

**MONTGOMERY COUNTY  
PUBLIC SCHOOLS**

**v.**

████████████████████

**STUDENT**

**BEFORE JEFFREY T. BROWN,  
AN ADMINISTRATIVE LAW JUDGE  
OF THE MARYLAND OFFICE  
OF ADMINISTRATIVE HEARINGS  
OAH No.: MSDE-MONT-OT-24-07353**

**DECISION**

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

**STATEMENT OF THE CASE**

On October 4, 2023, the IEP<sup>1</sup> team determined that updated formal educational, psychological, and speech and language assessments were needed to confirm an educational disability and update eligibility for special education services for ██████████ (Student). On October 5, 2023, ██████████ (Parent)<sup>2</sup> provided written consent to the assessments. The assessments were concluded by January 31, 2024. On January 10, 2024, the Parent requested an independent educational evaluation (IEE) at public expense because the assessments were not completed within ninety days. The request was denied as premature on the basis that the Montgomery County Public Schools (MCPS) had scheduled an IEP team meeting. On February 16, 2024, the IEP team met to review the results of educational, psychological, and speech-language testing conducted by the MCPS. On February 16, 2024, the Parents stated their

---

<sup>1</sup> Individualized Education Program.

<sup>2</sup> ██████████, II is also a Parent of the Student and will be identified as such by name, as appropriate, or as Parents when acting in combination with ██████████. Otherwise, all references herein to Parent will be to ██████████.

disagreement with the results of the MCPS assessments and requested IEEs at public expense. On March 14, 2024, the MCPS agreed to fund an educational evaluation at public expense and denied the Parents' request for a psychological and speech-language assessment at public expense. On March 15, 2024, the MCPS filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to show that its psychological and speech-language evaluations of the Student were appropriate and that the Parents did not have a right to IEEs at public expense under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017).<sup>3</sup>

On April 22, 2024, I held a prehearing conference (Conference) on the Webex videoconference platform (Webex). Stacey Swain, Esquire, represented the MCPS at the Conference. Moissette I. Sweat, Esquire, represented the Parents. The Parent was present. At the Conference, the parties and I discussed the timeframe for issuing this decision.

Under the applicable law, a decision in this case normally would be due by Monday, April 29, 2024, which is forty-five days after the MCPS filed the Due Process Complaint. 34 Code of Federal Regulations (C.F.R.) § 300.515(a) (2022); Md. Code Ann., Educ. § 8-413(h) (Supp. 2023); COMAR 13A.05.01.15C(14); *see also* COMAR 13A.05.01.15C(11)(d)(iii) (“In accordance with 34 CFR § 300.510(a)(3), a resolution session need not be held if: [t]he public agency initiated the due process complaint.”) The parties requested that the hearing be scheduled on two consecutive days, if possible. Based on the need to exchange documents in conformity with the five-day disclosure rule, based on my schedule and the parties' schedules (as detailed in Appendix II – Schedule), and based on the Parent's preference for two consecutive hearing dates, the MCPS requested that I extend the timeline to allow the case to be heard on May 16 and 17, 2024, and to allow sufficient time for me to

---

<sup>3</sup> U.S.C.A. is an abbreviation for the United States Code Annotated. All references to the U.S.C.A. are to the version found in the 2017 volume.

consider the evidence, evaluate legal arguments, and draft a decision. *Id.* § 300.515(c). The Parents posed no objection. I may grant specific extensions of time at the request of either party. *Id.* Accordingly, based on the noted scheduling conflicts, I found good cause to extend the regulatory timeframe as requested by the parties. *Id.* The MCPS requested that I issue a decision within thirty days after the conclusion of the hearing; the Parents did not oppose that request. The hearing concluded on May 17, 2024; therefore, the decision in this case is due on or before June 14, 2024.<sup>4</sup> As such, this decision is being issued within 30 days after the conclusion of the hearing. On April 23, 2024, the Parents filed an Answer to Due Process Complaint.

On May 16, 2024, I held a remote hearing on Webex, commencing at 9:30 a.m., as scheduled. COMAR 28.02.01.20B(1)(b). Ms. Swain represented the MCPS. Ms. Sweat represented the Parents. The Parent was present. A witness, [REDACTED], who was subpoenaed by the Parents, appeared and was excused for May 16, 2024 as he would not be reached that day.<sup>5</sup> The MCPS concluded its case at 3:30 p.m. on May 16, 2024. The parties agreed to recess the hearing until 9:30 a.m. on May 17, 2024, at which time the Parents presented their case.

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) (Supp. 2023); Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2023); COMAR 13A.05.01.15C; COMAR 28.02.01.

---

<sup>4</sup> Thirty days from May 17, 2024, is Sunday, June 16, 2024. Therefore, the decision would be due on the preceding business day, Friday, June 14, 2024.

<sup>5</sup> The Parent elected not to call [REDACTED], and he was subsequently released as a witness.

## ISSUES

1. Were the psychological and speech-language evaluations conducted by the MCPS appropriate?
2. Should the MCPS be required to pay for IEEs for psychological and speech-language evaluations of the Student at public expense?

## SUMMARY OF THE EVIDENCE

I have attached a complete Exhibit List as an Appendix.

