- Math concepts – noted concern
- Basic operations – noted concern
- Math application – noted concern

- Title and Grade of Two Math Assessments
- Newton's 2nd Law $F=MA$ Calculations – 7.5/15 (Missing); Weight vs. Mass Practice – 5/10 (Missing)

- **Oral Communication**
- Understands information presented orally – noted satisfactory
- Understands class readings – noted satisfactory
- Speaks in complete sentences to express ideas – noted satisfactory
- Speaks clearly – noted satisfactory

- **Organization**
- Materials organization – noted concern
- Completes assignments by due date – noted concern
- Arrives with necessary materials – noted satisfactory

- **Participation**
- Contributes during class discussions – noted concern
- Socializes at appropriate times – noted satisfactory
- Requests accommodations – noted concern
- Focuses on instruction/activity – noted concern
- Works collaboratively with team members – noted concern

- **Social Emotional**
 - Interactions with staff – noted concern
 - Interactions with students – noted satisfactory
 - Problem solves when stressed – noted concern
 - Raises hand/waits to be called on – noted satisfactory
- Comments – [The Student] struggles to be successful in class independently. He requires constant support to initiate, persevere through, and complete tasks. His initial behavior when he comes into class is to take out his computer and headphones, and he requires frequent prompting to either close the computer or stay focused on assignments instead of the various tabs he will have open at one time when he is allowed to use it. When prompted to pay attention or put technology away, he always responds with a defiant tone. When asked if he needs help on assignments, he always refuses and says he is okay. When the teacher is going over content, he loses focus quickly, as evidenced by his initial responses when called upon, which are usually “I don’t know” or “what?”, and that he rarely responds with a correct answer. He never responds voluntarily. When the teacher goes through examples, he doesn’t write them down on his papers unless there is direct support provided. He has struggled with solving basic math problems involving 3 variables ($F=ma$, $W=Fd$), even when provided with the formulas, examples, and a calculator. In Quarter 1, he only turned in 5 out of 8 assignments and on 3 of them he received the minimal score possible due to the number of errors he made. He never follows up on feedback on assignments nor takes advantage of opportunities to redo them. Out of the 3 assignments in Quarter 2 so far, he’s only turned in 1 and he received the minimal grade possible due to the number of errors. He gets frustrated easily and paces around the room frequently, likely as a coping mechanism.

(Parent Ex. 11)

50. [REDACTED], the Student’s Resource teacher reported the following observations in these categories:

- **Reading** – on grade level
 - Reads accurately and fluently – noted satisfactory
 - Understands class readings – noted satisfactory
 - Is able to interpret lengthy text – noted satisfactory
 - Able to keep up with longer reading – noted satisfactory
- **Written Language** – on grade level
 - Ideas and development – noted satisfactory
 - Organization – noted satisfactory
 - Voice – noted satisfactory
 - In written assessments – noted satisfactory
 - Sentence fluency – noted satisfactory
 - Conventions – noted satisfactory

- Title and grade of writing sample
- N/A/

- **Math: progress**
- Math concepts – not applicable to this course
- Basic operations – not applicable to this course
- Math application – not applicable to this course

- Title and Grade of Two Math Assessments
- N/A – Data not gathered for course

- **Oral Communication**
- Understands information presented orally – noted satisfactory
- Understands class readings – noted satisfactory
- Speaks in complete sentences to express ideas – noted satisfactory
- Speaks clearly – noted satisfactory

- **Organization**
- Materials organization – noted satisfactory
- Completes assignments by due date – noted concern
- Arrives with necessary materials – noted satisfactory

- **Participation**
- Contributes during class discussions – noted satisfactory
- Socializes at appropriate times – noted satisfactory
- Requests accommodations – noted satisfactory
- Focuses on instruction/activity – noted satisfactory
- Works collaboratively with team members – noted satisfactory

- **Social Emotional**
- Interactions with staff – noted satisfactory
- Interactions with students – noted satisfactory
- Problem solves when stressed – noted satisfactory
- Raises hand/waits to be called on – noted satisfactory

- Comments – As this is a Resource class, there are no specific reading or writing assignments. [The Student] does not take advantage of the class to make up missing work. He sits in the back of the room on his computer looking at preferred websites and activities. When his low grade in Digital Art was an issue, arrangements were made to get a special laptop so that he could complete assignments for that class. Despite this, [the Student] never completed a single assignment using that computer during Resource Class. Since the start of the 2nd quarter, [the Student] has shown more of an interest in taking advantage of the

opportunity that Resource Class offers. He has been accessing assignments and doing some work during class.

(Parent Ex. 11).

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 Parent is seeking relief and bears the burden of proof to show that the placement of the Student at the [REDACTED] at [REDACTED] did not meet the requirements of the law. COMAR 28.02.01.21K(1), (2)(a).

Applicable Law

The IDEA’s Requirement for a FAPE

A school system’s obligation under the IDEA is to provide all children with disabilities a FAPE. 20 U.S.C.A. § 1400(d)(1)(A); 34 C.F.R. § 300.101(a).

