

██████████ & ██████████,
PARENTS,
ON BEHALF OF ██████████,
STUDENT,
v.
BALTIMORE CITY PUBLIC SCHOOLS

BEFORE TRACEE ORLOVE FRUMAN,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-CITY-OT-24-08852

DECISION

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STATEMENT OF THE CASE

Baltimore City Public Schools (City Schools) previously identified ██████████ (Student) as a child with a disability under the Individuals with Disabilities Education Act (IDEA) who needs specially designed instruction through an Individualized Education Program (IEP). On March 7, 2023 and May 9, 2023, ██████████ and ██████████ (Parents)¹ informed the City Schools at an IEP team meeting that they rejected the proposed IEP in order to enroll the Student at the ██████████ (██████████), a private separate day school, at public expense for the Extended School Year (ESY) during summer 2023 and for the 2023-2024 school year. On July 26, 2023, the City Schools denied the Parents' request in writing. On August 25, 2023, at an IEP meeting, the Parents reiterated their decision to place the Student at ██████████ for the 2023-2024 school year. The Student attended ██████████ for the 2023-2024 school year. By a letter dated

¹ Any references to the Parent (singular) are to ██████████, the Student's mother.

February 12, 2024, the Parents notified the City Schools of their continued unilateral placement of the Student at [REDACTED] for the 2024-2025 school year. On February 16, 2024, the City Schools denied the Parents' request in writing.

On March 29, 2024,² the Parents, on behalf of the Student, filed a Complaint with the OAH requesting a hearing to show that (1) the City Schools failed to provide the Student a free appropriate public education (FAPE), (2) the unilateral placement is appropriate, and (3) the Parents are entitled to tuition reimbursement and related costs for the Student's attendance at [REDACTED] under the IDEA for the 2023-2024 and 2024-2025 school years.³

I held a remote prehearing conference on May 6, 2024.⁴ Ashley VanCleaf, Esquire, participated on behalf of the Student and the Parents. Samara Scott, Esquire, represented the City Schools. I scheduled the hearing on July 15, 16, and 17, 2024 and August 6, 7, 8, 9, 12, and 13, 2024.

On June 18, 2024, the City Schools filed a Motion for Postponement (Motion) of the scheduled merits hearing due to Ms. Scott leaving the employment of the City Schools on July 8, 2024.⁵ On June 25, 2024, the Parents filed a Motion in Opposition to the City School's Motion. On July 2, 2024, I held a motions hearing.⁶ Ms. VanCleaf appeared on behalf of the Parents and the Student. Ms. Scott was present, along with Patrice Wedderburn, Esquire, on behalf of the City Schools. I denied the Motion because Ms. Wedderburn, who entered her appearance as substitute counsel for the City Schools, was available to begin the hearing as scheduled on July

² The Office of Administrative Hearings' (OAH) date stamp indicates that it received the Due Process Complaint (Complaint) on Monday, April 1, 2024. However, following the prehearing conference, the Parents provided documentation that the Complaint was successfully transmitted to the OAH on March 29, 2024. Accordingly, I instructed the OAH Clerk's Office to amend the filing date of the Complaint to March 29, 2024. Code of Maryland Regulations (COMAR) 28.02.01.04D(1)(a); COMAR 28.02.01.02B(7).

³ 20 U.S.C.A. § 1415(f)(1)(A) (2017). "U.S.C.A." is an abbreviation for the United States Code Annotated. All citations herein to the U.S.C.A. are to the 2017 bound volume.

⁴ COMAR 28.02.01.17.

⁵ COMAR 28.02.01.16.

⁶ I previously advised the parties that they should come prepared to discuss additional hearing dates, in the event that I granted the Motion.

15, 2024.⁷ However, due to Ms. Wedderburn's schedule,⁸ she was only available for half-days (8:30 a.m. to 12:00 p.m.) on July 16 and 17, 2024. After discussion, the parties selected an additional date, August 15, 2024,⁹ in light of the two abbreviated hearing days on July 16 and 17, 2024.

Under the applicable law, a decision in this case normally would be due by June 12, 2024, forty-five days after the conclusion of the thirty-day resolution period on April 28, 2024.¹⁰ However, based on the timeline to file motions,¹¹ my schedule, and the parties' schedules, the Parents 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 decision.^{12,13} The City Schools did not object to that request. Accordingly, based on my availability and that of the parties, I found good cause to extend the regulatory timeline as requested by the Parents. *Id.*

In this type of case, the OAH policy allows for a maximum of thirty days to issue a decision, and the parties agreed to that timeframe given the volume of documents and the length

⁷ Ms. Wedderburn entered her appearance on the record, and on July 5, 2024, she filed a line striking Ms. Scott's appearance and substituting herself as counsel for the City Schools.

⁸ Ms. Wedderburn represented that she contracted with City Schools for this matter. She had previously scheduled meetings beginning at 12:30 p.m. on July 16 and 17, 2024; therefore, she was not available on those afternoons.

⁹ I was not available on August 14, 2024 due to previously schedule leave.

¹⁰ 34 Code of Federal Regulations (C.F.R.) § 300.515(a) (2022); Md Code Ann., Educ. § 8-413(h) (2022 & Supp. 2023); COMAR 13A.05.01.15C(14). All references to the C.F.R. will be to the 2022 volume and all references to the Education Article of the Maryland Annotated Code will be to the 2022 volume.

¹¹ Based on the City Schools' representation that it planned to file a Motion to Exclude (Motion 2) with regard to the Student's presentation of testimony or evidence regarding information beyond the two-year statute of limitations, I set a deadline of May 20, 2024 for the City Schools to file Motion 2. COMAR 28.02.01.12A. The Student's response to Motion 2 was due no later than June 3, 2024. COMAR 28.02.01.11B(8); 28.02.01.12B(3)(a). I scheduled a remote motions hearing for June 4, 2024, and my ruling was due no later than July 5, 2024. To allow the parties time to factor my ruling on the contemplated motion into their hearing preparations, we did not consider dates prior to the deadline for resolving motions. Ultimately, the City Schools did not file Motion 2.

¹² I was out of the office for work-related training on July 8, 9, 10, 11, and 12, 2024. The first three hearing dates were July 15, 16, and 17, 2024. Ms. Scott was on previously scheduled leave on July 18, 19, and 22, 2024. I was on previously scheduled leave on July 22 and 23, 2024. The Parents were on vacation from July 23, 2024 through August 1, 2024. I was on prescheduled leave on August 2 and 5, 2024. The remainder of the hearing was scheduled for August 6, 7, 8, 9, 12, and 13, 2024. Due to Ms. Wedderburn's previous commitments on the afternoons of July 16 and 17, 2024, the parties selected one additional date. I was on previously scheduled leave on August 14, 2024, so the last hearing day was on August 15, 2024.

¹³ 34 C.F.R. § 300.515(c); Educ. § 8-413(h).

of the hearing. The hearing concluded on August 15, 2024; therefore, the decision in this case is due on or before September 13, 2024.¹⁴

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.¹⁵

ISSUES

1. Did the City Schools fail to provide the Student with a FAPE for the 2021-2022,¹⁶ 2022-2023, and 2023-2024 school years by failing to offer proper compensatory services to the Student based upon the City Schools' assessment of the Student's relevant educational data?
2. Did the City Schools fail to provide sufficient special education services in order for the Student to make progress toward his IEP goals and objectives and the general education curriculum based on the Student's unique disability related needs for the 2021-2022, 2022-2023, and 2023-2024 school years?
3. Did the City Schools fail to provide an appropriate least restrictive environment (LRE) to meet the Student's unique disability related needs for the 2021-2022, 2022-2023, and 2023-2024 school years?
4. Did the City Schools fail to offer an appropriate IEP for the 2023-2024 and 2024-2025 school years?
5. If so, what remedies are appropriate?

¹⁴ Thirty days from August 15, 2024, is a Saturday; therefore, based on the OAH policy, the decision is due on the previous business day, which is Friday, September 13, 2024.

¹⁵ 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.

¹⁶ All references to the 2021-2022 school year refer to March 29, 2022 to the end of the 2021-2022 school year only.

SUMMARY OF THE EVIDENCE

Exhibits

The list of exhibits offered as evidence is attached to this Decision as an Appendix.

Testimony

██████████, the Student's mother, testified and presented the following witnesses:

- ██████████¹⁷ ██████████¹⁸, educational consultant, accepted as an expert in ██████████, ██████████, special education, and research-based interventions;
- ██████████¹⁹, educational consultant, accepted as an expert in ██████████, ██████████, specific learning disabilities, research-based interventions, ██████████²⁰ and executive functioning;
- ██████████, accepted as an expert in ██████████, ██████████, special education, educational assessments, and structured literacy; and
- ██████████, formerly the Student's special educator at ██████████, accepted as an expert in English instruction for students in grades seven through twelve, and teaching students with ██████████ and ██████████.

The City Schools presented the following witnesses:

- ██████████ ██████████ at ██████████ (██████████), admitted as an expert in special education, educational assessments, learning disabilities, psychology, and reading;
- ██████████, coordinator of due process and parent response, City Schools, admitted as an expert in special education and general education;

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██████████.
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- [REDACTED], staff occupational therapist at the [REDACTED], admitted as an expert in occupational therapy (OT) and special education; and
- [REDACTED], assistant principal at the [REDACTED], admitted as an expert in general education, special education, and reading intervention.

FINDINGS OF FACT²¹

The parties stipulated to five facts.²² Based upon the evidence presented, I find the following additional facts by a preponderance of the evidence:

1. *[The Student] is a [fourteen-year-old] rising [ninth] grader.* (Stipulation)
2. *[The Student] attended [the] City Schools from 2014-2015 through the 2022-2023 school year* (Stipulation) at the [REDACTED], which offers kindergarten through eighth grade.
3. The Student struggled with reading in first and second grade. The Parent noticed that the Student was memorizing books, rather than reading.
4. The Parents continued to express their concern about the Student's progress to the City Schools through the Student's third grade year. The Student displayed increased [REDACTED], did not like school and did not want to read at home.
5. The Student received [REDACTED] ([REDACTED]), now called [REDACTED] ([REDACTED]), beginning in 2018. [REDACTED] is typically a short-term process that is a first response to intervention rather than moving directly to special education. [REDACTED] should not interfere with the IEP process and can occur simultaneously with an IEP referral.

²¹ My findings, analysis, and legal conclusions are based upon consideration of all of the parties' arguments and the credible evidence of record. All testimonial and documentary evidence was considered and given the weight it was due, regardless of whether it has been recited, cited, referenced, or expressly set forth in the Decision. *See, e.g., Walker v. Sec'y of Health & Human Servs.*, 884 F.2d 241, 245 (6th Cir. 1989) (an administrative law judge need not address every piece of evidence in the record); *Mid-Atl. Power Supply Ass'n v. Md. Pub. Serv. Comm'n*, 143 Md. App. 419, 442 (2002) (emphasizing that "[t]he Commission was free to accept or reject any witness's testimony" and "the mere failure of the Commission to mention a witness's testimony" does not mean that the Commission "did not consider that witness's testimony").

²² Stipulated facts are italicized and have the reference (Stipulation). Any modifications I made are in brackets.

6. In March 2020, the Student's fourth grade year, instruction was virtual due to the global COVID-19 pandemic. The Parent worked with the Student and realized that he could not spell first grade sight words.

7. In February 2020, the Student participated in a Research Neuropsychological Assessment²³ through the [REDACTED] ([REDACTED]) on which he performed below age level expectations in word reading and comprehension, and his non-verbal reasoning skills were assessed to be in the average range.

8. On August 18 and 20, 2020, [REDACTED] conducted a neuropsychological consultation²⁴ with the Student. The Student's results, as they related to reading and writing, were as follows: sight word reading skills and reading comprehension – low average; word recognition fluency – below average; decoding – below average; essay composition theme development and text organization – low average.

9. *[The Student] was formally identified as a student with a [REDACTED] [REDACTED] [REDACTED] eligible for special education and related services on September 16, 2020[,] which was the beginning of his fifth-grade year. (Stipulation).*

10. The Student's [REDACTED] are [REDACTED] and [REDACTED]. The Student also has a diagnosis of unspecified [REDACTED] with related [REDACTED].

11. [REDACTED] refers to a constellation of symptoms that affect the reading process. Phonological awareness, decoding, and fluency are areas that are impacted in students with [REDACTED].

12. Phonological awareness is working with the sounds of language to understand that words are made up of sounds. Decoding refers to sounding out words. Reading fluency

²³ This assessment was not provided as an exhibit by either party, but rather, it was summarized in [REDACTED], [REDACTED]'s report.

²⁴ The consultation was virtual due to COVID.

involves rate, accuracy, and expression. It does not come automatically to [REDACTED] students and requires a lot of repetition.