### Testimony

The MCPS presented the following witnesses:

- [REDACTED], Speech Language Pathologist, who was accepted as an expert in Speech Language Pathology.
- [REDACTED], School Psychologist, who was accepted as an expert in School Psychology.<sup>6</sup>

The Parent testified on the Student's behalf and presented the following witnesses:

- [REDACTED], who was accepted as an expert in Audiology and Speech Language Pathology
- [REDACTED], MCPS Special Education Area Supervisor

---

<sup>6</sup> [REDACTED] was accepted over the objection of Ms. Sweat, which was based on the assertion that [REDACTED] background did not include clinical practice and was only in school settings. The objection did not go to [REDACTED] training, education, or experience in School Psychology, the specialty in which she was offered, and was overruled.

## FINDINGS OF FACT

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

1. The Student transitioned to [REDACTED] from [REDACTED] in April 2023 while in the tenth grade, and had an IEP in effect at that time which was continued at [REDACTED]. The Student is in the eleventh grade.

2. The Student's primary language is English.

3. The Student is diagnosed with [REDACTED], a genetic condition with symptoms that include learning disabilities.

4. The Student receives special education services as a student with an Other Health Impairment. The areas affected by this disability include behavioral - self-management; behavioral - academic organization; academic - speech and language expressive language; academic - written language expression; and academic - reading comprehension.

5. The Student was assessed by a MCPS School Psychologist in 2019 using the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-5) and obtained the following scores: Verbal Comprehension Index (84 – Low Average); Visual Spatial Index (100 – Average); Fluid Reasoning Index (103 – Average); Working Memory Index (88 – Low Average); Processing Speed Index (92 – Average); and Full Scale IQ (89 – Low Average).

6. The Student's grades as of January 2024 in the following subjects were all A's: Honors English; Latin American History; Honors Modern World; Resource Program; and Honors Physics.

7. At an October 4, 2023 IEP team meeting, the team determined that updated formal educational, psychological, and speech-language assessments were needed to confirm an educational disability and eligibility for special education services for the Student.

8. On October 5, 2023, the Parent provided written consent for the MCPS to assess the Student.

### **The Speech-Language Re-Assessment**

9. Based on a recommendation of the Student's IEP team, and with the consent of the Student's mother, ██████████ conducted a speech-language assessment of the Student over four dates – October 27, 2023; November 2, 2023; November 10, 2023, and November 17, 2023.

10. ██████████ reviewed the Student's speech-language history, including prior assessments in 2016, 2018, and 2019; employed classroom observations; relied on standardized assessment procedures, including the Comprehensive Assessment of Spoken Language -2 (CASL-2) test; and obtained a speech-language sample.

11. ██████████ determined that the CASL-2 test was most appropriate as the Student uses more complex language. The CASL-2 test measures expressive and receptive language.

12. Most of the Student's scores on the CASL-2 test were Below Average or Lower, while scores for Receptive Language, Antonyms, and Double Meaning were at least Average.

13. Relying on all of the data, ██████████ interpreted the Student's scores to confirm that he continued to require speech therapy in school, especially to improve his expressive and receptive language skills and focus on improving higher language skills

14. The Student was aware, willing, and cooperative throughout the evaluation process, and ██████████ had to remind him to take breaks.

15. ██████████ did not rely on a single measure or assessment to determine whether the Student has a disability or to recommend an appropriate education program for the Student.

16. The CASL-2, coupled with classroom observations and evaluation of the speech-language sample, are sound instruments, valid for the purpose of assessing the Student's speech and language abilities.

17. [REDACTED] was trained and knowledgeable in the administration of the assessment tools used.

18. [REDACTED] adhered to the CASL-2 test protocols and procedures.

19. [REDACTED] determined that the Student had strengths in conversation skills, antonyms, double meaning, receptive language, and pragmatics. She determined the Student had weaknesses in grammatical morphemes, nonliteral language, inferencing, and expressive language. She determined that the Student tested in the Average range for receptive language.

20. [REDACTED] issued a report on January 17, 2024 in which she determined that the speech and language data obtained through her assessment supported the presence of oral communication needs consistent with a speech-language disorder, and that the Student's weaknesses negatively impact his academic performance in expressive and receptive language.

21. [REDACTED] deferred specific recommendations to the next IEP team meeting, which was not yet scheduled when she produced her report.

### **The Psychological Assessment**

22. Based on a recommendation of the Student's IEP team, and with the consent of the Student's mother, [REDACTED] conducted a psychological assessment of the Student over the following dates: November 7 – 11, 2023; November 28- 29, 2023; December 20 – 21, 2023; and January 4, 2024.

23. The IEP team agreed to include the following assessment components in the psychological evaluation: Intellectual/Cognitive Functioning; Emotional/Social Behavior Development, and Observations.

24. [REDACTED] interviewed the Student.

25. [REDACTED] initially observed the Student in Latin American History class. During the observation, the Student was observed to be seated in the last row of the class, though

██████████ was informed that he could choose to sit closer. The Student was properly engaged in completing a task using his Chromebook. The teacher would periodically check whether the Student was on task. The Student periodically switched to other tasks on his Chromebook. The Student did not respond to prompts from the teacher to the class, which was similar to the majority of students. The Student did not interact with a peer when prompted to do so by the teacher. The Student's behavior was comparable to his peers.

26. ██████████ solicited comments from the Student's Parent and a teacher about the Student and their observations and impressions.