A FAPE is defined in the IDEA as special education and related services that—

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U.S.C.A § 1401(9); *accord* 34 C.F.R. § 300.17.¹⁷

In *Rowley*, the Supreme Court described a FAPE as follows:

Implicit in the congressional purpose of providing access to a [FAPE] is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child. . . . We therefore conclude that the “basic floor of opportunity” provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.

458 U.S. at 200-01. The Court held that a FAPE “consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child ‘to benefit’ from the instruction.” *Id.* at 188-89.

After *Rowley*, a split in the circuits of the United States Courts of Appeal developed over precisely what “some educational benefit” meant. Some circuits, notably the Fourth and Tenth, understood it to mean “some” benefit more than a “*de minimis*,” “minimal,” or “trivial” benefit; while others, such as the First, Third, and Ninth Circuits interpreted the standard to mean a “meaningful” benefit. *Compare O.S. v. Fairfax Cnty. Sch. Bd.*, 804 F.3d 354, 360 (4th Cir. 2015), and *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 798 F.3d 1329, 1338-41 (10th Cir. 2015), with *D.B. v. Esposito*, 675 F.3d 26, 34-35 (1st Cir. 2012), and *N.B. v. Hellgate Elementary Sch. Dist.*, 541 F.3d 1202, 1212-13 (9th Cir. 2008), and *Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 180 (3d Cir. 1988).

The Supreme Court resolved the split in the circuits by granting *certiorari* to review the Tenth Circuit’s opinion in *Andrew F.* The Supreme Court held a FAPE must be “reasonably

¹⁷ A FAPE is defined in COMAR 13A.05.01.03B(27) as “special education and related services” that:

- (a) Are provided at public expense, under public supervision and direction;
- (b) Meet the standards of the Department, including the requirements of 34 CFR §§ 300.8, 300.101, 300.102, and 300.530(d) and this chapter;
- (c) Include preschool, elementary, or secondary education; and
- (d) Are provided in conformity with an IEP that meets the requirements of 20 U.S.C. § 1414, and this chapter.

calculated to enable a child to make progress appropriate in light of the child’s circumstances” and finding that “[t]he IDEA demands more” than “an educational program providing merely more than *de minimis* progress from year to year.” *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999, 1001 (2017) (internal quotation marks omitted).¹⁸

Child With a Disability

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

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

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

The IEP

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

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

20 U.S.C.A. § 1414(d)(3)(A); *see also Sch. Comm. of Burlington v. Dep’t of Educ. of Mass.*, 471

¹⁸ The Fourth Circuit has acknowledged that “[o]ur prior FAPE standard is similar to that of the Tenth Circuit, which was overturned by *Andrew F.*” *M.L. ex rel. Leiman v. Smith*, 867 F.3d 487, 496 (4th Cir. 2017), *cert. denied*, 138 S. Ct. 752 (2018). For these reasons, any opinions of the Fourth Circuit or any circuit that adopted a no more than “*de minimis*” standard and any district court within those circuits that are cited or discussed below are not relied upon for their definition of a FAPE, but for other legal principles for which they remain the state of the law in this circuit and controlling precedent or persuasive authority.

U.S. 359, 368 (1985) (“The *modus operandi* of the Act is the already mentioned individualized educational program.” (internal quotation marks omitted)).

The IEP depicts the student’s current educational performance, sets forth annual goals and short-term objectives for improvements in that performance, describes the specifically designed instruction and services that will assist the student in meeting those objectives, and indicates the extent to which the child will be able to participate in regular educational programs. 20 U.S.C.A. § 1414(d)(1)(A); accord 34 C.F.R. § 300.22; Md. Code Ann., Educ. § 8-405(a)(4).

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

The test for whether an IEP is “appropriately ambitious,” *id.*, and “reasonably calculated to enable the student to receive educational benefits,” *id.* at 996, is different for each student; there is no bright-line rule or formula to determine whether an IEP provides a FAPE.¹⁹ *Id.* at 1000-01. For a student who is fully integrated in the regular classroom, a FAPE would generally require an IEP to be “reasonably calculated to enable the child to achieve passing marks and

¹⁹ In *Rowley*, the Supreme Court also held that a FAPE may be found to have been denied a student when a school fails to comply with the procedures set forth in the IDEA. 458 U.S. at 206; see also *Bd. of Educ. v. I.S. ex rel. Summers*, 325 F. Supp. 2d 565, 580 (D. Md. 2004).

advance from grade to grade.” *Id.* at 996, 999 (citing *Rowley*, 458 U.S. at 203-04). However, for a student who is not fully integrated and/or cannot be reasonably expected to achieve grade-level advancement, the “educational program must be appropriately ambitious in light of [the student’s] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom.” *Id.* at 1000. Regardless, “every child should have the chance to meet challenging objectives.” *Id.*

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

This respect and deference, while unquestionably a well-settled principle of review under the Act, both within and without this circuit, is not limitless. *See Cnty. Sch. Bd. of Henrico Cnty. v. Z.P.*, 399 F.3d 298, 307 (4th Cir. 2005) (“Nor does the required deference to the opinions of the professional educators somehow relieve the [judge] of the obligation to determine as a factual matter whether a given IEP is appropriate.”). “[T]he fact-finder is not required to conclude that

an IEP is appropriate simply because a teacher or other professional testifies that the IEP is appropriate.” *Id.*; see *Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1476 (9th Cir. 1993) (“Indeed, if the views of school personnel regarding an appropriate educational placement for a disabled child were conclusive, then administrative hearings conducted by an impartial decisionmaker would be unnecessary.”).