13. Reading comprehension can also be impacted by [REDACTED] because the reading process is more effortful, and it is difficult for [REDACTED] students to both process and remember the words to understand the content. The Student's reading comprehension is impacted by his SLD.

14. [REDACTED] is a [REDACTED] involving written expression, which has three components – motor (handwriting), mechanics (punctuation, capitalization, spelling), and organization (making an argument, organize and sequence thoughts).

15. The Student struggles with every level of the reading and writing process.

16. Executive functioning involves brain functions such as attention, memory, activity regulation, impulse regulation, task initiation, motivation, and organization. The Student struggles with these functions. He is high energy, often calls out or interrupts, and has difficulty sustaining focus over time.

17. The Student struggled with [REDACTED] and [REDACTED]g stupid due to his [REDACTED].

18. The Student is severely [REDACTED] and [REDACTED].

19. [REDACTED] students need explicit instruction because they do not naturally pick up the skills they lack.

20. On the Student's first IEP, in September 2020 (September 2020 IEP),²⁵ the IEP team identified his Present Level of Academic Achievement and Functional Performance (Present Levels) as follows:²⁶

- reading phonics – late second grade
- reading fluency – mid-second grade
- reading comprehension – late second grade
- written language mechanics – mid-second grade
- written language expression – early third grade
- social emotional/behavioral – elevated
- cognitive – n/a

21. The September 2020 IEP put in place the following special considerations and accommodations for the Student:

- graphic organizer
- text to speech
- human reader
- frequent breaks
- reduce distractions to self²⁷
- unique accessibility feature (break up assessment over multiple days)
- monitor test response
- extended time (1.5x)
- repetition of directions
- frequent and/or immediate feedback
- use of a word bank to reinforce vocabulary and/or when extended writing is required
- provide proofreading checklist
- monitor independent work
- allow use of organizational aids
- chunking of text(s)
- check for understanding
- preferential seating²⁸
- [REDACTED]

²⁵ This information, which is beyond the two-year statute of limitations for the Student's Complaint, is included for background purposes only.

²⁶ The September 2020 IEP established goals for the Student in reading phonics, written language expression, reading fluency, and social/emotional behavioral. He did not have goals in the remaining areas and were addressed through services, embedded IEP goals/objectives, specific accommodations and supplementary aids.

²⁷ “[The Student] can become easily distracted by typical classroom stimuli and requires that some of this [sic] distractions be removed. He will be meaningfully placed away from high-traffic areas and high-interest materials (when not in use for instruction) to help increase focus on the given task.” (BCPSS Ex. 3, p. 15)

²⁸ “[The Student] should routinely be seated away from doorways & hallways to help reduce distractions and may benefit from being closer to the teacher/area of learning[.]” (*Id.* at p. 20)

22. The September 2020 IEP put in place the following special education and related services for the Student:

- classroom instruction outside general education [OGE] – four sessions, thirty minutes each, weekly (two hours per week) delivered by the special education classroom teacher to address the areas of reading and writing;
- classroom instruction in general education [IGE]– three sessions, thirty minutes each, weekly (one-and-a-half hours per week) delivered by the special education classroom teacher and the general education teacher to address the areas of reading and writing;
- [REDACTED] outside general education – two sessions, thirty minutes each, monthly (one hour per month) delivered by the [REDACTED] [REDACTED] that are interfering with his learning and accessing instruction.

Sixth Grade (2021-2022)²⁹

23. In October 2021, the City Schools administered the iReady assessment to the Student. His overall score was 565, which placed him at grade four. In the individual domains, the Student's results were as follows:

- phonological awareness – tested out
- phonics – tested out
- high-frequency words - tested out
- vocabulary – grade four
- comprehension overall – grade five
 - Literature – grade five
 - Informational text – grade five

24. On a progress report dated November 18, 2021, the Student met his fluency goal, and thereafter, it was removed from the Student's IEP.

25. From September 2020 to December 2021, the grade levels in the Student's Present Levels remained virtually unchanged, advancing by a half-grade level, at most.

26. The IEP team convened on December 14, 2021 to inform the Parents of the Student's progress on his IEP goals and objectives and to review assessments (December 2021 IEP). The December 2021 IEP did not make any changes to the Student's special education

²⁹ The Parents' due process complaint concerns this school year beginning on March 29, 2022.

services, but did add one thirty-minute session of OT monthly delivered by the school occupational therapist to address his OT goal and objectives for enhanced classroom performance.

27. By December 2021, the IEP indicated that the Student's Present Levels were at an early third grade level in all areas, except for reading fluency (late second grade level). At this time, the Student was in sixth grade and was three-to-four years below grade level.

28. Beginning in December 2021, the Student received instruction using [REDACTED] ([REDACTED]) during pull-out sessions with his special educator, four times per week for thirty minutes. The [REDACTED] intervention was given only during a block of time set aside during the school day referred to as intensives.

29. [REDACTED] is a ten-step reading intervention that was offered by the City Schools. The ten steps are: phonogram cards, phonological awareness, word building, decoding and sentence reading, pre-reading, reading and reading comprehension, sound dictation, pre-spelling, spelling, and sentence dictation.

30. Each step in the intervention is assigned a time period, from two to fifteen minutes (totaling sixty minutes) to implement the complete lesson. It is optimal to complete all ten steps during a single lesson. However, for some children with less severe learning differences, the lesson can be broken up into steps one through six and seven through ten.

31. [REDACTED] is a scripted or "boxed" program and is not individualized to the student. It is more appropriate for a mild to moderate [REDACTED].

32. A highly knowledgeable and trained [REDACTED] teacher can make the lesson more personalized and appropriate to the student. [REDACTED] can be more intensive by using a one-to-one delivery model.

33. [REDACTED] is a tier two and tier three intervention. Tiers refer to the level of support. Tier two interventions can be inside or pulled out (of general education). Tier three is a higher level of intervention that requires pull-out support in a very small group (two or three students) or one-on-one. Tier three also has a higher level of intensity to the intervention, meaning there is more repetition, and it is given more often (hours and days).

34. The Parents hired [REDACTED], an educational diagnostician and consultant, to assess the Student on December 23, 2021 using a variety of educational tests.

35. The results of the testing indicated that the Student struggled with spelling (6th percentile on the Weschler Individual Achievement Test-III [WIAT-III]), mechanics (sentence building, 14th percentile on the WIAT-III), word attack³⁰ (3rd percentile on the Woodcock Reading Mastery Tests-III [WRMT-III]), reading (16th percentile in rate, 9th percentile in accuracy, 9th percentile in fluency, and 16th percentile in comprehension on the Gray Oral Reading Test-5 [GORT-5]). The Student scored in the 23rd percentile in the passage comprehension section of the WRMT-III.

36. The Student's grade equivalent for reading skills on the categories tested by the GORT-5 ranged from grade levels 2.2 to 3.2.

37. In her educational assessment report, [REDACTED] recommended an increase in service duration and times (i.e. five days per week for forty-five minutes), smaller group size (one-to-one), or a change of program intended for severely [REDACTED] students. She also recommended additional fluency training, written language tutoring, and increased occupational therapy.

³⁰ This pertains to sounding out words.

38. On January 18, 2022, ██████████ observed the Student during his entire reading intervention class, which was taught by ██████████,³¹ the Student's special educator. The class consisted of eight total students, including the Student, and took place in a small classroom, outside of general education. The class was scheduled for forty minutes, but the reading program did not begin until ten minutes into the class.

39. ██████████ observed ██████████ teach six of the ten ██████████ steps, but they were not taught in order. ██████████ estimated that the class was on a first to second grade instructional level based on the lesson. The lesson lasted thirty minutes while a full ██████████ lesson is sixty minutes.

40. ██████████ observed ██████████, followed by the students, not clipping sounds (for example, "The letter is 'y,' the sound is 'yuh.'"). Clipping adds an additional sound to the word, and can cause confusion with phonemic awareness, reading, and spelling.³² The students provided verbal responses simultaneously, preventing ██████████ from hearing individual responses to determine if each student mastered each new sound or if each step was completed correctly. In addition, ██████████ identified but did not correct errors.

41. Clipping is a very basic skill that should be mastered by age five.

42. ██████████ summarized her observations in a written report, in which she made recommendations, including breaking the group into three smaller groups, implementing each step in order, increasing instruction time, and allowing time to address and correct errors. The City Schools received ██████████ written report.

³¹ As there is another witness with the same last name, hereafter I will refer to these witnesses using their first initial and last name.

³² Parents Ex. 26-0001.

43. After a complaint from the Parents to the Parents Response Unit, the City Schools conducted an internal investigation and concluded that procedural FAPE violations occurred during the 2018-19, 2019-2020, 2020-2021, and 2021-2022 school years.³³

44. On February 1, 2022, the Student took the Standardized Reading Inventory (SRI) assessment as part of the application process for the [REDACTED] program.³⁴ The Student scored in the 9th percentile for word recognition, which indicated that he was much weaker in foundational skills than same-aged peers. The Student was guessing because he was not able to apply the concept that letters go with sounds, and the sounds can be combined to make words.

45. On March 31, 2022,³⁵ the IEP team convened for an annual review of the Student's IEP and to discuss assessment results (March 2022 IEP). The IEP team also discussed the procedural FAPE violations that occurred during the 2018-19, 2019-2020, 2020-2021 and 2021-2022 school years.

46. *[The] City Schools offered 100 hours of compensatory education [to be provided through tutoring outside of school hours] to address FAPE violations as outlined in the April 7, 2022 Prior Written Notice. (Stipulation)*

47. The City Schools also offered five-and-a-half compensatory service hours of [REDACTED] services to target behavioral goals and objectives to mitigate the harm caused by the FAPE violations and one-and-a-half compensatory service hours of OT to address three months of missed OT services.³⁶

³³ These school years, with the exception of a portion of the 2021-2022 school year, are not the subject of this matter. Therefore, the specific FAPE violations identified in the internal investigation are not listed in this Decision. As it relates to those FAPE violations, the issue before me is only whether the proposed remedy for such findings (compensatory services) was appropriate.

³⁴ [REDACTED] program is for mild to moderate [REDACTED] students.

³⁵ The Prior Written Notice (PWN) for this IEP meeting indicates that the meeting took place on March 29, 2022.

³⁶ One thirty-minute session of OT was added in the March 2021 IEP.

48. When determining the Student's compensatory services award, the City Schools considered formal and informal assessments, progress reports, running records, prior IEPs, attendance and disciplinary records, IEP team input, and parent input.

49. After an award of compensatory services is made, the City Schools assigns a particular staff member from the Office of Special Education's district office, whose responsibility is to process and monitor compensatory service awards, including ensuring the tutor's certification is aligned with the Student's unique needs. Then, either the staff member or the educational specialist assigned to the school (in this case, ██████████) contacts the parent to provide the tutor's information as well as explain the City School's responsibilities related to compensatory services. Once an assignment is made, the staff member then monitors progress through the completion of the compensatory services award.

50. The March 2022 IEP indicated that the Student's Present Levels were:

- phonemic awareness – late sixth grade
- reading phonics – late fourth grade
- reading fluency – late fifth grade
- reading comprehension – mid-fifth grade
- written language mechanics – early third grade
- written language expression – early fourth grade
- social emotional/behavioral – elevated
- self-management – elevated
- visual motor – below average.

51. The March 2022 IEP incorrectly listed the Student's Present Level for phonemic awareness as late sixth grade. It should have been reflected as late second grade.³⁷ This error was carried through on subsequent IEPs until May 2023.

52. Phonological awareness should be mastered by second grade.

³⁷ This is based on testimony from ██████████. See Tr., p.1725-26.

53. The IEP team relied on the Student's iReady diagnostics from October 2021³⁸ and January 2022, which stated that he "tested out" of the phonics and high-frequency word subtests and reported that the Student's phonological awareness and phonics skills were beyond a third-grade level. However, students are not administered the phonics or high-frequency word components of iReady after second grade.

54. The IEP team cited and relied upon Fountas & Pinnell (F&P) results from March 2022 to determine the Student's Present Levels as they related to reading. F&P is an English Language Arts (ELA) curriculum that is used as a tool for teachers.

55. The March 2022 IEP relied on [REDACTED] data when evaluating the Student's reading phonics Present Level. However, in the discussion of the Present Level, the results of the mid-level assessment were missing from the narrative.

56. When evaluating reading fluency, the IEP team considered the Student's scores on the December 2021 GORT-5, which suggested that he was below average in on all subtests. The grade level equivalents on the subtests were: Rate - 3.2, Accuracy - 2.2, Fluency - 2.7, and Comprehension - 3.2.

57. The IEP Team determined that after an assistive technology (AT) trial, the Student required an AT device, specifically, tools such as speech-to-text, predictive text, and spellcheck, but not AT services. The IEP did not provide the data of the AT trial. The IEP team determined that AT services were not necessary because the Student was able to successfully access the AT tools and device. The IEP team ordered an additional AT trial to further assess how AT will assist the Student, but did not indicate when it would be completed.