27. ██████████ then progressed to formal testing, which she conducted in a warm, quiet room that was well lit and free of distractions. The Student was polite, conversational, and responsive to ██████████ requests.

28. The Student was persistent and gave his best effort, and showed no signs of frustration on the first two days of testing. ██████████ considered the results of the testing to be a valid assessment of the Student's intellectual functioning.

29. The Student had the following scores on the Wechsler Intelligence Scale for Children (Fifth Edition) (WISC -V):

- Full Scale Intelligence Quotient – 86 – in the Low Average range
- Verbal Comprehension Index – 84 – in the Low Average range
- Visual Spatial Index – 97 – in the Average range
- Fluid Reasoning Index – 106 – in the Average range
- Working Memory Index – 85 – in the Low Average range
- Processing Speed Index – 75 – in the Very Low range

30. ██████████ administered the Behavioral Assessment System for Children – 3 (BASC – 3) for the Student. This test rates behaviors observed in the home and in school.

31. As required by this assessment, ██████████ solicited a parent rating scale from the Parent, which she received, and a teacher rating scale from the Student's teachers, of which



she received one. [REDACTED] solicited a self-report scale from the Student, which he completed.

32. The Student scored within the following ranges on the Behavioral Assessment System for Children – 3 (BASC – 3):

- Externalizing Problems Composite – in the Average range per both the Parent and the teacher
- Internalizing Problems Composite – in the Average range per the Parent and the teacher; within the Composite, the Parent rated him in the Clinically Significant range for Anxiety; within the Composite, the teacher rated him in At-Risk range for somatization
- School Problems Composite – (teacher only) the teacher rated him in the At-Risk range for Attention Problems, and Clinically Significant for Learning Problems
- Behavioral Symptoms Index – in the Average range by the Parent and the teacher; within the Composite, the teacher rated him in the At-Risk range for Withdrawal
- Adaptive Skills Composite – in the Average range by the Parent; within the Composite, the teacher rated him in the Clinically Significant range for Adaptability, Social Skills, and Functional Communication; within the Composite, the teacher rated him in the At Risk range for Study Skills

33. The Student rated himself in the At Risk range for the School Problems Composite, including in the component for Attitude to School, and in the Clinically Significant range for Attitude to Teachers.

34. [REDACTED] administered the Connors 4<sup>th</sup> Edition test for Attention. This assessment is used to gather information about symptoms of Attention-Deficit/Hyperactivity Disorder (ADHD) and was provided to the Parent and a teacher.

35. The results of the Connors test placed the Student in High or Very Elevated ranges for students [REDACTED].

36. [REDACTED] administered the Comprehensive Executive Function Inventory (CEFI), which uses responses from Parents, teachers and the Student to assess the Student's ability to employ executive processes for purposeful, goal-directed, problem-solving behavior. The scores ranged from Average to Well Below Average.

37. ██████████ assessed the Student by using a variety of assessment tools and strategies, and included multiple sources.
38. ██████████ did not rely on a single measure or assessment to determine whether the Student has a disability or to recommend an appropriate education program for the Student.
39. ██████████ used technically sound instruments that were valid for the purpose of psychologically assessing the Student.
40. ██████████ is trained and knowledgeable in the administration of the tests used.
41. ██████████ adhered to all test protocols and procedures.
42. On January 31, 2024, ██████████ issued a report in which she concluded that the Student continued to require special education services and proposed Classroom Strategies to address weaknesses of working memory, processing speed, and comprehension-knowledge, as well as other recommendations for the IEP team to discuss.

## **DISCUSSION**

### *Legal Framework*

A local education agency (LEA) generally must ensure a child with a disability is reevaluated at least once every three years.<sup>7</sup> Parents who disagree with a school evaluation may, under certain circumstances, obtain an IEE at public expense.<sup>8</sup> An IEE is defined as “an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.”<sup>9</sup> Public expense means that “the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.”<sup>10</sup>

---

<sup>7</sup> 20 U.S.C.A. § 1414(a)(2) (2017); 34 C.F.R. § 300.303; COMAR 13A.05.01.06E.

<sup>8</sup> 34 C.F.R. § 300.502(a)(1) (2022); COMAR 13A.05.01.14B.

<sup>9</sup> 34 C.F.R. § 300.502(a)(3)(i).

<sup>10</sup> 34 C.F.R. § 300.502(a)(3)(ii).

Parental rights to an IEE at public expense are established by the IDEA and its implementing regulations. Under the IDEA, “[a] parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency.”<sup>11</sup> In Maryland, a parent may also obtain an IEE if the LEA fails to respond within thirty days of the parent’s request; or approves the request but fails to convene an evaluation IEP meeting within sixty days of receipt of the parent’s request, or within ninety days during a state of emergency.<sup>12</sup> Upon receiving a request for an IEE at public expense, an LEA has one of two choices: provide the evaluation at public expense<sup>13</sup> or file a special education due process complaint to defend its evaluation.<sup>14</sup>

For the LEA’s evaluation to be appropriate, it must “use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining” the student’s eligibility, educational disability, and the content of the student’s IEP.<sup>15</sup> Furthermore, the LEA shall “not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child” and must “use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.”<sup>16</sup>

In addition, the LEA is obligated to ensure that assessments and other evaluation materials:

---

<sup>11</sup> 34 C.F.R. § 300.502(b)(1); *see also* Educ. § 8-405(b)(4)(i)(1); COMAR 13A.05.01.14B(1).