“To give deference only to the decision of the School Board would render meaningless the entire process of administrative review.” *Sch. Bd. of Prince William Cnty., Va. v. Malone*, 762 F.2d 1210, 1217 (4th Cir. 1985) (citation omitted). A reviewing judge may fairly expect the school system’s professionals “to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of [his or her] circumstances.” *Andrew F.*, 137 S. Ct. at 1002.

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

The development of an IEP is a prospective process. *Andrew F.*, 137 S. Ct. at 998-99. Other circuits and district courts have held the test of the appropriateness of the IEP is *ex ante* and not *post hoc*. *Z.B. v. Dist. of Columbia*, 888 F.3d 515, 524 (D.C. Cir. 2018); *Adams v. State*,

195 F.3d 1141, 1149 (9th Cir. 1999); *Fuhrmann v. E. Hanover Bd. of Educ.*, 993 F.2d 1031, 1041 (3d Cir. 1993); *J.P. ex rel. Popson v. W. Clark Cnty. Sch.*, 230 F. Supp. 2d 910, 919 (S.D. Ind. 2002) (“[T]he measure of appropriateness for an IEP does not lie in the outcomes achieved. While outcomes may shed some light on appropriateness, the proper question is whether the IEP was objectively reasonable at the time it was drafted.” (citation omitted)). Thus, a judge in a due process hearing must look to what the IEP team knew when it developed the IEP, and whether that IEP, as designed, was reasonably calculated to enable the child to receive educational benefit and make appropriate progress. An IEP is essentially a “snapshot” in time and cannot be judged “with the benefit of hindsight.” See *Z.B.*, 888 F.3d at 524; *K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 818 (8th Cir. 2011); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990).

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 Cnty. 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. Consequently, removal of a child from a regular educational environment may be necessary when the nature or severity of a child’s disability is such that education in a regular classroom cannot be achieved. COMAR

13A.05.01.10A(2). In such a case, a FAPE might require placement of a child in a nonpublic school setting that would be fully funded by the child’s public school district.

An agency is required to ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. 34 C.F.R. § 300.115(a). The continuum is required to include alternative placements such as instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. 34 C.F.R. § 300.115(b)(1). The continuum must also allow for supplementary services to be provided in conjunction with regular class placement. 34 C.F.R. § 300.115(b)(2).

Analysis

The Parent challenged the May 25, 2023 placement recommendation by the IEP team; she did not challenge the content of the May 25, 2023 IEP but argued that the Student has not made meaningful progress on his IEP goals at the [REDACTED]. The Parent argued that the Student’s IEP goals cannot be mastered unless he is placed in a private school placement that offers a small classroom setting for all of the Student’s classes and built-in therapeutic services as well.

The Parent argued that the Student can only make meaningful progress on his IEP goals in the smaller, supportive and learning environment offered at the [REDACTED] in [REDACTED]. The Parent asserted that the Student needs daily therapeutic supports, which the [REDACTED] does not offer and the [REDACTED] does, which would enable him to make meaningful academic and behavioral progress on his IEP goals. While it is understandable that the Parent seeks the best possible environment for her child to succeed, the Court was clear in *Andrew F.* that the IDEA does not promise an ideal education. Rather, the IEP must be “reasonably calculated to enable the child to make progress in light of his circumstances.” *Andrew F.* 135 S.Ct. at 1002.

The Parent argued that the IEP's counseling and behavioral components do not equal the therapeutic components needed for the Student. The Parent maintained that the counseling and behavioral services in the IEP are inappropriate and that the Student specifically requires psychotherapy. The Student's May 2023 IEP provides that he will receive two forty-five-minute counseling sessions monthly for the 2023-2024 school year. [REDACTED] testified that psychotherapy is a clinical model that is not provided in the MCPS. The Parent presented a letter from [REDACTED], Clinical Social Work Manager, [REDACTED], which was admitted into evidence, which advocated for weekly school-based therapy to address the Student's executive functioning. [REDACTED] did not testify in support of her undated letter or to elaborate on her recommendation. As the expertise of [REDACTED] was not established in this hearing, her conclusions are not based on any accepted expertise in the field of psychology or psychiatry. However, [REDACTED] concerns for the Student's executive functioning skills are supported by his lack of progress in his behavioral and education goals due in large part to the Student's inability to remain on task, focus on instruction and not allow himself to be distracted from class instruction by his electronic devices. [REDACTED] testified that the [REDACTED] utilizes resource teachers that assist the Student with executive functioning, organization, and completion of assignments in addition to supporting the Student's academic needs through re-teaching. [REDACTED] provided her expert opinion that the [REDACTED] is the appropriate setting for the Student because he is receiving the specialized instruction necessary to make progress towards his IEP goals. Additionally, [REDACTED] testified that the Student receives social/emotional support through his interaction with the social worker for group counseling and individual counseling as necessary. Yet, [REDACTED] expert opinion, which was not contradicted by any expert opinions offered on behalf of the Student, is not, in itself, sufficient for me to find that the Student's IEP is reasonably calculated to enable him to make progress appropriate in light of his