³⁸ The IEP incorrectly stated that the Student was given an iReady assessment in November 2021.

58. The March 2022 IEP added the following special considerations and accommodations:

- preview/pre-teach lesson vocabulary
- word processing device
- classroom instruction consultation (with general education and special education instructors)
- [REDACTED] consult (with general and special education instructors).

59. During the March 2022 IEP team meeting, the IEP team revised the Student's reading phonics goal to the following: "By March 2023, given grade level text, [the Student] will be able to read and apply phonics skills with 95% accuracy using previously taught word attack accuracy over three texts as measured by informal procedures, such as pre- and post-lesson assessments and running records."³⁹ The goal require mastery of three out of four trials.

60. The IEP team revised the Student's written mechanics goal to the following on his March 2022 IEP: "By March 2023, given an exemplar text, a graphic organizer, and rubric, [the Student] will publish a composition on the sixth-grade level, to include proper capitalization, punctuation, spelling, and word choice in three out of four opportunities as evidenced by his writing portfolio and informal measures."⁴⁰ This goal required three out of four trials.

61. Capitalization and punctuation are first-grade skills.

62. The Student's March 2022 IEP had a social emotional/behavioral goal with three objectives focused on problem-solving in situations that involve multiple steps, require long-term planning, or cause negative feelings. The goal required 85% accuracy based on observation and teacher reports.

63. The March 2022 IEP provided the following self-management goal: "By April 2023, [the Student] will improve self-regulation and self-monitoring within the classroom as measured by 90% time on-task and 100% assignment/tasks completed within the allotted time

³⁹ BCPSS Ex. 7, p. 31.

⁴⁰ BCPSS Ex. 7, p. 33.

period.”⁴¹ The method of measurement was teacher report and the criteria of mastery was 90% accuracy.

64. The Student was assessed on April 4, 2022 on the Maryland Comprehensive Assessment Program (MCAP), a standardized test administered to all students in the State of Maryland at various times throughout the school year. In ELA and math, the Student was a level two (out of four), which is categorized as a developing learner (two or more years below grade level).

65. On June 7, 2022, the Parents emailed [REDACTED] and inquired about accessing the 100 hours of compensatory services that the City Schools awarded the Student. As of that date, the Parents had not received any information about accessing the compensatory services and they wanted to schedule tutoring for the Student over the summer.

66. The City Schools generated a June 10, 2022 progress report for the Student’s March 2022 IEP, which noted that the Student was making sufficient progress to meet each one of his IEP goals. The progress reports contained, among other things, the following progress note descriptions:

- Reading phonics: “[The Student] has been able to read lists with specific blends successfully with 80% and 100% accuracy. When presented with unknown words containing familiar morphemes with 50% accuracy. [The Student] will often substitute sounds in words causing him to mispronounce the word.”⁴²
- Social emotional/behavioral: “[the Student] has expressed some worry regarding spelling assignments but has generally improved his ability to cope with frustration and [REDACTED] over classwork. [The Student] can recognize when he is feeling anxious, identify triggers for stress and talk about academic tasks or projects that frustrate him with minimal prompting in 90% of opportunities. He is able to identify and discuss his feelings, their impact on his work production and coping skills to use in 80% of opportunities. He is also able to discuss the use of strategies to increase focus in order to complete his work [in] 50% of

⁴¹ BCPSS Ex. 7, p. 35.

⁴² BCPSS Ex. 7, p. 32.

opportunities and has stated to be more successful in using strategies independently, though still needs reminders.”⁴³

- Written language mechanics: “[The Student] has been able to compose text but still requires heavy prompting when using the checklist to edit. He is not able to locate some errors with punctuation and spelling. He has been able to correct the errors to about a 65% accuracy.”⁴⁴

67. On a date not provided in the record, but by June 29, 2022, the City Schools connected the Parents to a tutor for the Student, [REDACTED], a special educator with the City Schools. [REDACTED] had experience teaching at the Student’s grade level and received ongoing training to provide reading intervention. [REDACTED] was not certified in the Orton-Gillingham (OG) approach.

68. Special educators in Baltimore City are not required to have OG training.

69. On June 29, 2022, July 8, 2022, and July 27, 2022, the Parent inquired with the City Schools regarding whether [REDACTED] was trained in OG. The Parent also inquired about different ways to utilize the compensatory hours.

70. On a date not provided in the record, [REDACTED] told the Parent over the telephone that she was not certified in OG.

71. On October 10, 2022, [REDACTED] emailed the Parent regarding the delivery of compensatory services. [REDACTED] explained that the City Schools compensated tutors at \$ [REDACTED] per hour and explained the process for payment and reimbursement.

72. The City Schools required that tutors who deliver compensatory services be certified special educators with a Maryland State Teacher’s certification.

73. There were three methods to access compensatory services: (a) use a tutor offered by the City Schools, (b) identify a private tutor who will accept the City Schools’ rate, or (c) ask the City Schools to provide a lump sum amount (hours of compensatory services multiplied by

⁴³ BCPSS Ex. 7, p. 33.

⁴⁴ BCPSS Ex. 7, p. 34.

the hourly rate) to pay a tutor to supplement the hourly rate of the tutor, if it is more than \$ [REDACTED] per hour. This is not a formal policy or provided in writing.

74. At that time, the going rate for tutors was \$ [REDACTED] to \$ [REDACTED] per hour.⁴⁵

75. The Parents did not access the compensatory services offered by the City Schools because the Parent did not want to “waste time” with a tutor who was not trained in OG.⁴⁶

76. The City Schools did provide the compensatory psychology and OT services to the Student during the course of the school year.

77. Compensatory services are available for one year after they are awarded. In certain circumstances, it is not possible to use the award immediately or within one year, so parents can request to use the award in the future.

Seventh Grade (2022-2023)

78. In September 2022, the Parents hired [REDACTED] to conduct informal educational assessments of the Student. [REDACTED] assessed the Student on September 7 and 14, 2022.

79. Informal assessments differ from standardized (formal) assessments in that informal testing looks at more discrete and isolated skills.

80. [REDACTED] testing revealed that the Student was not clipping sounds, that the Student was not automatic with decoding, that he struggled with syllable division, and therefore, also struggled with multi-syllabic words (a fourth-grade skill).

81. [REDACTED] used pseudo- or nonsense words because the Student would not be able to rely on memorization or compensatory strategies; rather, he had to use skills he should have learned and apply them to decode.

⁴⁵ This information is based on the testimony of the Parent and [REDACTED]. *See*. Transcript (Tr.), p. 68-69, 405

⁴⁶ Tr., p. 112.

82. [REDACTED] administered a DIBELS⁴⁷ assessment which tests fluency. The goal for beginning seventh grade is 126-151 words correct per minute (WCPM) and accuracy of at least 96%. The Student read 92 WCPM at 95% accuracy, which decreased by the end of the passage to 92%. The Student was using compensatory skills, such as memory and guessing, which leads to exhaustion, and a decrease in accuracy. The Student performed in the red range, which means he requires intensive support.

83. [REDACTED] administered the Qualitative Reading Inventory-6 (QRI-6), which is an informal reading assessment that measures fluency and comprehension. With a word list, the Student was at 95% accuracy for level three (independent), 80% accuracy for level four (instructional), and 65% accuracy for level five (frustration). [REDACTED] also administered a level five text, and the Student struggled because he could not decode the vocabulary in order to comprehend the text. He was at 80 WCPM and 93% accuracy (instructional) and at frustration (4 questions correct out of eight) for comprehension.

84. When given a level five text with more familiar vocabulary, he was at 74 WCPM and accuracy was 94% because he relied on context clues and guessing, rather than using syllable division rules to decode.

85. [REDACTED] administered a writing activity, which did not permit the Student to use any accommodations. The Student had spelling, capitalization, and punctuation errors on the writing activity. The writing activity also indicated that the Student needed to work on more complex sentences and structure when writing a paragraph.

86. As a result of the informal educational assessment, [REDACTED] recommended one-on-one, explicit, evidence-based, multi-sensory, literacy instruction using OG Plus. She also recommended more intensive services, that is, services that are provided five days-per-week, for

⁴⁷ Dynamic Indicators of Basic Early Literacy Skills.

a minimum of forty-five minutes. She noted that the Student had foundational gaps, which she called “potholes,” that impacted his decoding, fluency, and accuracy. [REDACTED] recommended [REDACTED], a writing intervention.

87. In September 2022, the Student took a [REDACTED] level three pre-test. He read 116 WCPM using a lower level (second grade) text. The seventh-grade expectation is 140-150 WCPM.

88. [REDACTED] requires a student read with only 80% to achieve mastery

89. On September 15, 2022, the Student took an iReady diagnostic assessment. It showed that the Student was on a fourth-grade level for vocabulary (three or more years below grade level) and a fifth-grade level for comprehension (two years below grade level). Further, the Student’s score (565) decreased from his previous iReady assessment (569 in January 2022). The iReady assessment indicated that the Student tested out of (i.e., was not tested on) phonological awareness, phonics, and high frequency words.

90. On November 7, 2022, the Student completed a writing assignment in school, which demonstrated very poor handwriting. It did not reflect the use of a word processor or word bank, as is required by his IEP. In places where the worksheet did not have lines to write on, the Student’s writing slanted down. The Student made consistent errors with punctuation and capitalization.

91. On November 10, 2022, the IEP team met to address the Parents’ concerns, review/revise the IEP, and discuss the results of the AT trial (November 2022 IEP). The IEP team also reviewed the results of [REDACTED] informal assessments. The Parent reported that the Student felt singled out because he was the only student using an iPad. The IEP team proposed that the Student use a Chromebook, the addition of goals in fluency and word attack skills, and an increase in service hours to include two fifteen-minute sessions per week in a

group with no more than three students. The IEP team rejected [REDACTED] suggestion to add a phonemic awareness goal to the IEP because they did not identify this as an area of need for the Student.

92. In the November 2022 IEP, the grade levels associated with the Student's Present Levels remained unchanged from the March 2022 IEP, except for phonics, which the IEP indicated was early fifth grade. His Present Level for spelling, which was added in this IEP, was noted to be third grade.

93. For reading phonics, the November 2022 IEP indicated a Present Level of early fifth grade, but the Summary of Assessment Findings for phonemic awareness states that the Student is on [REDACTED] level two which correlates to third grade phonics skills. This is identical to the March 2022 IEP.

94. For the written language expression Present Level, the only updated information that the IEP team relied on was an on demand writing assessment from September 2022, on which the Student's teacher placed him at a third-grade level for writing. The findings also noted "During the 2021-2022 [school year], according to formal testing, work samples, and observation, [the Student's] written expression skills are around an early fourth grade level, about two years below grade-level expectations. Findings suggest difficulties with writing and suggest below grade-level performance."⁴⁸

95. For reading fluency, the IEP team noted that he reads fluently with good comprehension during pull-out sessions, but there is no data provided to support this observation, such as whether it was a warm (familiar) text or a cold (unfamiliar) text.

96. The PWN for November 2022, indicates that the IEP team approved the Student's use of "a Chromebook that is explicitly his with additional Chrome add-ons that will allow

⁴⁸ BCPSS Ex. 8, p. 12.

test[s] to be read to him and remove distracting information.”⁴⁹ In the AT section of the November 2022 IEP, it provided “[the Student] will continue to have regular access to a classroom-based device,” but did not indicate that the device is specifically for his use, nor did it reference the add-ons referenced in the PWN.⁵⁰

97. The November 2022 IEP increased the Student’s special education services by adding a fifth weekly session and increasing the length of each session from thirty minutes to forty-five minutes (totaling three hours and forty-five minutes of pull-out services per week), as well as two, fifteen-minute sessions per week in a group with no more than three students outside of general education to work on spelling and fluency goals.

98. In the November 2022 IEP, the IEP team added two spelling goals:

- “By November 2023, provided direct instruction on encoding, [the Student] will correctly spell multi-syllabic words with open syllables, exceptions, and suffixes with 80% accuracy in four out of five trials.”⁵¹ (multi-syllabic goal)
- “By November 2023, the Student will orally identify syllable division patterns (VC/CV, V/CV, VC/V, and CLE)⁵² and fluently decode real and pseudo words with 90% accuracy in four out of five trials.”⁵³

99. On the November 2022 IEP, the Student’s fluency goal was: “By November 2023, [the Student] will fluently blend as he decodes 121 WCPM with 95% accuracy on grade level passages containing subjects in terms of which he has previously been exposed.”⁵⁴ The method of measurement was observation record.

100. The Student did not achieve his prior phonics goal, so it was revised as follows: “By November 2023, [the Student] will use a combined knowledge of all correct letter-sound

⁴⁹ BCPSS Ex. 19, p. 1.

⁵⁰ BCPSS Ex. 8, p. 19.