<sup>12</sup> Educ. § 8-405(b)(4)(i)(2).

<sup>13</sup> “When a parent requests an [IEE] at public expense, the public agency shall provide a written response approving or denying the request within 30 days of the date the request was made.” COMAR 13A.05.01.14B(2); *see also* Educ. § 8-405(b)(4)(ii).

<sup>14</sup> 34 C.F.R. § 300.502(b)(2)(i)-(ii); Educ. § 8-405(b)(4)(iii)-(iv).

<sup>15</sup> 20 U.S.C.A. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1); COMAR 13A.05.01.05B(2); *see also* 34 C.F.R. §§ 300.15, 300.304 - .311; COMAR 13A.05.01.06.

<sup>16</sup> 20 U.S.C.A. § 1414(b)(2)(B)-(C); 34 C.F.R. § 300.304(b)(2), (3); COMAR 13A.05.01.05B(3), C.

- (i) are selected and administered so as not to be discriminatory on a racial or cultural basis;
- (ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;
- (iii) are used for purposes for which the assessments or measures are valid and reliable;
- (iv) are administered by trained and knowledgeable personnel; and
- (v) are administered in accordance with any instructions provided by the producer of such assessments.<sup>17</sup>

Finally, the LEA must assess a student in “all areas of suspected disability.”<sup>18</sup>

The MCPS bears the burden of showing that its evaluations are appropriate under the IDEA.<sup>19</sup> The standard of proof in this case is a preponderance of the evidence.<sup>20</sup> To prove an assertion or a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered.<sup>21</sup>

The Court in *E.P. ex rel. J.P. v. Howard County Public School System* adopted the language of previous courts and stated:

In challenging an evaluation, courts have found that a parent “cannot simply argue that the evaluation was inappropriate because they disagree with its findings.” In [*West Chester Area School District v. G.D.*], the court explained: “Because IDEA evaluations depend on the exercise of professional judgment, they are entitled to a reasonable degree of deference. Accordingly, when plaintiffs challenge a decision reached by an educational professional, they must show more than simple disagreement with the conclusion; they must show the professional judgment rendered is actually wrong, and not just in doubt. For example, a plaintiff must show evidence of a flawed evaluation process, by failing to follow regulatory requirements, or if the district failed to investigate an area of suspected disability with little or no explanation why.”<sup>22</sup>

---

<sup>17</sup> 20 U.S.C.A. § 1414(b)(3)(A); *see also* 34 C.F.R. § 300.304(c)(1); COMAR 13A.05.01.05.

<sup>18</sup> 20 U.S.C.A. § 1414(b)(3)(B); *see also* 34 C.F.R. § 300.304(c)(4); COMAR 13A.05.01.05B(1).

<sup>19</sup> *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005); 34 C.F.R. § 300.502(b)(2)(i).

<sup>20</sup> State Gov’t § 10-217; COMAR 28.02.01.21K(1).

<sup>21</sup> *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

<sup>22</sup> 2017 WL 3608180, at \*28 (D. Md. Aug. 21, 2017), *aff’d per curiam*, 727 F. App’x 55 (4th Cir. June 19, 2018) (citations and footnotes omitted).

The MCPS maintains that the issue here is a narrow one; specifically, whether the evaluations of the Student administered by the MCPS over the course of several dates in November and December 2022, and January 2024, met the IDEA requirements outlined above. The MCPS contends that the evaluations were comprehensive, appropriate, and consistent with the requirements of the IDEA and its accompanying regulations, thereby warranting denial of the Parent's request for an IEE at public expense.

*Evidence Presented by the Parties*

**The MCPS' Evidence**

██████████ has worked as a School Psychologist for the MCPS for three years. She has a Master's degree in Educational Psychology and is an Education Specialist in School Psychology. She is licensed in Maryland. MCPS presented evidence that ██████████ is appropriately trained and knowledgeable to conduct assessments of students in accordance with the requirements of the IDEA and federal regulations.<sup>23</sup> ██████████ performs more than fifty psychological assessments per school year. I accepted ██████████ as an expert in School Psychology.

██████████ testified that she conducted the Student's psychological assessment with the Parent's written consent, given in October 2023, and upon the recommendation of the IEP team.

██████████ noted that the Student had made good progress on his IEP goals but the IEP team wanted to conduct a more current evaluation to assess the Student's disability and determine appropriate goals and objectives.

██████████ employed a number of data collection methods as part of her assessment from November 2023 through January 2024. She performed a classroom observation in Latin American History, a subject area the Student likes. ██████████ reviewed the Student's school

---

<sup>23</sup> 34 C.F.R. § 300.304(c)(1)(iv).

records, staff information, parent information, performed a student interview, and conducted a cognitive assessment using the WISC-V, which provides a summary of cognitive development.

██████████ conducted a social/emotional behavior assessment using the BASC-3. She conducted a test for attention results using the Connors 4<sup>th</sup> Edition rating scales. She conducted the CEFI to assess the Student's executive functioning abilities.