circumstances. So, I must still analyze whether the May 2023 IEP and its amended iterations through December 18, 2023 allowed the Student to make appropriate progress on those IEP goals in light of his particular circumstances while at the [REDACTED] during the 2023-2024 academic year. I find that the Student failed to make appropriate progress on those IEP goals while at the [REDACTED].

The Student's Behavioral Progress at [REDACTED]

The Student's Behavioral-Self Management IEP goal indicated that given staff expectations, fading staff support, frequent feedback, positive reinforcement, monitoring independent work, monitoring the Student's technology use, the Student would demonstrate on task behaviors 80% of the time in four out of five opportunities by May 2024. The Student made sufficient progress in meeting this goal in his first three progress reports of June 16, 2023, October 31, 2023, and January 26, 2024, however, he was not making sufficient progress on this goal in the April 9, 2024 progress report.

An FBA was conducted by the MCPS on November 7, 2023, which identified the Student having off task behaviors that demonstrated a lack of engagement, an inability to complete tasks and a lack of independent work completion. The FBA also found that the Student takes longer to initiate and/or complete tasks when assigned to work independently and that he engages in a variety of behaviors that limit his task completion, such as using the internet, listening to music, talking to himself, wearing headphones and accessing his phone. The FBA also reported that the Student has a negative response to redirection by staff, often telling staff to leave him alone.

Teacher Reports from the first marking period of 2023-2024 academic year

The Student's issues with remaining on task and succumbing to distractions from his electronic devices were reflected in numerous teacher comments found in their first marking period reports for the 2023-2024 academic year. (Parent Ex. 11). [REDACTED], digital art 1A

teacher, noted concerns regarding the Student's ability to timely complete assignments and his ability to focus on instruction. [REDACTED] also commented that the Student refuses to participate in class discussions.

[REDACTED], English 11A, also noted concerns regarding the Student's ability to timely complete assignments and focus on instruction.

[REDACTED], geometry-A, noted concerns regarding the Student's ability to timely complete assignments and focus on instruction. [REDACTED] commented that the Student requires near constant prompting to stay on task and gets very defensive when prompted to stay on task. [REDACTED] also noted that the Student is often distracted and focused on personal pursuits at the expense of classroom assignments.

[REDACTED], modern world history, noted concerns regarding the Student's ability to timely complete assignments and focus on instruction. [REDACTED] also indicated that the Student's electronics are a major distraction as he often switches from a class assigned tab in his laptop to another tab involving a preferred activity.

[REDACTED], physics, also noted concerns regarding the Student's ability to complete assignments and focus on instruction. [REDACTED] indicated that the Student struggles to be successful in class independently and requires constant support to initiate, persevere through, and complete tasks. [REDACTED] further observed the Student's use of non-class related tabs on his computer and that when prompted to pay attention or put his technology away, the Student always responded in a defiant tone.

As a result of the FBA, teacher, and parental input at the Student's December 12, 2023 IEP meeting, the team added supplemental aids to his IEP including check ins with a trusted adult, instructional support aids for long term projects and assignments and preferential seating along with visual checklists to address his focus and task completion issues.

Yet, even with the December 12th IEP's additional supplemental aids, the Student's behavioral issues continued to impact him the classroom. Those behavioral issues were noted in the April 9, 2024 progress reports which including the following:

- English – The Student only completed one out of six full assignments in reading comprehension
- Math – after providing modeling, blank scratch paper, extended time, frequent checks for understanding, strategies to initiate and sustain attention, preferential seating, and step-by-step instructions, the Student rarely focuses on class activities and has not completed a homework assignment
- Physics – the Student requires direct staff support in order to be able to solve math problems.

(MCPS Ex. 6)

Behavioral – Self-Management

While the Student's IEP progress reports dated June 16, 2023, October 31, 2023, and January 26, 2024 indicated that he was making sufficient progress to meet this goal, his April 9, 2024 IEP progress report found that he was not making sufficient progress. Again, I found it noteworthy that the Student's regression in this goal occurred after the December 12, 2023 supplementary aids and supports were added to the Student's IEP. The April 9, 2024 progress report indicated that the Student struggles with maintaining on-task behaviors in class and needs significant staff prompting to start or complete tasks. This report further notes that without staff direction, the Student will not complete work, even simple assignments like copying practice problems off the board. This report further indicated that the Student benefits significantly from extended time and significant staff support.