⁵¹ BCPSS Ex. 8, p. 30.

⁵² Vowel Consonant/Consonant Vowel, Vowel/Consonant Vowel, Vowel Consonant/Vowel, and Constant LE.

⁵³ BCPSS Ex. 8, p. 31.

⁵⁴ BCPSS Ex. 8, p. 33.

(consonant and vowels) and syllable patterns to decode one syllable pseudo and real words with 90% accuracy in four out of five trials.”⁵⁵

101. The November 2022 IEP had a new social emotional/behavioral goal: “By November 2023, given support through [REDACTED] services, [the Student] will demonstrate perspective-taking, problem solving, and self-monitoring of his behaviors in order to manage conflicts, difficult tasks, and negative feelings in four out of five opportunities.”⁵⁶ The IEP team made minor changes to three of the objectives and added one additional objective because the Student did not meet the previous goal on the March 2022 IEP.

102. The IEP team added the following reading comprehension goal in the November 2022 IEP: “By November 2023, given grade level informational texts, [the Student] will answer literal questions, verbally or in writing, using textual evidence with 80% accuracy as measured by informal procedures, such as comprehension quizzes and running records.”⁵⁷

103. The IEP team revised the Student’s written language mechanics goal on the November 2022 IEP. The new goal stated,

By November 2023, given a familiar editing checklist and rubric, [the Student] will publish a composition on the seventh grade level, demonstrating command of the conventions of standard English for capitalization, transitional words, and punctuation with 90% accuracy in order to produce a revised written composition in three out of four opportunities as evidenced by his writing portfolio and informal measures.⁵⁸

104. In the November 2022 IEP, the Student’s self-management goal remained the same as in the March 2022 IEP.

105. On November 29, 2022, the City Schools provided a progress note for the Student’s reading phonics goal, which he achieved. The progress note stated, “[the Student] has done well with chinking [sic] and decoding words. We are working with the level 3 [REDACTED]

⁵⁵ BCPSS Ex. 8, p. 32.

⁵⁶ BCPSS Ex. 8, p. 34.

⁵⁷ BCPSS Ex. 8, p. 35.

⁵⁸ BCPSS Ex. 8, p. 36.

kit.”⁵⁹ However, the goal required that the Student demonstrate mastery with three out of four trials, yet the progress note does not provide any data or cite to running records as a method of measurement.

106. On November 29, 2022, the City Schools provided the following progress note for the Student’s social emotional/behavioral goal:

[the Student] has made significant progress in talking through and managing negative feelings. [The Student] sometimes gets in trouble in class and in discussing what happened, it appears he does not understand his role in the conflict. [The Student] can be impulsive and have difficulty taking others’ perspectives. In recent sessions, [the Student] has been able to express his feelings and respectfully participate in the discussion in order to recognize and respect alternative points of view. His answers reflect that he cares a lot about others and his feelings sometimes depend on what others do, say, or think about him. He is making sufficient progress with problem solving how to manage conflicts and negative feelings.”⁶⁰

The progress note does not contain any objective data to measure the Student’s progress.

107. On November 29, 2022, the City Schools provided the following progress note for the Student’s written language mechanics: “[The Student] has been able to edit small chinks [sic] of presented text for errors and beginning to use the same editing techniques with his original compositions when prompted. Please encourage [the Student] to bring his work home to read over/study especially when absent.”⁶¹ The progress report does not include any data related to the method of measurement (teacher created rubric) or the number of trials offered.

108. The Student was making progress toward his self-management goal; however, [REDACTED] reported that the Student was only implementing the self-management strategies 20-49% of the time, which was not an increase from the previous progress report of 40%. This was after the Student had worked with the [REDACTED] on these skills for a full year.

⁵⁹ BCPSS Ex. 7, p. 32.

⁶⁰ BCPSS Ex. 7, p. 33.

⁶¹ BCPSS Ex. 7, p. 34.

109. On January 9, 2023, [REDACTED], a tutor who works for [REDACTED], observed the Student during Lunch Bunch, which was held in a hallway during the lunch period, with [REDACTED] and one other student. Lunch Bunch was not a [REDACTED] intervention, but rather, an additional intervention to work on the Student's spelling and fluency goals.

110. During the observation, the Student was unable to correctly define syllable. On two occasions during the class, groups of students walked by, and it was very loud, making it difficult to hear. [REDACTED] did not clip her sounds, resulting in the Student making the same error.

111. The focus of the Lunch Bunch lesson was VCCV⁶² words (a second-grade skill) and [REDACTED] praised the Student's incorrect answer when he incorrectly divided the word bandit.

112. [REDACTED] also observed the Student's [REDACTED] intervention on January 9, 2023. [REDACTED], a substitute teacher, provided the intervention because [REDACTED] was sick. [REDACTED] noted the following observations: there was loud music playing next door during the entire class, the student to teacher ratio was six to one, the Student sat in the seat closest to the door, [REDACTED] did not correct the Student's incorrect answers, and incorrectly identified /sh/ as a consonant blend. [REDACTED] was not explicitly demonstrating the lesson in a multi-sensory manner, and it was not systematic or structured.

113. On January 12, 2023, the Student took an iReady diagnostic reading assessment on which he scored on a sixth-grade level overall, as well as in vocabulary and comprehension. He tested out of (was not assessed in) phonological awareness, phonics or high-frequency words. His score was 600.

⁶² Vowel consonant, consonant vowel.

114. On February 8, 2023, [REDACTED] observed the Student's [REDACTED] intervention with [REDACTED]. The student to teacher ratio was six to one. [REDACTED] noted the following observations: [REDACTED] did not correct the Student's errors and used improper mouth placement for the /th/ sound. The intervention was not multi-sensory and lasted less than thirty minutes.

115. On February 15, 2023, [REDACTED] observed push-in services in the Student's general education classroom. At the start of the class, before [REDACTED] entered the room, the students were working on an independent assignment. The Student sat in the back of the classroom next to the door.

116. Twenty-five minutes into the class period, [REDACTED] and thirteen additional students joined the class. The Student mostly worked independently, and the teacher checked on him several times. The class was very loud during much of the lesson.

117. In collaboration with [REDACTED], [REDACTED] prepared a written report summarizing [REDACTED] observations and made recommendations which were provided to the City Schools. [REDACTED] recommended preferential seating, chunking of assignments, and repeated instruction in a small group or one to one setting. These accommodations were already in place in his IEP.

118. The Student completed a writing assignment in February 2023 that was handwritten and did not include a word bank.⁶³ The Student's writing was missing punctuation and had capitalization errors.

119. The IEP team held an IEP meeting on March 7, 2023 (March 2023 IEP) to determine the Student's eligibility for ESY services. At the meeting, the Parents notified the City Schools that it would be placing the Student at [REDACTED] for ESY during summer 2023 and the 2023-2024 school year.

⁶³ No evidence was presented as to which class the Student was in when he completed this assignment.

120. The March 2023 IEP indicated that the grade levels assigned to the Student's Present Levels remained the same as in the November 2022 IEP.

121. Under the ESY portion of the March 2023 IEP, it stated that the Student was reading on a sixth grade level and referenced the Student's January 2023 iReady data. Despite there being no change in the grade level associated with the Student's Present Level, the same section of the November 2022 IEP stated that the Student was reading on a fifth-grade level.

122. On March 8, 2023, the City Schools provided the following progress notes for the Student's IEP:

- Reading phonics: “[The Student] has been doing well with breaking down and decoding words. He is a lot more fluent now that he is more confident in his ability to decode and is also transferring that skill to spelling the words within his writing. [The Student] will be reassessed on these skills in the coming weeks.”⁶⁴
- Reading fluency: “[The Student] was able to fluently blend as he decodes 106 WCPM with 96% accuracy on grade level passages containing subjects and terms of which he has previously [been] exposed.”⁶⁵
- Self-management: “In sessions, [the Student] has done well creating and monitoring his progress on self-created academic and behavioral goals. He keeps track of his grades and what assignments he needs to do. He shares his feelings and engages in problem solving for negative situations 80% of the time period he has successfully engaged in perspective taking activities to try and understand other feelings as well, though still needs to work on doing this on his own. He will acknowledge another viewpoint but not independently state what another person might be feeling or how they may have interpreted his behavior. [The Student] asks for help when he needs it, though often prefers to attempt somethings himself first period he has utilized sessions to practice self-monitoring and editing written work for class assignments. He will go back and edit his work independently 50% of the time. [The Student] is a pleasure to work with and open to deeper therapeutic discussions. Overall, he is making great progress on his goals.”⁶⁶
- Reading comprehension – “[The Student] has been able to answer literal questions, verbally or in writing, using contextual evidence with 75% accuracy when allowed to discuss with peers or others about the text.”⁶⁷

⁶⁴ BCPSS Ex. 8, p. 33.

⁶⁵ BCPSS Ex. 8, p. 34.

⁶⁶ BCPSS Ex. 8, p. 35.

⁶⁷ BCPSS Ex. 8, p. 36.

- Written language mechanics – “[The Student] is able to use grammar and punctuation more appropriately, yet he's still requiring prompts to edit at least twice to ensure he has appropriate punctuation. When given a quick prompt he will make corrections when asked.”⁶⁸

123. The November 29, 2023 progress reports do not contain sufficient data to support the Student’s progress. The reading phonics progress report provides the number of trials but does not cite to running records, which was the method of measurement. The self-management progress report does not provide whether this data was from his general education teacher or special education teacher. The reading composition progress was contingent on discussing the text with peers, although this is not specified in his goal or objectives. The written language mechanics progress note references the number of trials but is not presented in the context of the method of measurement (teacher-created rubric).

124. On April 12, 2023, the Student took the MCAP assessment and remained a level two developing learner in both ELA and math.

125. On April 24, 2023, the Student completed an assignment which had missing words, run-on sentences, misspelled words, a lack of capitalization and punctuation, and writing that was below the line.⁶⁹ It was handwritten and there was no word bank or access to word processor evident from the document. In addition, his handwriting declined by the last page of the assignment in that the letters were not written on the lines provide, but rather, straddling the lines, with portions of the letter above and below the line.

126. On April 25, 2023, the Student took a DIBELS benchmark assessment given by the City Schools. The result was 115 WCPM at 96.7% accuracy on the first read, which was in the “red” range, meaning the Student requires intensive support.

⁶⁸ BCPSS Ex. 8, p. 37.

⁶⁹ No evidence was presented as to which class the Student was in when he completed this assignment.

127. On May 9, 2023, the IEP team held an annual IEP meeting (May 2023 IEP) to review the Student’s IEP and discuss the Student’s educational placement. The Parents reiterated that they would be unilaterally placing the Student at ██████ for the 2023-2024 school year and would be requesting reimbursement from the City Schools.

128. On the May 2023 IEP, the Student’s phonemic awareness and reading fluency Present Levels remained the same, late sixth grade and late fifth grade, respectively. The May 2023 IEP indicated that the other Present Levels were:

- reading phonics – early sixth grade
- reading comprehension – mid-sixth grade
- written language mechanics – late third grade
- written language expression – mid-fourth grade
- visual motor – below average
- self-management – elevated
- word attack⁷⁰ – late third grade

129. At the time of the May 2023 IEP, the Student was working on ██████ level four.

130. At the May 2023 IEP meeting, the IEP team added AT services (semi-annual consultation) and access to digital editing tools to the Student’s IEP.

131. In the May 2023 IEP, the IEP team renamed the Student’s spelling goals and objectives as word attack.

132. The Student’s goals in the May 2023 IEP were as follows:

- Spelling: “By November 2023, provided direct instruction on encoding, [the Student] will correctly spell multi-syllabic words with open syllables, exceptions, and suffixes with 80% accuracy in four out of five trials.”⁷¹
- Spelling: “By November 2023, [the Student] will orally identify syllable division patterns (VC/CV, V/CV, VC/V, and CLE) and fluently decode real and pseudo words with 90% accuracy in four out of five trials”⁷²
- Reading phonics: “By November 2023, [the Student] will use a combined knowledge of all correct letter-sound (consonant and vowels) and syllable patterns

⁷⁰ This was an area affected by the Student’s disability that was added in the May 2023 IEP.

⁷¹ BCPSS Ex. 9, p. 31.