The evidence presented by the MCPS concerning the speech-language evaluation established that ██████████ had the proper education, training, licensing, and qualifications to administer the speech and language assessment and interpret the results, in accordance with the federal regulations.<sup>24</sup> She testified that she is qualified to conduct this assessment as a licensed Speech-Language Pathologist. She has attained a Masters degree in Speech-Language Pathology and is licensed and certified in Maryland and Pennsylvania. ██████████ has worked for the MCPS as a Speech Pathologist since 2023 and has been a Speech Pathologist for six years. She conducts ten to fifteen speech and language assessments annually for the MCPS and evaluates how language and speech impact academics. ██████████ was accepted, without objection, as an expert in Speech Language Pathology.

██████████ testified that she employed a number of data collection methods as part of her assessment of the Student between October and November 2023. She conducted her own classroom observation of the Student, during which the Student answered questions and followed directions. ██████████ reviewed the Student's speech-language history, including prior assessments in 2016, 2018, and 2019. ██████████ administered the CASL-2 test, which evaluates fourteen separate sub-parts of language, including but not limited to receptive language, antonyms, synonyms, expressive vocabulary, idiomatic language, sentence expression, sentence comprehension, grammatical judgment, meaning from context, inference, double meaning, and

---

<sup>24</sup> 34 C.F.R. § 300.304(c)(1)(iv).

pragmatic language. ██████ explained each category in the CASL-2 test and the Student's results for each. ██████ also obtained a speech-language conversational sample, which she analyzed as part of her evaluation.

### **The Student's Evidence**

The Parent testified at length about her concerns and disagreements during numerous interactions and events within the IEP process prior to the IEP team's decision to seek re-assessment of the Student's educational, psychological, and speech and language test results in October 2023. The Parent testified that she made numerous requests concerning testing, including for example that she wanted to test for dyslexia, and expressed her dissatisfaction with the IEP team's failure to entertain, or document, her requests. The Parent described her dissatisfaction with the failure of notice to her of testing days, as she had insisted upon and which the IEP team agreed to. She testified about dissatisfaction involving disagreements with certain of the Student's teachers, in the way they were incorrect about some interaction with the Student or herself, and how the Parent had to pursue corrections. The Parent expressed concern that while the Student was being tested by the School Psychologist or Speech-Language Pathologist at the school, he missed some classes, and was required to make up missed assignments.

One of the most significant reasons that the Parent initially sought IEEs, and continues to seek IEEs as to psychological and speech-language evaluations, is that the testing was not completed within ninety days. During her testimony the Parent identified this issue, which she asserted was a failure to follow the law, as one of three reasons that she was declining to participate in IEP team meetings as of the time of the hearing. The Parent testified that she would not meet with the IEP team until they follow the law, as she sees it.

The other two reasons identified by the Parent that the MCPS did not follow the law are that the reports that resulted from the re-evaluations do not appear to her to even describe her son, and the reports fail to offer adequate recommendations applicable to her son. She objected that the reports failed to identify any strengths the Student has, which she asserted the evaluations must include, and she believed the reports were not specific to him. The Parent testified that the reports recommend services for problems the Student does not even have, or do not make meaningful recommendations at all. The Parent took particular issue with the psychological report by ██████████, which the Parent construed as suggesting anger issues on the part of the Student, which the Parent denied exist.

The Parent called ██████████ as an expert in Audiology and Speech Pathology. ██████████ testified that his unique specialty within the field of Audiology is auditory processing, which he explained as how the brain makes sense of what sounds it processes. ██████████ testified generally that if a child has speech-language deficits, he or she may also have Auditory Processing Disorder, but not necessarily. He stated that if a child is given a formal speech-language evaluation and does not perform well with reception, it is possible that the child not only has a language problem but also has an auditory processing problem. ██████████ testified that whether a child with Auditory Processing Disorder also has a speech-language problem depends on the type of language processing problem he or she has.

██████████ met with the Student on March 4, 2024 to assess him for an auditory processing deficit. He prepared a report of his evaluation, setting forth that as a result of testing he conducted, the Student has auditory processing deficits that required interventions.<sup>25</sup> In his report, he noted that there was a difference between accommodations and treatment, and that accommodations are provided because of a problem, but treatment is to improve or eliminate the

---

<sup>25</sup> Student Ex. HH.



problem.<sup>26</sup>

██████████ testified that children with ██████████ often have problems with auditory processing speed. He testified that some have difficulty integrating information to form an overall picture, and some only recall present information. He explained that if the Student is such a child, he may have difficulty with executive function, or expressing himself. ██████████ went on to testify at length about how certain of the outcomes determined in the speech-language evaluation completed by ██████████, and even by those Speech-Language Pathologists who evaluated the Student before ██████████, might also be explained by Auditory Processing Disorder. ██████████ testified about how the nature of the Student's disability may be attributable to Auditory Processing Disorder. He reviewed the findings made by ██████████, and suggested that they did not include a comparison to determine whether her results were significantly lower than results obtained in a June 2019 speech-language evaluation, and that the differences could be caused by Auditory Processing Disorder.

The Student also called ██████████ to testify. ██████████ is employed by the MCPS as a Special Education Area Supervisor, and she works at ██████████. She testified about the IEP process, the role of the IEP team, and what information an IEP team considers. She explained that it is a cooperative team process where issues and actions are discussed among all team members. ██████████ testified that she understood that required assessments should be completed within ninety days starting from the date of consent. She stated that she did not know when the evaluations were provided. She also offered limited testimony in response to questions

---

<sup>26</sup> *Id.*, p. 7.

about the determination of the Student's disability prior to the Psychological and Speech-Language evaluations being performed.