Behavioral – Social Emotional

Again, the Student's IEP progress reports of June 16, 2023, October 31, 2023, and January 26, 2024, reported that the Student was making sufficient progress to meet this goal, but his April 9, 2024 report found that he was not making sufficient progress. The April 9th report

found that even with verbal prompts, frequent feedback, preferential seating and reminders, the Student still does not effectively participate in classroom discussions and activities at least once per class period independently. The Student rarely participates in class voluntarily and rarely demonstrates active listening skills as his head is often buried in his computer.

I find that the Student is not making meaningful progress in his IEP behavioral goals at the [REDACTED] as even after an FBA was performed and additional aids and supports were added in December 2023, his behavioral performance regressed in April 2024 resulting in him making no progress on both of his behavioral goals.

The Student's Academic Progress at the [REDACTED]

Speech and Language Pragmatics

This academic goal for the Student indicated that when given sentence starters, learned/shared strategies, and verbal cues, the Student will maintain conversations and use higher order social skills (interpreting non-verbal body language, inferencing, and perspective-taking) related to academics/social discussions in two out of three conversations. The IEP team reported that the Student made sufficient progress to meet this goal in both the January 26, 2024, and April 9, 2024 progress reports.

Reading Comprehension

This academic goal for the Student indicated that by May 2024, when given direct instruction, materials, and accommodations including rubrics, models and graphic organizers, the Student will analyze and evaluate elements of narrative texts to facilitate understanding of grade level text with 80% accuracy in four out of five opportunities. The Student's progress reports for the goal dated June 16, 2023, October 31, 2023, January 26, 2024, and April 9, 2024, all reported that the Student made sufficient progress to meet this goal. However, his English teacher reported in the April 9th Progress Report that this goal was difficult to evaluate because of the six

separate opportunities to demonstrate reading comprehension, the Student only completed one full assignment and enough of another assignment to evaluate this goal. The Student's English teacher indicated that it is difficult to determine if the Student's difficulties lie with his task initiation and focus or reading comprehension.

Math Problem Solving

This academic goal for the Student indicated that by May 2024, when given modeling, blank scratch paper, extended time, frequent checks for understanding, strategies to initiate and sustain attention, preferential seating, models and formulas along with step-by-step instructions, the Student will use a variety of mathematics strategies to independently solve real world problems involving geometric and algebraic processes with 80% accuracy in four out of five trials. The Student's progress reports for June 16, 2023 and October 31, 2023, show that he was making sufficient progress to meet this goal by achieving 60% accuracy. In the Student's January 26, 2024 progress report he continued to show sufficient progress towards meeting this goal by achieving 70% accuracy. In the Student's April 9, 2024 progress report, however, it noted that the Student was not making sufficient progress to meet this goal as he achieved 60% accuracy. The Student's math teacher indicated in the January 26, 2024 progress report that the Student was not making progress at independently solving real world problems involving algebraic processes as he requires direct staff support to identify the correct operations, setting up equations, and applying the proper steps. In the April 9, 2024 progress report the Student's math teacher found that even with all of his included accommodations, he still requires prompts to be ready for class. The math teacher also reported that the Student rarely focuses on class activities and has not completed a homework assignment.

Written Language Expression

This goal stated that when given an at-grade level assigned writing task with the support of a graphic organizer, rubric, teacher models, feedback, word processor, and fading support, the Student will compose effective, expressive, informational and persuasive writing in class with 80% accuracy in four out five trials. After his English teacher reported that the Student was making sufficient progress to meet this goal in the June 16, 2023, October 31, 2023 and January 26, 2024 progress reports, the teacher reported in the April 9, 2024 progress report that the Student was not making sufficient progress to meet this goal. The English teacher reported that the Student's final drafts were incomplete and did not fully meet expectations.

In sum, the Student was making sufficient progress to meet his IEP goals of Speech and Language Pragmatics and Reading Comprehension, although his English teacher's comments regarding reading comprehension indicated that the Student barely completed enough assignments to allow for an evaluation of his progress and that it was still difficult to discern whether the Student's difficulties with this subject lie with his inability to focus or whether they are rooted in his struggles with reading comprehension. Although the Student was progressing in his reading comprehension goal, he was still experiencing struggles in this area as he only fully completed one out six tasks assigned to him to evaluate his progress. The Student showed regression and was reported to not be making sufficient progress to meet his IEP goals of Math Problem Solving and Written Expression. Again, I found the Student's regression and inability to make sufficient progress in those goals problematic as his regression occurred after supplementary aids and supports were added to his IEP after the December 12, 2023 IEP meeting.

The Student's MAP Progress Report

The Student scored in the fourth, first, first, fourth, third, and second percentile ranges, respectively, in the MAP-M assessments from seventh grade through tenth grade at the MCPS [REDACTED]. The Parent argued that the Student's stagnant Math scores while in the [REDACTED] [REDACTED] was an indication of the lack of meaningful progress made by the Student at the [REDACTED] [REDACTED]. [REDACTED] testified that one data point, such as the Student's MAP score, must be considered with other data points to determine a student's progress. However, [REDACTED] did testify that this data point, when taken by itself, does not indicate academic success.