⁷² BCPSS Ex. 9, p. 32.

to decode one syllable pseudo and real words with 90% accuracy in four out of five trials.”⁷³

- Reading fluency: “By November 2023, [the Student] will fluently blend as he decodes 121 WCPM with 95% accuracy on grade level passages containing subjects and terms of which he has previously [been] exposed.”⁷⁴
- Social emotional/behavioral: “By November 2023, given support through [REDACTED], [the Student] will demonstrate perspective-taking, problem-solving, and self-monitoring of his behaviors in order to manage conflicts, difficult tasks, and negative feelings in four out of five opportunities.”⁷⁵
- Reading comprehension: “By November 2023, given grade level informational texts, [the Student] will answer literal questions, verbally or in writing, using textual evidence with 80% accuracy as measured by informal procedures, such as comprehension, quizzes, and running record.”⁷⁶
- Written language mechanics: “By November 2023, given a familiar editing checklist and rubric, [the Student] will publish a composition on the seventh grade level demonstrating command of the conventions of standard English for capitalization, transitional words, and punctuation with 90% accuracy in order to produce a revised written composition in three out of four opportunities, as evidenced by his writing portfolio and informal measures.”⁷⁷
- Visual motor: “By March 2023, [the Student] will demonstrate improved visual perceptual motor skills for enhanced performance and independence with classroom tasks, with 80% accuracy as measured by informal procedures.”⁷⁸
- Self-management: “By November 2023, [the Student] will improve self-regulation and self-monitoring within the classroom as measured by 90% time on task and 100% assignment/tasks completed within the allotted time.”⁷⁹

133. The March 2023 IEP goals and objectives remained unchanged from the previous two IEPs.

134. On May 24, 2023, [REDACTED] conducted informal educational testing with the Student. [REDACTED] administered Megawords 2nd Edition Assessment of Decoding Skills, which identified specific skills that have been learned and not learned. It is designed at the fourth-grade

⁷³ BCPSS Ex. 9, p. 33.

⁷⁴ BCPSS Ex. 9, p. 34.

⁷⁵ BCPSS Ex. 9, p. 35.

⁷⁶ BCPSS Ex. 9, p. 36.

⁷⁷ BCPSS Ex. 9, p. 37.

⁷⁸ BCPSS Ex. 9, p. 38.

⁷⁹ BCPSS Ex. 9, p. 40.

level and beyond. The Student struggled with syllable types within multi-syllabic words, syllable division patterns, suffixes, and schwa syllables. He also failed to clip sounds and struggled to decode nonsense words on a phonological awareness test.

135. [REDACTED] also administered the QRI-6 with a level 5 text. The Student's WCPM was 112 with 94% accuracy. The goal for seventh grade is 150 WCPM, so the Student was just over the 10th percentile.

136. On the Words Their Way: Elementary assessment, which assesses spelling and can be used as early as first grade, the Student scored 19/25. The Student did not answer more than twenty words correctly, so he was not assessed using the upper level inventory.

137. [REDACTED] also did a writing activity with the Student during which he had five minutes to write a persuasive essay convincing [REDACTED] to watch his favorite show. He was not permitted to use any accommodations. The Student did not use proper punctuation, capitalization, or spelling.

138. [REDACTED] prepared a written report summarizing the assessment results and made recommendations that were provided to the City Schools. Her recommendations included one-on-one, explicit, evidence-based, multi-sensory, structured, literacy instruction five days-per-week throughout the day and across the curriculum. She also recommended the [REDACTED] intervention for writing.

139. On May 26, 2023, the Student's took an iReady assessment, which indicated that the Student performed on an early seventh grade level for vocabulary and literature comprehension, and a sixth-grade level for informational text comprehension. These results indicated that the Student improved his vocabulary and literature comprehension scores, while his informational text comprehension remained the same as the January 2023 iReady assessment.

140. The June 13, 2023 progress report indicated that the Student achieved the spelling goal for multi-syllabic words, having improved from 75% (in March 2023) to 80% accuracy. This progress report was identical to the March 8, 2023 progress report. There was no additional data to support the Student's achievement of the goal.

141. The June 13, 2023 progress report stated that the Student was making sufficient progress, having improved from 80% (in March 2023) to 85% accuracy, with the spelling goal for syllable division patterns. This progress report was identical to the March 8, 2023 progress report, including the accuracy rate.

142. For reading phonics, the June 13, 2023 progress report noted that the Student was making progress to meet the goal, but the narrative was identical to the March 8, 2023 progress note without any additional data to support the Student's progress.

143. For reading fluency, the June 13, 2023 progress note stated that the Student's accuracy increased from 80% (in March 2023) to 90% but the narrative, including the data (106 WCPM with 96% accuracy), was identical to the March 8, 2023 progress note, and did not include any updated data to support the Student's progress.

144. For reading comprehension, the June 13, 2023 progress note stated that the Student's accuracy increased by 3% but the narrative was identical to the March 3, 2023 progress note, and did not include any new data to support the Student's progress.

145. For written language mechanics, the June 13, 2023 progress note stated that the Student's was making progress to meet the goal, but the narrative was identical to the March 3, 2023 progress note without any new information to support the Student's progress.

146. For visual motor, the June 13, 2023 progress note indicated that the Student was making sufficient progress to meet the goal, although it was already beyond the projected goal date of March 2023.

147. For self-management, the June 13, 2023 progress note indicated that the Student was making progress and contained a detailed explanation of his progress based on teacher reports. However, the actual results achieved percentage is blank on the progress note.

148. On July 26, 2023, the City Schools denied the Parents' request to fund the Student's placement at [REDACTED] for ESY during summer 2023 and for the 2023-2024 school year.

Eighth Grade (2023-2024)

149. On August 25, 2023, the IEP team convened an IEP meeting to review and revise the Student's IEP (August 2023 IEP). The IEP team added pre-teaching and pre-exposure to vocabulary to the supplementary aids and services and agreed to incorporate multi-sensory, specially designed reading instruction.

150. The Parents proposed increasing the Student's special education services OGE, including [REDACTED] and [REDACTED] as writing interventions, and including multi-sensory instruction for writing.

151. The IEP team did not make any changes to the Student's goals and objectives, refused to incorporate a specific methodology for writing instruction, refused to increase special education services, and refused placement in a private separate day school.

152. The August 2023 IEP identified the Student's Present Levels in fluency (late fifth grade), written language mechanics (late third grade), and word attack (late third grade) as unchanged from the May 2023 IEP. The August 2023 IEP documented the remaining Present Levels as follows:

- reading phonemic awareness – early seventh grade
- phonics – early seventh grade
- reading composition – early seventh grade
- written language expression – mid-fourth grade
- visual motor – below average
- self-management – elevated

153. Regarding the Student's written language mechanics and written language expression Present Levels, the August 2023 IEP stated,

Teachers state that [the Student] needs to improve on his revision and editing/proofreading components of the writing process. . . Oftentimes, he does not want to take the time to demonstrate quality work and will need to go back and review several times. If he is struggling with the high expectations of long-term assignments and projects, he will become flustered and need an adult advocate to communicate with the teacher. . . He does try to utilize the spell check and grammarly [sic] on the computer but still requires several prompts to do so consistently on assignments. We are still working on editing one specific type of error at a time to increase the accuracy of the finished product.⁸⁰

154. The Student attended ██████ in eighth grade (2023-2024 school year).

155. ██████ is a private separate day school that specializes in educating students with language-based learning differences, including ██████ and ██████. It is certified by the ██████ (█████). ██████ has small class sizes (no more than ten students in upper school classes). ██████ uses the OG approach, which is a method of reading instruction that is explicit, multisensory, and structured.

156. The Student does not require specially designed instruction for physical education, art, or lunch.

157. OG is a method of structured literacy that is systematic, sequential, explicit, and multi-sensory. Many different literacy programs are based on the OG method, including ██████, and have different levels of intensity.

158. OG Plus, which is provided at ██████, has been accredited by the ██████, and is a more intense level of structured literacy.

159. Not all OG programs use multi-sensory strategies, and how multi-sensory is defined and what tools are used varies by publisher. Multi-sensory instruction, using three-to-

⁸⁰ BCPSS Ex. 11, p. 19.

four senses (visual, auditory, kinesthetic, tactile) at a time, helps to create and solidify neural pathways in the brains of [REDACTED] students to help them learn and get the information to stick.

160. Educators who are trained in OG Plus complete sixty hours of training in reading intervention for [REDACTED] students.

161. The Parent researched different reading curriculums and felt strongly that the Student receive the OG instruction, not just an OG-based intervention like [REDACTED].

162. [REDACTED] uses [REDACTED], which is an explicit, multisensory, and structured writing intervention. Although [REDACTED] was created by a teacher at [REDACTED], anyone can sign up for training in [REDACTED].

163. The cost of tuition at [REDACTED] for the 2023-2024 school year was \$ [REDACTED], of which the Parents received financial aid in the amount of \$ [REDACTED]. The tuition bill for the 2023-2024 school year did not include ESY for the summer of 2023. The cost of tuition at [REDACTED] for the 2024-2025 school year is \$ [REDACTED].

164. The Student is a hard worker, with a good work ethic. He has a great sense of humor, is social with his peers, and loves to build and create.

165. The Student has great contextual knowledge and compensates well using his memory.

166. *[The Student] attended [REDACTED] at his parents' expense and under notice of unilateral placement for the 2023-2024 school year. (Stipulation)*

167. Samples of the Student's work in eighth grade demonstrated his use of descriptive and more complex language, were more in line with what the Student would say if he answered verbally (more sophisticated answers) and utilized appropriate support to generate a more organized work product.

168. A November 29, 2023 writing assignment, which the Student completed in class at [REDACTED], utilized a computer, was organized, used quotation marks, punctuation, and capitalization. The writing sample was easy to read.

169. [REDACTED] was the Student's teacher in eighth grade, and she saw him daily for two classes. One class focused on vocabulary, writing, and grammar skills, and the other class was literature. [REDACTED] was also the Student's advisor, so she also saw him at the end of the day when they did an organizational check or worked on homework.

170. [REDACTED] has an extra period of tutoring which focused on decoding. The student to teacher ratio was three to one.

171. [REDACTED] utilized [REDACTED] as a writing intervention for the Student. [REDACTED] focuses on the content and quality of the writing, not the length. It uses a color-coded organizer.

172. When the Student began attending [REDACTED], he did not have a lot of confidence in writing independently, asked to check-in often, and needed a lot of encouragement to work independently. Through the school year, the Student grew in this area. [REDACTED] saw the Student make progress with [REDACTED] and she saw less repetition, his ideas flowed more smoothly, and he gained more independence in his writing.

173. If [REDACTED] noticed a consistent spelling error, she would remind the Student of the spelling rule if he learned it. If he had not learned the spelling rule, [REDACTED] communicated with the decoding teacher to teach/reinforce it.

174. The Student was in [REDACTED], which is a specialized program at [REDACTED] for late-diagnosed middle schoolers or students who did not attend [REDACTED] in lower school. This program is for a small cohort of middle school students who have not received the interventions that other [REDACTED] students received from the beginning. Students in this program worked with a

team that explicitly taught organization, executive function skills, and time management every day.

175. The Student also received executive function supports as part of [REDACTED], which met four times weekly for forty-five minutes to learn more about executive function in context with specific assignments and tasks. As the year progressed, the educator relinquished responsibilities to the Student and stepped-in as needed.

176. The Student fit in well in the [REDACTED] community and latched onto the skills being taught.

177. The Student's attention and impulse control issues were most apparent when reading during class, which is often done as a group to demonstrate proper modeling. The Student's decoding and attention issues made it difficult for him to read on his own, so he benefited from someone reading out loud.

178. The Student needed a lot of re-direction because he would get distracted by peers. [REDACTED] saw progress with the Student's self-monitoring in that he was often able to recognize when he was distracted before she had to redirect him.

179. The behaviors of the other students with [REDACTED] did not negatively impact the Student's progress.

180. While at [REDACTED], the Student was getting all of the services he needed during the school day, just like all of the other students. He still has access to foreign language (Spanish and Latin), which he would not have taken at the City Schools because he would have requested a waiver.⁸¹

⁸¹ The parties did not present any testimony about the foreign language waiver process.

181. On February 13, 2024, after five months at [REDACTED], [REDACTED] conducted a re-evaluation of the Student using the WIAT-IV,⁸² WRMT-III, and GORT-5 assessments. Where possible, [REDACTED] compared the Student's scores with his previous scores on the same tests in December 2021. A comparison of the Student's relevant scores are:

Category		
Spelling	6 th percentile	16 th percentile
Sentence Composition	39 th percentile	53 rd percentile
Sentence Building	14 th percentile	39 th percentile
Sentence Combining	75 th percentile	68 th percentile
Essay Composition	63 rd percentile	53 rd percentile

182. On the WRMT-III, the Student's word identification decreased from the 34th to the 32nd percentile, while his word attack increased from the 3rd to the 7th percentile, and his passage comprehension increased from the 23rd to the 34th percentile.

183. On the GORT-5, the Student's rate and comprehension remained at the 16th percentile, while his accuracy and fluency increased from the 9th to the 16th percentile.

184. After five months at [REDACTED], there was still room for growth in many areas.

185. Writing samples from March 2024 and May 2024 were written using [REDACTED] to organize his thoughts and utilized a computer. The essays were sophisticated, used proper punctuation, capitalization, spelling, and transitions, and demonstrated engagement.