Analysis

**The Psychological Evaluation**

The evidence presented by the MCPS established by a preponderance of the evidence that [REDACTED] had the proper education, training, licensing, and qualifications to administer the psychological assessment and interpret the results in accordance with federal regulations.<sup>27</sup> The evidence presented by the MCPS showed by a preponderance of the evidence that [REDACTED] conducted the psychological assessment and evaluation in accordance with 34 C.F.R. section 300.304 and COMAR 13A.05.01.05.

As a result of her data collection, analysis, and her classroom observation, [REDACTED] had sufficient data to find on January 31, 2024 that the Student has indicators of weakness in working memory, weakness in processing speed, and weakness in comprehension-knowledge, and proposed recommendations for the IEP team to consider.<sup>28</sup>

The Parent's stated objections to the psychological assessment process and results focused on dissatisfaction generally with issues not directly related to the elements of 34 C.F.R. section 300.304 or COMAR 13A.05.01.05, for instance, but which pertain more to IEP procedural matters, and her unhappiness with her perception of the treatment of the Student by the MCPS.

As for the Parent's primary contention that the psychological re-evaluation is invalid because it was not completed and provided within ninety-days of her consent, this argument is

---

<sup>27</sup> 34 C.F.R. § 300.304(c)(1)(v).

<sup>28</sup> The IEP team has not been able to reconvene with the Parent present as a team member to address or discuss these results, because the Parent is not presently cooperating in scheduling an IEP team meeting to do so. The Parent acknowledged canceling an IEP team meeting in May 2024 because she does not believe the MCPS is following the law.

without merit. The Parent called ██████ to establish that the Parent consented to the evaluations in October 2023, but was not provided with the results until February 2024. However, the evaluations to which the Parent consented are not initial evaluations. If they had been, 34 C.F.R. section 300.301(c)(1) provides that the initial evaluation must be conducted within sixty days of receiving parental consent for the evaluation. COMAR 13A.05.01.06A(1)(b) would have required that the IEP team complete an initial evaluation of a student within ninety days of the public agency receiving a written referral.

No similar limitation is found at 34 C.F.R. section 300.303, which pertains to re-evaluations. Similarly, COMAR 13A.05.01.06E(6), also pertaining to re-evaluations, states only that the results of assessment procedures shall be used by the IEP team in reviewing, and as appropriate, revising the student's IEP within ninety days of the IEP team meeting at which the results are discussed. The Parent has acknowledged that she has refused to attend such a meeting. In any event, the Parent offered no authority to support the argument that the evaluations were not valid unless provided within ninety-days of her consent, and I could find none.

The Parent did not call an expert concerning the administration or interpretation of the psychological testing or results. The Parent's arguments against the psychological assessment and evaluation were not built upon evidence that the MCPS failed to comply with any element of 34 C.F.R. section 300.304 or COMAR 13A.05.01.05, but upon her erroneous position that the MCPS wrongfully failed to provide the evaluations within ninety days, upon her disagreement with the results, and upon her dissatisfaction with the recommendations. Once the MCPS carried its burden of proof to show that it fully complied with 34 C.F.R. section 300.304, and COMAR 13A.05.01.05, as to the psychology evaluation, the Parent was required to show that the professional judgment rendered by ██████, is "actually wrong, and not just in doubt."<sup>29</sup> In

---

<sup>29</sup> See *E.P. ex rel. J.P. v. Howard County Public School System*, *supra*.

challenging the evaluations, it was incumbent upon the Parents to present evidence of a flawed evaluation process, by failing to follow regulatory requirements, or that the MCPS failed to investigate an area of suspected disability with little or no explanation why. They did not do so. The MCPS established that it complied with the law and the Parents did not present evidence to the contrary.

Therefore, I find that the MCPS has carried its burden of proof to show that it fully complied with 34 C.F.R. section 300.304 and COMAR 13A.05.01.05 regarding the psychology evaluation.

### **The Speech-Language Evaluation**

The evidence presented by the MCPS established by a preponderance of the evidence that [REDACTED] is appropriately trained and knowledgeable to conduct speech and language assessments of students in accordance with the requirements of the IDEA and federal regulations.<sup>30</sup> The MCPS showed that by a preponderance of the evidence that [REDACTED] conducted her speech-language assessment and evaluation in accordance with the requirements of 34 C.F.R. section 300.304 and COMAR 13A.05.01.05.

As a result of her data collection, analysis, and her classroom observation, I find by a preponderance of the evidence that [REDACTED] had sufficient data to find on January 31, 2024 that the Student has strengths in conversational skills, antonyms, double meaning, receptive vocabulary, and pragmatics. She determined that the Student has weaknesses in grammatical morphemes, non-literal language, inferencing, and expressive language.

[REDACTED] determined that the Student has oral communication needs consistent with a speech-language disorder and that his weaknesses negatively impact educational performance in expressive and receptive language.

---

<sup>30</sup> 34 C.F.R. § 300.304(c)(1)(iv).