The Student scored low in the MAP-R assessment as well. He scored in the twenty-seventh, fifteenth, tenth, sixth, nineteenth, twenty-fourth and eighth percentile ranges, respectively, in the MAP-R assessments from seventh grade through tenth grade at the MCPS [REDACTED]. Similar to the Student's math assessment, he has regressed to a very low percentile score in the tenth grade. There are no MAP-M or MAP-R assessment scores for the Student's 2023-2024 eleventh grade year. The Student has been enrolled in the [REDACTED] from sixth grade middle school through his current eleventh grade placement at [REDACTED] [REDACTED]. I find the math scores which showed stagnation from seventh through tenth grade culminating in a second percentile score and his wildly inconsistent reading scores which ranged from a high of the twenty-seventh percentile to a score in the eighth percentile in tenth grade demonstrate of a lack of meaningful progress being made by the Student at the MCPS [REDACTED] [REDACTED] in math and reading.

The Student's 2023-2024 Eleventh Grade Report Card Grades

During the first two marking periods of the 2023-2024 academic year the Student received "D" grades in English 11-A and physics-A. He received a "D" in geometry-A in the first quarter and a "C" for the second quarter. In modern world history-A the Student received a

“C” in the first quarter and a “B” in the second quarter. He also received a “B” in digital art 1A in the first quarter and a “D” in digital art 1A in the second quarter.

As the Student was struggling in his courses, he received additional aids and supports which were added to his IEP in December 2023. However, the Student’s grades in his core academic classes regressed significantly during the third quarter of the 2023-2024 academic year. During that quarter, he received a “D” in English 11-B, an “E” in geometry-B, and an “E” in physics-B. Most troubling is that with the Student is on a diploma-based track that requires him to pass geometry-B in order to graduate. [REDACTED] and [REDACTED] both testified that the Student is currently failing geometry-B and [REDACTED] added that the Student failed geometry-B last year in his tenth-grade year. [REDACTED] also testified that the Student is failing English and physics too. Although no bright line test for determining meaningful progress in light of the Student’s circumstances has been provided by the Courts, I find that the Student’s academic performance as reflected in the MAP assessments and his academic regression in eleventh grade combined with his continued behavioral issues that impact his academic performance show a lack of appropriate progress by the Student in light of his particular circumstances.

In determining whether the MCPS denied the Student a FAPE, I am not required to determine what would be the “ideal” placement for the Student. *Andrew F.*, 137 S. Ct. at 999 (citing *Rowley*, 458 U.S. at 206-207). The Student is entitled to an IEP that is reasonably calculated to ensure he makes progress in light of his unique circumstances. I am aware that *Andrew F.* rejected the standard of “merely more than *de minimis*.” Even allowing that the standard is significantly higher than “merely more than *de minimis*,” and encompasses the ideas of appropriate progress, significant progress, and reasonable progress, the Student is not guaranteed under the law an IEP that gives the very “best.”

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

Although the Student’s IEPs prior to his current May 2023 IEP and its amended iterations through December 2023, were not included in the record, it is undisputed that the Student has attended the [REDACTED] from the sixth grade through the present and that despite the efforts of [REDACTED] staff, he has not made progress in light of his particular circumstances. As he is on a diploma track, it is reasonable to expect him to pass his required core academic classes necessary for graduation. The MCPS presented testimony from [REDACTED] and [REDACTED], who were both accepted as experts in special education, however, it did not provide any of the Student’s other teachers to testify regarding his performance in the classroom. Therefore, I am left with the teacher reports, MAP scores, and his grades to evaluate his progress. [REDACTED]

has been the Student's case manager for the past three years and has been the Student's social studies teacher for the past three years as well, so I do find that his expert opinion carries substantial weight regarding the Student. However, his direct testimony was limited to a conclusory statement that the [REDACTED] has been appropriate for the Student based on his past performance which showed success through him achieving decent and passing grades. However, there is no evidence in the record of the Student's grades prior to his eleventh-grade year. During cross examination, [REDACTED] conceded that the Student is currently failing English, physics, and geometry-B and that he is taking geometry-B for a second time. [REDACTED] [REDACTED] was also called as a witness for the Student and testified that he does not believe that the Student would benefit from a smaller setting with therapeutic services. I do not credit this opinion as [REDACTED] did not elaborate why he believed that the Student would not benefit from the type of setting that the [REDACTED] could provide. In accordance with *Andrew F.* I find that the MCPS has failed to offer a cogent explanation for the regression of the Student's academic performance during the 2023-2024 academic year despite the inclusion of additional supports added to his IEP in December 2023 and being in the most restrictive public-school setting offered in a comprehensive school by the MCPS.