186. [REDACTED] assessed the Student on June 5, 2024 using the QRI using a level six text, which demonstrated that the Student's WCPM and accuracy increased to 114 WCPM at 96.7% accuracy (two words away from independent), as compared to 112 WCPM at 94% accuracy (instructional) on a level five text in May 2024. She noted that he was applying word attack skills instead of guessing, and he was only two words away from being independent at level six. He also improved with comprehension, improving from 6/8 questions correct on a level

⁸² [REDACTED] assessed the Student using the WIAT-III in 2021, and did not use the WIAT-III to assess his reading, so there is no comparison of those scores.

five text in May 2024 to 7/8 questions correct on a level six text. On the level six text, the Student was one question away from being independent.

187. [REDACTED] administered a ReadWorks assessment that was in the range of fifth-to-sixth grade, on which the Student read 114 WCPM at 97.3% accuracy with nine questions (out of nine) correct for comprehension. On a second text within that range, the Student had 137 WCPM at 97.8% accuracy. She did not compare previous test results.

188. [REDACTED] also gave the Student a Megawords assessment. A comparison of the Student's results from May 24, 2023 to June 5, 2024 are as follows:

Syllable division of two syllables	14/18 (78%)	3/4 (74%)
Common prefixes and suffixes	9/14 (64%)	5/6 (83%)
Schwa sound in the middle syllable and endings	8/12 (67%)	5/5 (100%)
Advanced suffixes	7/12 (58%)	4/5 (80%)
Vowel combinations	4/10 (40%)	6/6 (100%)

189. The Student self-corrected, four times during the assessment, which he rarely did previously (and when he did, he was guessing).

190. A handwritten writing sample from [REDACTED] assessment on June 5, 2024 demonstrated fair legibility, space between words, letters appropriately oriented on the baseline (or below for descending lowercase letters), and overall organization. In addition, the writing sample used punctuation and capitalization correctly, had better spatial planning, was more detailed, and the spelling improved.

Ninth Grade (2024-2025)

191. On February 12, 2024, the Parents notified the City Schools of their continued unilateral placement of the Student at [REDACTED] for the 2024-2025 school year for ninth grade.

192. On February 16, 2024, the City Schools denied the Parents' request to fund the Student's unilateral placement at [REDACTED] because the City Schools believed it could offer a FAPE to the Student.

193. [REDACTED] teachers are not permitted to participate in the IEP process. [REDACTED] does not participate in the IEP process.

194. In an email dated June 26, 2024, [REDACTED] proposed July 2, 2024 for the Student's IEP meeting; however, Ms. VanCleaf was not available.

195. On July 10, 2024, the City Schools convened a meeting to discuss an IEP for the 2024-2025 school year. The City Schools requested additional assessments of the Student to assist in developing the IEP. The Parents signed and returned the required consent form on July 14, 2024, the same day the Parents received it.

196. The Parents cooperated with the IEP process and provided documents from the 2023-2024 school year that the City Schools could not directly access from [REDACTED].

197. The Parent received a call regarding scheduling the assessments on July 29, 2024, but they were on vacation, and told the caller that they would return home on August 2, 2024. By August 8, 2024, the Parent had not received another call about scheduling the assessments.

198. The assessments were scheduled for August 16, 2024. The City Schools has ninety days to complete the evaluation process.

199. The City Schools is making an effort to expedite the IEP process, but at the time of the hearing, there was no IEP in place for the 2024-2025 school year

200. As of the date of the hearing, the Student was enrolled to attend the [REDACTED] at [REDACTED] for his ninth grade year (2024-2025 school year).

DISCUSSION

Legal Framework

The IDEA requires the states to provide a FAPE⁸³ to all children who qualify for special education services.⁸⁴ To meet this obligation, local educational agencies (LEAs) must ensure that “FAPE emphasizes special education and related services designed to meet [the eligible child’s] unique needs and prepare them for further education, employment and independent living.”⁸⁵ In order to qualify to receive special education services, the child must be identified under one of the enumerated educational disabilities⁸⁶ and “by reason thereof, [need] special education and related services.”⁸⁷

LEAs meet the federal requirement to provide FAPE to eligible students through development and implementation of IEPs.⁸⁸ An IEP is a comprehensive program prepared by a child’s IEP team, which includes mandatory members from the LEA as well as the child’s parent(s).⁸⁹ An IEP must be drafted in compliance with a detailed set of procedures.⁹⁰ It also must contain, among other things, “a statement of the child’s present levels of academic

⁸³ 34 C.F.R. § 300.17. (“Free appropriate public education or FAPE means special education and related services that—(a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the [state education agency (SEA)], including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.”). See also 20 U.S.C.A. § 1401(9).

⁸⁴ 20 U.S.C.A. § 1412.

⁸⁵ 20 U.S.C.A. §§ 1400(d)(1)(A); see also Educ. § 8-403.

⁸⁶ There are thirteen designated educational disabilities under the IDEA. 34 C.F.R. § 300.8(a)(1). However, Maryland has fourteen educational disabilities including: Autism, Deaf-Blindness, Developmental Delay, Emotional Disability, Hearing Impairment including deafness, Intellectual Disability, Multiple Disabilities, Orthopedic Impairment, Other Health Impairment, Specific Learning Disability, Speech Language Impairment, Traumatic Brain Injury, and Visual Impairment. COMAR 13A.05.01.03B(78) (generally); see also COMAR 13A.05.01.03B(8), (17), (23), (29), (36), (44), (50), (51), (73), (74), (82) and (84); COMAR 13A.05.01.06B and 13A.13.01.03B(12) (regarding developmental delay).

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

⁸⁸ See *M.S. ex rel Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009) (“An IEP is the “primary vehicle” through which a public agency provides a student with a FAPE.”); see also 20 U.S.C.A. § 1414(d); 34 C.F.R. §§ 300.320-300.324.

⁸⁹ 20 U.S.C.A. § 1414(d)(1)(B)-(d)(1)(D); 34 C.F.R. § 300.321; COMAR 13A.05.01.07.

⁹⁰ 20 U.S.C.A. § 1414(d)(1)(B).

achievement,” “a statement of measurable annual goals,” and “a statement of the special education and related services to be provided to the child.”⁹¹

“The IDEA cannot and does not promise ‘any particular [educational] outcome.’”⁹² But, to ensure that an eligible child receives a FAPE, an IEP must be reasonably calculated to yield meaningful educational benefit to the student.⁹³ The United States Supreme Court has developed a two-part test for determining whether a school district has provided a FAPE to a student with a disability. There must be: (1) a determination as to whether a school district has complied with the procedural safeguards as set forth in IDEA,⁹⁴ and (2) an analysis of whether the IEP is reasonably calculated to enable the child to make meaningful educational benefit in light of the child’s unique individual circumstances.⁹⁵ A “reasonably calculated” IEP involves a “fact-intensive exercise” derived from “the prospective judgment by school officials” and “input of the child’s parents or guardians” “after careful consideration of the child’s present levels of achievement, disability, and potential for growth.”^{96, 97}

Further, “meaningful benefit” cannot be de minimis or slight.⁹⁸ Rather, a student’s progress must be “appropriately ambitious in light of [the child’s] circumstances.”⁹⁹ Grade-to-grade advancement may be “appropriately ambitious” for students capable of grade-level work

⁹¹ 20 U.S.C.A. § 1414(d)(1)(A)(i).

⁹² *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 398 (2017).

⁹³ *Bd. of Educ. v. Rowley*, 458 U.S. 176, 187-204 (1982).

⁹⁴ “Therefore, a court’s inquiry in suits brought under § 1415(e)(2) is twofold. First, has the State complied with the procedures set forth in the [IDEA]? And second, is the individualized educational program developed through the [IDEA]’s procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.” *Rowley*, 458 U.S. at 206–07; *see also Endrew F.*, 580 U.S. at 402 (“But the procedures are there for a reason, and their focus provides insight into what it means, for purposes of the FAPE definition, to “meet the unique needs” of a child with a disability. §§ 1401(9), (29).”).

⁹⁵ “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Id.* at 399.

⁹⁶ U.S.C.A. §§ 1414(d)(1)(A)(i)(I)-(IV), (d)(3)(A)(i)-(iv).

⁹⁷ *Endrew F.*, 580 U.S. at 399, 400 (citations in original).

⁹⁸ *Id.* at 402.

⁹⁹ *Id.*

who are fully integrated in a regular classroom, but that is not the case for all students.¹⁰⁰ When grade-to-grade advancement is not reasonable for the student in light of their unique circumstance, they should be afforded the opportunity to meet other challenging objectives.¹⁰¹

A component of determining whether a LEA has complied with its FAPE obligations is whether the special education and related services in the Student's IEP are provided in the LRE to meet the Student's unique educational needs. LRE refers to the Student's placement. The IEP team must consider the continuum of alternative placements, which span from the least restrictive setting, such as a general education classroom, to more restrictive settings like self-contained special education classes, placements outside of the school district, home and hospital instruction, and even residential care or treatment facilities.¹⁰² The IDEA requires that the LEA must:

...to the maximum extent appropriate (ensure that) children with disabilities... are educated with children who are nondisabled and that special classes, separate schooling, or other removal of children with disabilities from the regular education environment occurs only if the nature or severity of the disability is such that education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily.¹⁰³

Parents who believe that an LEA is not providing or offering a FAPE to their child may unilaterally place them in a private/non-public school and thereafter seek reimbursement.¹⁰⁴ In order to receive reimbursement for tuition resulting from the unilateral private school placement, an administrative law judge must find that: 1) that the school district has denied a FAPE to the student or committed another substantive violation of the IDEA; 2) that the parents' private school placement is appropriate; and 3) that the equitable factors in the particular case do not

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² 34 C.F.R. § 300.115.

¹⁰³ 34 C.F.R. § 300.114(a)(2).

¹⁰⁴ 20 U.S.C.A. § 1412(a)(10)(C); 34 C.F.R. § 300.148(c).

preclude the relief.¹⁰⁵ A private placement also need not satisfy all of the procedural and substantive requirements of the IDEA.¹⁰⁶ The standard is whether the parental placement was reasonably calculated to provide the child with educational benefit.¹⁰⁷ However, if the LEA made a FAPE available to the student through its IEP, the LEA is not required to reimburse the parents for the cost of the unilateral placement.¹⁰⁸

Burden of Proof

The Parents bear the burden of showing that the City Schools denied the Student a FAPE, that the Student’s unilateral placement at a private school is appropriate, and that they are entitled to tuition reimbursement and any other relief sought under the IDEA. The standard of proof in this case is a preponderance of the evidence.¹⁰⁹ 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.¹¹⁰

Analysis

I. The City Schools offered sufficient compensatory services.

The Parents alleged that the City Schools failed to provide the Student with a FAPE for the 2021-2022, 2022-2023, and 2023-2024 school years because it failed to offer proper compensatory services to the Student based upon the City Schools’ assessment of the Student’s

¹⁰⁵ *Sch. Comm. Town of Burlington v. Dep’t of Educ.*, 471 U.S. 359 (1985); *Florence Cnty. Sch. Dist. #4 v. Carter*, 510 U.S. 7 (1993); see also *Forest Grove Sch. Dist. v. TA*, 557 U.S. 230, 246–47 (2009) (“Parents ‘are entitled to reimbursement *only* if a federal court concludes both that the public placement violated IDEA and the private school placement was proper under the [IDEA].’ And even then, courts retain discretion to reduce the amount of a reimbursement award if the equities so warrant—for instance, if the parents failed to give the school district adequate notice of their intent to enroll the child in private school. In considering the equities, courts should generally presume that public-school officials are properly performing their obligations under IDEA.”) (internal citations omitted).

¹⁰⁶ *Carter, supra*. See also *M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 369-70 (4th Cir. 2009) (“For example, the unilateral placement need not be provided in the least restrictive environment, but the restrictive nature of placement may be considered in determining whether the placement was appropriate.”).

¹⁰⁷ *Carter, supra*.

¹⁰⁸ A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs. 34 C.F.R. § 300.148(c).

¹⁰⁹ State Gov’t § 10-217 (2021); COMAR 28.02.01.21K(1).

¹¹⁰ *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

relevant educational data. The Parents contended that the compensatory services offered by the City Schools as a remedy for the procedural FAPE violations that occurred during the 2018-2019, 2019-2020, 2020-2021, and 2021-2022 school years, were insufficient for the Student's needs. The Parents also argued that the compensatory services award did not include an analysis of the impact of the COVID-19 school closures on the Student.

The City Schools argued that the offer of compensatory services was sufficient. The City Schools further argued that the Parents did not access the compensatory services, despite having been connected with a tutor. The City Schools contended that the compensatory services award included an analysis of the impact of the COVID-19 school closures.