The Parent's argument that the speech-language evaluation was also invalid because the results were not produced is equally misplaced for the reasons stated concerning the psychological evaluation. The evaluation was not an initial evaluation. There is no authority imposing a ninety-day completion requirement for a re-evaluation, and the Parents presented no evidence to support the argument.

The Parents did not present any evidence showing that the MCPS failed to adhere to 34 C.F.R. section 300.304 or COMAR 13A.05.01.05. In challenging the speech language evaluation, it was incumbent upon the Parents to present evidence of a flawed evaluation process, by failing to follow regulatory requirements, or that the MCPS failed to investigate an area of suspected disability with little or no explanation why. The testimony of [REDACTED] appears intended to suggest that there was an area of suspected disability that was not investigated. Nevertheless, I find the Parents' reliance on the testimony or conclusions of [REDACTED] to be misplaced in the context of what is at issue.

[REDACTED] did not testify that the tests administered by [REDACTED] were done incorrectly, or that the tests she used were not appropriate to the evaluation being conducted. He did not testify that [REDACTED] should have possessed his level of expertise in Auditory Processing Disorder, which he previously noted few Speech Pathologists have, or that her conclusions were incorrect for the evaluation she performed. For the most part, he testified that some of the Student's problems may also be attributable to Auditory Processing Disorder. He did not testify concerning the effect of numerous concurrent or overlapping diagnoses, such as [REDACTED], [REDACTED], or Other Health Impairment, or how, if at all, the symptoms of Auditory Processing Disorder could be distinguished from similar symptoms associated with the Student's other diagnoses or conditions.

The evidence establishes that Auditory Processing Disorder, which [REDACTED] suggested in his report and at the hearing was a suspected disability that was not explored, was not known to anyone on the IEP team, or any identifiable speech pathologist, before March 2024, by which time the evaluations were long completed. The Parents' requests for IEEs at public expense was initially made in January and was renewed in February 2024, before [REDACTED] March 2024 evaluation of the Student had happened. [REDACTED] conducted testing in a very specialized area of Speech Pathology, namely auditory processing, in which he acknowledged there are few people who possess such expertise. His testing was administered in March of 2024. That is, the substance of [REDACTED] examination or report was not available to the Parent or the IEP team when the speech-language evaluation was agreed upon or conducted.

[REDACTED] findings, while possibly pertinent to future discussions between the Parent and the MCPS, are not relevant to whether the speech-language evaluation was done in compliance with 34 C.F.R. section 300.304 and COMAR 13A.05.01.05 at the time it was authorized and conducted. The MCPS had no reason to suspect in October 2023 that there existed so specialized a possible disability, Auditory Processing Disorder, that it should be the subject of the Student's speech-language evaluation. Indeed, [REDACTED] report identifies that Auditory Processing Disorder may be a new disability as of March 2024, but it does not distinguish the symptoms of that possible disorder from others of which the MCPS is already aware and offering services, including [REDACTED] and an Other Health Impairment.

Neither [REDACTED] testimony nor his report can create a dispute over whether the speech-language evaluation conducted by the MCPS should have investigated an area of suspected disability but did not do so, since there was no other suspected disability at the time. Indeed, it is arguable whether there is one now, since that determination will presumably be left to the IEP team, and they are unable to meet because the Parent will not participate.

It was incumbent upon the Parents to show evidence of a flawed evaluation process, by failing to follow regulatory requirements, or that the MCPS failed to investigate an area of suspected disability with little or no explanation why, but they presented no evidence to establish these.

Therefore, I find that the MCPS has carried its burden of proof to show that it fully complied with 34 C.F.R. section 300.304 and COMAR 13A.05.01.05 regarding the speech-language evaluation.

The MCPS proved by a preponderance of the evidence that it conducted comprehensive psychological and speech-language assessments that complied with the IDEA and applicable federal and State regulations. Thus, the Parents are not entitled to a psychological or speech-language IEE at public expense.

#### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the psychological and speech-language evaluations conducted by the MCPS were appropriate. 20 U.S.C.A. § 1414(b); 34 C.F.R. § 300.303; 34 C.F.R. § 300.304; COMAR 13A.05.01.05; *E.P. ex rel. J.P. v. Howard County Public School System*, 2017 WL 3608180, at \*28 (D. Md. Aug. 21, 2017), *aff'd per curiam*, 727 F. App'x 55 (4th Cir. June 19, 2018). Therefore, I further conclude, as a matter of law, that the MCPS should not be required to pay for IEEs of the Student at public expense. 34 C.F.R § 300.502(a)(1), (b)(2); COMAR 13A.05.01.14B(3)(a).

## **ORDER**

I **ORDER** that the Montgomery County Public Schools' psychological assessments and speech-language assessments were appropriate and that the Parents' request for independent psychological and speech language evaluations at public expense be **DENIED**.

June 7, 2024  
Date Decision Mailed

Jeffrey T. Brown  
Administrative Law Judge

JTB/kh  
#212174

## **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) (2022). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence.