The Student has not mastered any of the goals on his current IEP and is regressing in his progress in three of his five IEP goals. An IEP is "a statement of measurable annual goals, including academic and functional goals, designed to . . . meet the child's needs that result from the child's disability to enable the child . . . to make progress." 34 C.F.R. § 300.320. Maryland's regulations provide that IEP goals are "measurable, academic and functional," "annual," and achievable "within [one academic] year." COMAR 13A.05.01.09. Also, the school system must "address any lack of expected progress in the annual goals." COMAR

13A.05.01.08. The regulations mandate that a school system “shall make a good faith effort to achieve the goals of a student’s IEP.” COMAR 13A.05.01.09.

While there is nothing in the IDEA or federal or Maryland regulations that requires a guarantee that the Student achieve his IEP goals, a lack of progress should signal a problem and require a significant change. The MCPS did further analysis and assessments but did little to act upon the results. The supplemental aids added to his December 2023 IEP which included a behavioral support of providing a check-in with a trusted adult, instructional support through the use of rubrics for long term projects and multi-paragraph writing tasks and the environmental support of preferential seating and visual checklists have not prevented the Student’s academic and behavioral slide during the third quarter of the 2023-2024 academic year. Further, the Student has been in the [REDACTED] since his sixth-grade year and his MAP math and reading scores have remained quite low throughout that time. Further, he is failing geometry-B for a second time and is also failing his English 11-B and physics courses, jeopardizing his ability to graduate. As [REDACTED] indicated, the [REDACTED] is the most restrictive public-school setting within the MCPS system. Although remaining in the [REDACTED] allows the Student to maintain exposure to non-disabled peers, [REDACTED] indicated during cross examination that if there is a student that requires a therapeutic component, then the school system would have to explore where and when that could be provided. [REDACTED] further noted that when services are determined to be beyond the [REDACTED], then the MCPS will conduct a central IEP meeting to discuss possible private placement options. I find that it is clear that the Student needed something more, and that something more was a change in placement.

I cannot conclude that the Student made any meaningful educational progress in the 11th grade at the [REDACTED] as he was not progressing in three out of his five IEP goals, had not mastered any of his IEP goals, was failing three core academic subjects, and had scored in the

second and eighth percentile ranges in math and reading in his most recent MAP assessment performed in his tenth grade year. Therefore, I cannot conclude that he made meaningful progress utilizing the methodology of the MCPS IEPs. While his IEPs prior to May 25, 2023 were not in the record, his performance within their framework is instructive as to his needs. The Parent and the Student's therapist, [REDACTED], believe the Student is in need of a much more intensive program than that available through the [REDACTED]. His behaviors are directly impacting his ability to access the curriculum and are resulting in his academic regression. He needs different strategies and a different setting in order to learn, which would include a therapeutic component to address those behaviors. If the IEP is not designed to provide meaningful educational benefit, a FAPE cannot be provided. In 2023-2024, the MCPS did not provide a FAPE.

Remedy

Having found that the MCPS failed to offer the Student a FAPE during the 2023-2024 academic year and that the Student failed to make meaningful progress in his IEP academic and social and emotional goals during the 2023-2024 academic year, I must next determine the appropriate relief for the Student.

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

child was denied a FAPE, or prospective compensatory education. *G. ex rel R.G. v. Fort Bragg Dependent Sch.*, 343 F.3d. 295, 308 (4th Cir. 2003). Compensatory education involves discretionary, prospective, injunctive relief crafted by a court to account for the period of time that a student was deprived of his right to a FAPE. Courts have held that to accomplish the IDEA’s purposes, a compensatory education award must be “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” *Reid ex rel Reid v. Dist. of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005).

As a remedy, the Parent seeks a compensatory educational award by way of a prospective placement of the Student at the [REDACTED] in [REDACTED] for the 2024-2025 school year. The Parent argued that the Student requires the small class settings and therapeutic component found at the [REDACTED], due to the Student’s educational and health needs. The MCPS contended that the [REDACTED] is not the least restrictive environment for the Student, as the Student would lack exposure to non-disabled peers in the school setting.

As the Parent did not unilaterally place the Student in a private education setting and is therefore not seeking reimbursement, but is instead seeking a prospective placement as a compensatory award for a denial of a FAPE, I do not need a full analysis of the appropriateness of the [REDACTED], but rather must seek to remedy the denial of a FAPE in order to mitigate the harm done by the MCPS’s denial of a FAPE to the Student. The overarching principle of a compensatory award is rooted in equity and what is necessary to remediate the denial of a FAPE. The Fourth Circuit has held, “Compensatory education involves discretionary, prospective, injunctive relief crafted by a court to remedy what might be termed an educational deficit created by an educational agency’s failure over a given period of time to provide a FAPE

to a student.” *G. ex rel R.G.*, 343 F.3d. at 309. In *Diatta v. District of Columbia*, the D.C. District Court held that educational programming sought as a compensatory award should be “reasonably calculated to confer the remedial and contemporary educational benefits” due to the student. 319 F. Supp. 2d 57, 67 (D.D.C. 2004).

In this case, the Student was denied a FAPE during the 2023-2024 school year when his continued placement at the [REDACTED] resulted in a regression in his behavioral and academic IEP goals and his failure of English, physics, and geometry courses.