When a school system has failed its obligation to a student under the IDEA, that student is entitled to be made whole with nothing less than a “complete” remedy including compensatory services.¹¹¹ Further “[w]hen a FAPE is not provided to a disabled student, the student’s parents may seek an award of compensatory education. These educational services are ordered by the court to be provided prospectively to compensate for a past deficient program, i.e., the school system’s failure to provide the student with a FAPE.”¹¹² The Fourth Circuit has explained that “[c]ompensatory 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.”¹¹³ Relying upon Fourth Circuit and Ninth Circuit cases, the D.C. Circuit Court rejected the quantitative “cookie cutter” “hour for hour analysis” in favor of an equitable, qualitative analysis.¹¹⁴

¹¹¹ *G.I. v. Ligonier Valley Sch. Dist. Auth.*, 802 F.3d 601, 625 (3d Cir. 2015); citing *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 244 (2009).

¹¹² *Y.B. v. Bd. of Educ. of Prince George’s Cnty.*, 895 F. Supp. 2d 689, 693-94 (D. Md. 2012) (internal citation and quotation marks omitted).

¹¹³ *Reid ex rel. Reid v. D.C.*, 401 F.3d 516, 523 (D.C. Cir. 2005) citing *G. v. Fort Bragg Dependent Sch.*, 343 F.3d 295, 309 (4th Cir. 2003).

¹¹⁴ *Id.* at 523-524.

On a date not provided in the record, the Parents asked for an investigation, by the City Schools' Parent Response Unit, into alleged FAPE violations during the 2018-2019, 2019-2020, 2020-2021, and 2021-2022 school years. After the internal investigation, the City Schools identified procedural violations during the relevant time period, and at an IEP meeting on March 31, 2022, the City Schools offered the Parents compensatory services to address the violations. Specifically, the City Schools offered the Parents 100 hours of compensatory services for academics, one-and-a-half hours of OT services and five-and-a-half hours of psychology services.¹¹⁵ The compensatory services were to be provided through a tutor and the psychology and OT services would be made up within the school year.

The City Schools offered the testimony of [REDACTED], coordinator of due process and parent response at the City Schools, whom I accepted as an expert in special education and general education. In her current role, which she has held since May 2024, [REDACTED] supervises three groups—one under compliance, one under the Special Education Parent Response Unit, and one under Partners for Success. Through those groups, [REDACTED] supports special education concerns and complaints, including parent complaints, State complaints filed with the MSDE, requests for mediation, due process complaints, parent trainings and outreach, professional development, and technical assistance to school-based teams. In that capacity, and in her previous role in the unit since May 2022, in which she facilitated IEP meetings, drafted IEPs, and coordinated school-related service providers, [REDACTED] has extensive experience with IEPs, working with IEP chairs and school administration to provide consulting, coaching, and professional development on particular cases at schools that receive support from the district

¹¹⁵ The Parents did not seem to take issue with the OT and psychology services, and their argument focused entirely on the sufficiency of the academic compensatory services.

office. While working at the City Schools, [REDACTED] has attended “well over 1,000” IEP meetings and served upward of 2,000 students with disabilities.¹¹⁶

[REDACTED] testified comprehensively regarding how a compensatory award is determined and the process by which the City Schools implements the award. In determining the number of compensatory hours, “there is no formula, and it is an ongoing process,” so the IEP Team looks at the unique needs of the student, the documentation, and the student’s progress over time in order to determine what would make the student whole.¹¹⁷

The City Schools did not immediately provide the Parents with the necessary information to access those services. The Parents reached out to [REDACTED] two months later, in June 2022, and inquired about accessing the 100 hours of compensatory services. By the end of June 2022, the City Schools connected the Parents with [REDACTED], the special educator selected by the City Schools who it believed, based on the Student’s unique needs, was appropriate to provide tutoring services. The Parents believed that the Student should receive tutoring from someone who was certified in the OG intervention and sought to determine [REDACTED] credentials. Rather than inquire with [REDACTED] directly, the Parent repeatedly emailed the City Schools to no avail. The Parent eventually spoke with [REDACTED] who confirmed that she was not certified in OG.

For reasons that are not clear from the record, it was not until October 10, 2022 that [REDACTED] [REDACTED] emailed the Parent regarding the delivery of compensatory services and the reimbursement options. Through that email, [REDACTED] informed the Parent about the methods to access compensatory services, one of which was that the Parent could request a lump sum from the City Schools to pay a tutor of their choosing, as long as the tutor is a certified, Maryland state teacher. If that tutor charged more than \$ [REDACTED] per hour, the Parents would be responsible for paying the

¹¹⁶ Tr., p. 1114.

¹¹⁷ Tr., p. 1138.

difference. [REDACTED] testimony corroborated the information that [REDACTED] provided in his email to the Parents.

The Parent testified that she felt strongly about the Student receiving tutoring services from a tutor who was certified in OG because of her own research into reading interventions. Because [REDACTED] was not certified in OG, the Parents opted not to move forward with [REDACTED]. The Parent testified that they were “not able to access” the compensatory services. This is not accurate.

The Parent testified that she “didn’t want to waste time on tutoring” with [REDACTED] if the tutor did not possess the qualifications that the Parents deemed acceptable.¹¹⁸ Rather than identify a tutor of their choosing who was both state-certified and OG-certified, which the Parents knew they could do,¹¹⁹ and pay any difference in out-of-pocket costs, the Parents opted to forgo any tutoring for the Student, leaving 100 hours of compensatory services on the table. In short, the Parents chose not to access the compensatory services for the Student.

I found [REDACTED] testimony regarding parent concerns about the amount of compensatory award especially persuasive in light of the facts of this case. [REDACTED] testified that “if, at the end of issuing a compensatory award, the parent still has ongoing concerns or the school has concerns that progress was not made with those compensatory services, it is something that can be revisited. And should be revisited.”¹²⁰

There is a dearth of information in the record as to the sufficiency of the compensatory award other than the very general, and ultimately unpersuasive, testimony of the Parent’s witnesses, [REDACTED], [REDACTED], and [REDACTED]. While I found these witnesses very credible and gave great weight to their testimony for other reasons as stated elsewhere in this decision,

¹¹⁸ Tr., p. 112.

¹¹⁹ The Parent testified, “I think even later, we were asked, if we could - - we asked if we could actually hire our own tutor? But they were only going to reimburse at \$ [REDACTED] an hour, which is really not the going rate.” Tr., p. 68.

¹²⁰ Tr., p. 1138.

they did not offer compelling testimony as to why 100 hours was not sufficient and what would have been an appropriate number of compensatory service hours.

██████████, whom I admitted as an expert in ██████████, ██████████, special education, and research-based interventions, testified very briefly on this issue. ██████████ opined, “I don’t think that’s an appropriate amount of time to meet his needs and reduce that gap effectively,” but offered no basis for her opinion or any further testimony on appropriateness of the compensatory services hours.¹²¹ ██████████, whom I admitted as an expert in ██████████, ██████████, special education, educational assessments, and structured literacy, testified that her professional recommendation is one hour of service per day, and 100 hours translates roughly to approximately seven months of service, which is “not going to close the gap.”¹²² She did not explain whether she recommends one hour of service per day for all clients, ██████████ clients, or specifically, the Student, or what that recommendation was based upon. She also did not explain what she meant by “close the gap” in the context of the Student.

██████████, whom I admitted as an expert in ██████████, ██████████, specific learning disabilities, research-based interventions, ADHD, and executive functioning, testified that “the research tells us that with young kids you’re looking at 100 to 300 hours of intervention. And remember, again, as we get older, you need more. We don’t have, for our learners, a firm figure.”¹²³ ██████████ described the Student’s situation as “a crisis” and, in her opinion, the Student would need “hundreds and hundreds of hours of intervention to make progress.”¹²⁴ ██████████ opined that dividing 100 hours to address all of the Student’s areas of need is “just not enough.”¹²⁵

¹²¹ COMAR 28.02.01.21D(1)(c).

¹²² Tr., p. 615.

¹²³ Tr., p. 453.

¹²⁴ *Id.*

¹²⁵ Tr., p. 454.

Although these witnesses testified that 100 hours was not enough, their testimony lacked specificity regarding the basis for their opinions. ██████ did not expand on the research she relied upon. Neither witness provided any insight as to what an appropriate amount would be, other than hundreds and hundreds of hours, which is vague and does not provide information specific to the Student, nor did either witness suggest, as the Parents argued, that the appropriate length of the compensatory award is one that is equal to the length of the educational denial.¹²⁶ ██████ testified that, “there is no, give him a little bit and see what happens;” however, some services are better than no services and, as ██████ testified, the number of hours could have been revisited if the Student did not make progress after the 100 hours were issued.¹²⁷

To find the compensatory award insufficient, I would have to infer that the Student would have made no progress, or not enough progress, after receiving 100 hours of one-to-one tutoring from a certified special educator. Given that the Student never received even one hour of tutoring under the compensatory award, and the Parents’ witnesses did not provide persuasive testimony on this issue, I cannot conclude that 100 hours was an insufficient award of compensatory services.¹²⁸ Furthermore, because the Parents failed to access the available compensatory services hours for prior school year violations, I cannot conclude that the Student was then denied FAPE in the subsequent school years. While the IEP team could have considered data collected on the Student’s progress while receiving the 100 hours of compensatory services in

¹²⁶ See, *Manchester Sch. Distr. v. Christopher B.*, 807 F. Supp. 860 (D.N.H. 1992) (where a student was inappropriately placed in a public school and then the school district failed to provide the Student with an appropriate private placement, the appropriate measure of compensatory education award is the length of the inappropriate placement); For the same proposition, the Parents also cited *Marple Newtown Area School District*, 33 IDELR 115 (SEA PA 2000), which is the decision of a hearing officer, and therefore not precedent in this matter.

¹²⁷ Tr., p. 453.

¹²⁸ The Parents focused their argument entirely on the number of compensatory service hours. To the extent that the Parents argued that the compensatory award was improper because the City Schools did not offer an OG-certified tutor to provide the services, they did not cite any authority for the position that the City Schools must provide a tutor certified in the intervention of their choosing. Furthermore, none of the Parents’ expert witnesses provided relevant testimony in support of that position. Accordingly, I conclude that the tutor’s lack of OG-certification did not make the compensatory award improper.

drafting subsequent IEPs, the Parents provided no legal authority regarding how an alleged failure to remedy a past FAPE violation equates to a future or continued FAPE violation for subsequently developed IEPs.¹²⁹

The Parents also argued that the City Schools did not consider the impact of COVID-19 school closures on the Student. [REDACTED] testimony shed light on the MSDE's guidance that "school districts consider the impact of COVID and discuss how the impact of COVID-19 may have negatively impacted the students' provision of [FAPE]" including late assessments and documentation of reevaluation, which were at issue in this case.¹³⁰ [REDACTED] testified that the rationale for the compensatory services was the procedural violations and the failures that impacted service delivery. In the Student's case, some of the procedural violations were due to the City Schools' failure to complete assessments that were ordered within the required timelines. The reason for the delay in completing the assessments was the restrictions in place due to COVID-19.

The investigation letter that set forth the procedural FAPE violations included a direction to the IEP team to consider the educational impact of COVID-19 on the Student. The Parents contended that the City Schools did not follow this directive because the April 7, 2022 PWN does not explicitly state that the IEP team looked at learning loss due to COVID-19. [REDACTED] testified that although the April 7, 2022 PWN does not contain an explicit reference to COVID-19, the investigation into the failures and the resulting compensatory award encompassed the time period (2020-2022) when COVID-19 impacted the Student's education.

Further, the investigation into the FAPE violations from 2018-2022 concerned only procedural violations and did not make any finding as to substantive violations of FAPE. Those

¹²⁹ See *Andrew F.*, 580 U.S. 176; *Rowley*, 458 U.S. 176.

¹³⁰ Tr., pp.1138-1139.

procedural violations, which included a delay in assessing the Student due to the constraints of a global pandemic, were considered in the award of compensatory services. Although the PWN did not explicitly reference COVID-19, the evidence and [REDACTED] explanation of the process, which I found credible and thorough, supported the conclusion that the circumstances that gave rise to some of the procedural violations were directly related to the unique challenges caused by COVID-19. Furthermore, the PWN is not required to be a transcript of an IEP meeting, but rather, must contain “sufficient detail” to inform parents about the action being proposed or refused, the reason for taking the action, and all procedural safeguards available.¹³¹ Therefore, I conclude that impact of COVID-19 on the Student was considered by the IEP Team, despite the PWN not explicitly mentioning COVID-19.

II. The City Schools failed to provide a FAPE to the Student for the 2021-2022, 2022-2023, and 2023-2024 school years because it failed to provide sufficient special education services.

The Parents argued that the City Schools failed to provide a FAPE to the Student for the 2021-2022, 2022-2023, and 2023-2024 school years because it failed to provide sufficient special education services in order for the Student to make progress toward his IEP goals and objectives and the general education curriculum based on the Student’s unique disability related needs. Specifically, the Parents argued that the Student did not make progress toward his goals and objectives and did not receive specially designed instruction to meet his needs. The Parents provided persuasive evidence to support this claim.