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

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



**Copies Mailed To:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**MONTGOMERY COUNTY  
PUBLIC SCHOOLS**

**v.**

[REDACTED]

**STUDENT**

**BEFORE JEFFREY T. BROWN,  
AN ADMINISTRATIVE LAW JUDGE  
OF THE MARYLAND OFFICE  
OF ADMINISTRATIVE HEARINGS  
OAH No.: MSDE-MONT-OT-24-07353**

**APPENDIX I – EXHIBITS**

I admitted the following exhibits on behalf of the MCPS:

MCPS Ex. 1 - IEP Amended/Approved 10/04/2023	Bates Nos. 0001 – 0051
MCPS Ex. 2 - Prior Written Notice, 02/16/2023	Bates Nos. 0052 – 0053
MCPS Ex. 3 - Report of Speech Language Re-Assessment, 01/17/2024	Bates Nos. 0054 - 0061
MCPS Ex. 4 - Report of School Psychologist, 01/31/2024	Bates Nos. 0062 – 0090
MCPS Ex. 5 - Specific Learning Disability Team Report, 02/16/2024	Bates Nos. 0091 – 0093
MCPS Ex. 6 - Resume of [REDACTED]	Bates No. 0094
MCPS Ex. 7 - Resume of [REDACTED]	Bates Nos. 0095 – 0097

I admitted the following exhibits on behalf of the Parents:

Student Ex. A – Not offered or admitted	
Student Ex. B – Report of School Psychologist, 01/09/2019	Bates Nos. 0007 – 0024
Student Ex. C – Confidential Psychoeducational Evaluation Report, [REDACTED] 05/21/2019	Bates Nos. 0025 – 0057
Student Ex. D – Speech/Language Evaluation, [REDACTED] [REDACTED], 06/20/2019	Bates Nos. 0058 – 0068
Student Ex. E – Not offered or admitted	
Student Ex. F – Not offered or admitted	
Student Ex. G – Not offered or admitted	

Student Ex. H – Not offered or admitted

Student Ex. I – Not offered or admitted

Student Ex. J - Not offered or admitted

Student Ex. K – MCPS Notice and Consent for Assessment, Bates Nos. 0181 – 0182  
10/04/2023

Student Ex. L – Not offered or admitted

Student Ex. M – Emails between the Parent and ██████████, Bates Nos. 0188 – 0189  
12/01/2023 and 12/04/2023

Student Ex. N – Not offered or admitted

Student Ex. O – Offered but not admitted

Student Ex. P – Not offered or admitted

Student Ex. Q – Not offered or admitted

Student Ex. R – Emails between the Parent and numerous MCPS Bates Nos. 0208 – 0209  
personnel, 12/18/2023 to 12/19/2023

Student Ex. S – Offered but not admitted

Student Ex. T – Not offered or admitted

Student Ex. U – Emails between the Parent and ██████████, Bates Nos. 0126 – 0220  
11/07/2023 to 01/03/2024

Student Ex. V – Email from the Parent to the MCPS, 01/10/2024 Bates No. 0221

Student Ex. W – Not offered or admitted

Student Ex. X – Not offered or admitted

Student Ex. Y – Letter from the MCPS to the Parent, 01/31/2024 Bates No. 0225

Student Ex. Z – Not offered or admitted

Student Ex. AA – Not offered or admitted

Student Ex. BB - Not offered or admitted

Student Ex. CC – Offered but not admitted

Student Ex. DD - Not offered or admitted

Student Ex. EE - Not offered or admitted

Student Ex. FF - Not offered or admitted

Student Ex. GG - Not offered or admitted

Student Ex. HH - Not offered or admitted

Student Ex. II - Not offered or admitted

Student Ex. JJ – Resume of

Bates Nos. 0266 – 0299

Student Ex. KK - Not offered or admitted

Student Ex. LL - Not offered or admitted

Student Ex. MM – Thumb drive, Audio recording of IEP Team Meeting on 02/16/2024

Note: On May 21, 2024, the OAH received a submission from the Parent's counsel entitled Student's List of Citations. The submission contained no representation that it was mailed to Ms. Swain on behalf of the MCPS. The record closed on May 17, 2024, without leave to either party to offer supplemental evidence, arguments, or submissions. Accordingly, the Student's List of Citations will not be considered by me, but its receipt will be documented on the OAH file Document Index, and it will be retained with the file by that means.

**APPENDIX II – SCHEDULE**

**April 2024**

Monday	Tuesday	Wednesday	Thursday	Friday
22	23	24	25	26
Conference held	Not available due to five-day disclosure requirement	Not available due to five-day disclosure requirement	Not available due to five-day disclosure requirement	Not available due to five-day disclosure requirement
29	30	1	2	3
Not available due to five-day disclosure requirement	ALJ Brown has a mandatory docket at OAH	ALJ Brown has a mandatory docket at OAH	ALJ Brown has a mandatory docket at OAH	ALJ Brown has a mandatory docket at OAH

**May 2024**

Monday	Tuesday	Wednesday	Thursday	Friday
6	7	8	9	10
ALJ Brown has a mandatory conference	ALJ Brown has a mandatory docket at OAH	The Parent requested consecutive hearing dates. This date was insufficient	ALJ Brown has previously scheduled leave	ALJ Brown has previously scheduled leave
13	14	15	16	17
Ms. Swain and Ms. Sweat were available, but consecutive hearing dates were not possible due to schools being closed on May 14	Ms. Swain and MCPS witnesses were not available because schools were closed for Primary Election Day, preventing consecutive days	ALJ Brown has a mandatory docket at OAH	Hearing Day 1	Hearing Day 2