Based on the totality of the record before me, I find that it would be equitable and appropriate for the Student to be awarded a prospective placement at the [REDACTED] in [REDACTED] for the 2024-2025 school year.

Although the MCPS argued that the [REDACTED] is not the least restrictive environment for the Student, I do not find this argument germane to the interests of equity. Even in a situation involving a unilateral private placement, the private education services need not be provided in the least restrictive environment. *M.S. ex rel. Simchick*, 553 F.3d at 319.

In her Due Process Complaint, the Parent requested the remedy of an award of “a non-public placement for [the Student] to attend the [REDACTED] in [REDACTED] where he can receive an appropriate education and therapeutic services in his school setting, or an equivalent non-public educational setting.” I find that in general, prospective placement at the [REDACTED] in [REDACTED] for the 2024-2025 school year is the appropriate and equitable remedy.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the IEPs and placement proposed by MCPS for the 2023-2024 school year were not reasonably calculated to offer the Student a FAPE. 20 U.S.C.A. §§ 1412(a)(5), 1414 (2017); 34

C.F.R. §§ 300.114(a)(2)(i), 300.117 (2016). *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017); *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982).

I further conclude that the Parent is entitled to placement of the Student at the [REDACTED] in [REDACTED] for the 2024-2025 school year, as compensatory education for the MCPS' failure to provide the Student a FAPE during the 2023-2024 school year.

20 U.S.C.A. §§ 1412(a)(5), 1414 (2017); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117 (2019). *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017); *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982).

ORDER

I **ORDER** that:

1. The Montgomery County Public Schools shall **FUND** placement of the Student at the [REDACTED] in [REDACTED] for the 2024-2025 school year; and
2. The Montgomery County Public Schools shall, within thirty [30] days of the date of this decision, provide proof of compliance with this Order to the Chief of the Complaint Investigation and Due Process Branch, Division of Special Education and Early Intervention Services, Maryland State Department of Education.

June 12, 2024
Date Decision Issued

Brian Zlotnick
Administrative Law Judge

BMZ/ckc
#212060

REVIEW RIGHTS

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

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

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

Copies Mailed To:

[REDACTED]

Stacy Swain, Esquire

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

██████████,
STUDENT

v.

MONTGOMERY COUNTY PUBLIC
SCHOOLS

BEFORE BRIAN ZLOTNICK,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-MONT-OT-24-03392

FILE EXHIBIT LIST

I admitted the following exhibits on behalf of the Parent:

- Parent Ex. 1 – Request for Mediation and Due Process Complaint, February 6, 2024 with attached typed statement
- Parent Ex. 2 - Amended IEP, November 2, 2023
- Parent Ex. 3 - Amended IEP, November 18, 2023
- Parent Ex. 4 - Amended IEP, December 6, 2023
- Parent Ex. 5 - Amended IEP, December 18, 2023
- Parent Ex. 6 - Prior Written Notices, November 28, 2023, December 13, 2023, and December 19, 2023
- Parent Ex. 7 - Parental Input for IEP, December 8, 2023
- Parent Ex. 8 - Progress Report on IEP Goals, November 13, 2023
- Parent Ex. 9 - Functional Behavioral Assessment Summary Report, November 7, 2023
- Parent Ex. 10 - MAP Student Progress Report, February 16, 2023
- Parent Ex. 11 - Teacher Reports, November 18, 2023
- Parent Ex. 12 - Letters from ██████████ and ██████████, January 18, 2024
- Parent Ex. 13 - ██████████ Evaluations, February 23, 2023
- Parent Ex. 14 - Student's first quarter for 2023-2024 school year behavioral raw data

Parent Ex. 15 - Secondary Transition Report, April 18, 2024

Parent Ex. 16 - Student's Report Card, April 11, 2024

Except when otherwise noted, I admitted the following exhibits on behalf of the MCPS²⁰:

MCPS Ex. 1 – Prior Written Notice, November 28, 2023

MCPS Ex. 2 - Prior Written Notice, December 13, 2023 – **NOT OFFERED INTO EVIDENCE**

MCPS Ex. 3 - Prior Written Notice, December 19, 2023

MCPS Ex. 4 - Behavioral Intervention Plan, November 7, 2023 – **NOT OFFERED INTO EVIDENCE**

MCPS Ex. 5 - Functional Behavioral Assessment, November 7, 2023 – **NOT OFFERED INTO EVIDENCE**

MCPS Ex. 6 - Amended IEP, December 18, 2023

MCPS Ex. 7 - [REDACTED] Resume, undated

MCPS Ex. 8 - [REDACTED] Resume, undated – **NOT OFFERED INTO EVIDENCE**

MCPS Ex. 9 - [REDACTED] Resume, undated

²⁰ The MCPS submitted an exhibit binder that contained nine exhibits, but not all of the exhibits were offered into evidence. As the binder was submitted to the Parent and the OAH prior to the hearing in accordance with my March 14, 2024 Prehearing Order I will identify all of the exhibits but will note if an exhibit was not offered into evidence by the MCPS.