At the outset of the hearing, the City Schools objected to evidence prior to March 29, 2022, or two years prior to the filing of the Complaint.¹³² I generally agree with the City School’s argument; however, to analyze the Parents’ claim, and the City Schools’ argument that the Student was making progress, one must consider information outside the two-year window.

¹³¹ 34 C.F.R. § 303.421.

¹³² 20 U.S.C.A. § 1415(b)(6); 20 U.S.C.A. § 1415(f)(3)(C), (D).

The special education services provided by the City Schools during the 2021-2022, 2022-2023, and 2023-2024 school years were insufficient to allow the Student to make progress on his goals and objectives for several reasons. In the March 2022 IEP, the City Schools relied on inflated Present Levels and did not appropriately increase the intensity of the intervention by providing additional special education services despite the Student's failure to make progress on his goals and objectives. During the 2022-2023 and 2023-2024 school years, the Student made little progress and continued to work on the same goals and objectives without any meaningful changes to the Student's special education services. In addition, during the entirety of the time period at issue, the special educators were not providing the [REDACTED] intervention with fidelity.

A. 2021-2022 School Year

Beginning with the Student's first IEP in September 2020, the City Schools provided four, thirty-minute sessions per week of classroom instruction OGE and three, thirty-minute sessions per week of classroom instruction IGE, and two, thirty-minute sessions monthly of [REDACTED]. Beginning with the March 2022 IEP, the City Schools also provided one, thirty-minute session of OT monthly. The City Schools continued to provide these special education services through the 2021-2022 school year.

From September 2020 until December 2021, the Student's grade levels attributed to his Present Levels were stagnant. On March 31, 2022, the IEP Team convened for an annual review of the Student's IEP. At the March 2022 IEP, the grade levels attributed to the Student's Present Levels indicated that the Student made significant progress between December 2021 and March 2022, despite there being no change in the special education services provided. These apparent advancements are not supported by the evidence and testimony.

The March 2022 IEP erroneously placed the Student on a late sixth-grade level for phonemic awareness. This was an apparent error that was not identified and corrected for several

IEPs going forward, despite the same IEP later stating, under the reading fluency Present Level, that his phonemic awareness skills are at a late second-grade level. The IEP described the Student's phonemic awareness skills as "close to three years below grade-level expectations."¹³³ At this time, the Student was nearing the end of sixth grade, so his phonemic awareness skills were actually close to *four* years below grade-level expectations. However, despite this large gap, the IEP team still did not view the Student's phonemic awareness skills as "a major deficit that is contributing to his reading difficulties"¹³⁴ and did not include a goal for phonemic awareness in the March 2022 IEP.

I found persuasive the cumulative testimony of the Parents' witnesses that the Student's deficits in phonemic and phonological awareness indicated that he had not mastered foundational reading skills that were significantly impacting his ability to make progress. ██████ testified "phonemic awareness is not instructional based off of grade level" and that students should have phonemic awareness mastered "by second grade."¹³⁵ ██████ also testified, regarding mastery of phonological awareness, "ideally, by first grade, you have a very solid command of the basics, and then into second grade you would get into more advanced skills. After second grade, that should be solid and automatic."¹³⁶

Regarding reading phonics, the IEP team used F&P data and a ██████ mid-level assessment to identifying his Present Levels for reading phonics in the March 2022 IEP. First, F&P should not be used to make decisions during IEP meetings. The Parents offered a 2019 article, written by Irene C. Fountas and Gay Su Pinnell, which I found persuasive given the authors of the article are the namesakes of the informal assessment. The article states, "levels

¹³³ BCPSS Ex. 7, p. 7.

¹³⁴ BCPSS Ex. 7, p. 5.

¹³⁵ Tr., p. 595.

¹³⁶ Tr., p. 542.

have no place in conferences, on reports, or in discussions with a student.”¹³⁷ The article goes on to say that “[a] level is a teacher’s tool. It is not a ‘score,’ and certainly isn’t a child’s label.”¹³⁸ [REDACTED] also testified that the publishers of F&P “actually say that [F&P] shouldn’t be used to make decisions, and meetings, and instructional decisions.”¹³⁹ Also problematic was the City Schools’ reliance on the Student’s March 14, 2022 mid-level [REDACTED] assessment because the results of the assessment were not included in the IEP. The IEP listed each concept without an associated score, preventing the reader from understanding the role of the [REDACTED] assessment in the Student’s Present Level.

The City Schools’ own evidence refutes the Student’s phonics Present Level. The March 2022 IEP states that the Student “tested out” of phonics and high-frequency words on iReady testing in October 2021 and 2022, which reflects a misunderstanding of the results of the test. [REDACTED] and [REDACTED], both of whom have extensive knowledge and experience with educational testing and interpretation, testified credibly, thoroughly and were in agreement that iReady testing of phonics and high-frequency words is not administered after second grade.

[REDACTED], whom I admitted as an expert in special education, educational assessments, learning disabilities, psychology, and reading, on behalf of the City Schools, also testified that on the Student’s iReady assessments, as it related to phonics and high-frequency words, tested out meant that the Student was not tested in those areas. [REDACTED] clarified that she attended the meeting when [REDACTED] stated that she “actually added it back on for students who are still working on these skills, and [the Student] still tested out of it.”¹⁴⁰ I did not find [REDACTED] testimony credible because it is not supported by the multiple IEPs, which were drafted by [REDACTED] [REDACTED] as the Student’s special educator, none of which have any reference to [REDACTED] adding

¹³⁷ Parents Ex. 92.

¹³⁸ *Id.*

¹³⁹ Tr., p. 212.

¹⁴⁰ Tr., p. 956.

back the testing on phonics and high-frequency words. In addition, under the reading comprehension Present Level, it is clear that the Student took the vocabulary and comprehension sections of the iReady assessment because here are an actual result included in the IEP. However, for phonics and high-frequency words, the IEP does not mention a score and only says that the Student “tested out,” which reinforces the experts’ testimony that those tests were not administered.

Notably, [REDACTED] did not testify during the merits hearing, despite being the one educator who had the most interaction with the Student at the [REDACTED], and who could have provided clarity on many issues, including the Student’s phonemic awareness Present Level and whether she tested the Student on the phonics and high-frequency subtests of the iReady assessment. [REDACTED] was present on the first day of the hearing to observe for professional development purposes. Ms. Wedderburn stated that [REDACTED] was a member of the IEP team and an unavailable witness. Ms. Wedderburn did not explain how [REDACTED] could be present at the hearing to observe, and yet, unavailable to testify.

The March 2022 IEP also indicated that despite the apparent advancement of the Student’s Present Levels, the Student was not meeting his goals and objectives. For instance, for the Student’s reading phonics goal, the June 10, 2022 progress report stated that the Student is making sufficient progress to meet the goal; however, the description does not cite to the method of measurement or the number of trials, so the data does not align with the measurement and mastery criterion. While there are three accuracy scores provided suggesting that the Student was potentially given three opportunities, there was no explanation whether the Student had four trials or whether the data used was the informal measurements listed in the goals, such as pre or post lesson assessments or running records.

The Student's written language mechanics goal was revised on the March 2022 IEP, even though the Student's Present Level was significantly and consistently below grade level from September 2020 to March 31, 2022. The IEP did not reflect why the Student did not attain the prior goal, and despite updating the Present Level with current informal data, the Student did not make any strides with grade level advancement in terms of his Present Level.

Further, the June 10, 2022 progress report does not contain any data to support his progress toward this revised goal. [REDACTED], whose interaction with the Student in the classroom during sixth grade during a trimester-long study skills class, testified that during sixth grade, "[the Student's] handwriting was much more improved, writing mechanics were improved, and that was with minimal verbal prompting."¹⁴¹ I gave [REDACTED] testimony little weight because it completely contradicted the June 10, 2022 progress note, which stated that "[The Student] has been able to compose text but still requires heavy prompting when using the checklist to edit. He is not able to locate some errors with punctuation and spelling. He has been able to correct the errors to about a 65% accuracy."¹⁴² [REDACTED] testified that this "would be at a D. And, of course, we would want him to be further along than that. But that is growth."¹⁴³ Without any data on where the Student started in terms of an accuracy percentage, I do not agree that the progress note suggests growth in this area.

In addition to determining the frequency and methodology by which goals will be measured,¹⁴⁴ an IEP team must also address within the IEP whether the student requires supplementary aids, program modifications, supports, and accommodations, along with special education and related services, in order to advance towards goal attainment, participate in the

¹⁴¹ Tr., pp. 1430-1431.

¹⁴² BCPSS Ex. 7, p. 34.

¹⁴³ Tr., p. 1485.

¹⁴⁴ 20 U.S.C.A. § 1414(d)(1)(A)(i)(III).

general education curriculum, and/or participate in activities with nondisabled peers.¹⁴⁵ When developing the IEP, the IEP team must take into account, the student’s strengths, parent concerns, any evaluation results, and the student’s academic, developmental, and functional needs.¹⁴⁶ Additionally, as noted above, a student’s appropriate progress, must be “appropriately ambitious in light of [the child’s] circumstances”¹⁴⁷ and the student must be afforded the opportunity meet challenging objectives.¹⁴⁸ Because the Student’s grade levels in his Present Levels, particularly in reading phonics and written language mechanics, remained stagnant and his special education services did not increase, the March 2022 IEP was not appropriately ambitious to increase the Student’s progress toward goal and objective attainment. Further, I find that the Student was denied a FAPE for the remainder of the 2021-2022 school year based upon the inappropriate March 2022 IEP and the lack of data to support progress on the June 2022 progress notes. Additionally, as explained further below, the services were not reflective of the educational needs of the Student as the designated reading intervention was not implemented with fidelity.

B. 2022-2023 School Year

During the 2022-2023 school year, when the Student was in seventh grade, the Student continued to make little progress toward his goals and objectives, yet the City Schools did not appropriately increase his special education services.

In the November 2022 IEP, the City Schools added two, fifteen-minute classes per week, in a small group of no more than three students, to address the Student’s spelling and fluency goals. In her recommendations to the City Schools after observing the Student’s interventions and assessing the Student, [REDACTED] recommended one-on-one or small group intervention.

¹⁴⁵ 20 U.S.C.A. § 1414(d)(1)(A)(i)(II), (IV), (VI).

¹⁴⁶ 20 U.S.C.A. § 1414(d)(3)(A).

¹⁴⁷ *Andrew F.*, at 402.

¹⁴⁸ *Id.*

██████████ testified that this additional service was not sufficient to address her recommendations. She testified, “it didn’t make sense within his instruction. . . it was noisy, it was in a hallway . . . it didn’t have that multi-sensory—there was not immediate error correction. . . it did not fully support him, and what he needs.”¹⁴⁹

In reviewing the evidence, most persuasive was the comparison of the Student’s Present Levels between March 2022 and March 2023. The grade levels in the Student’s Present Levels did not advance at all in the areas of phonemic awareness, fluency, reading comprehension, written language mechanics, written language expression, or self-management. One must question how a student could be making progress on every goal on the IEP but never make any grade level gains on his Present Levels. If the Student is not making progress, as it appears he was not in the IEPs, it was incumbent on the City Schools to adjust the Student’s IEP, including but not limited to increasing the special education services that it provided to the Student.

While the March 2023 IEP indicated that the Student’s phonics Present Level advanced from late fourth grade to early fifth grade (by November 2022), this appeared to be based on the achievement of his reading phonics goal, which is not substantiated in the progress report. On the March 2022 IEP, a November 29, 2022 progress note for the Student’s reading phonics goal indicated that the Student achieved his goal. The progress note stated, “[the Student] has done well with chinking [sic] and decoding words. We are working with the level 3 ██████████ kit.”¹⁵⁰ The goal used running records as a method of measurement, yet the progress note does not reference any records. In addition, the goal required that the Student demonstrate mastery with three out of four trials, yet the progress note does not provide any data. A March 8, 2023 progress note on the November 2022 IEP states that the Student was making progress,

¹⁴⁹ Tr. 418.

¹⁵⁰ BCPSS Ex. 7, p. 32.

succeeding in two out of three trials, but the description speaks in generalizations and does not include data from running records to support the claim that he was making progress.

Similarly, the IEP does not reflect sufficient data to support that the Student was making progress with written language mechanics. ██████████ September 2022 assessment demonstrated that the Student was still struggling with spelling, punctuation, and capitalization. Under the Student's written language mechanics goal, the first objective targeted October 2022 as a projected achievement date and required 75% accuracy over four opportunities. However, the Student did not meet the first objective by the target month, and the November 29, 2022 progress report, which essentially consisted of one relevant sentence,¹⁵¹ did not refer to the method of measurement (teacher-created rubric) or include the results of any trials offered. The progress note does not support the statement that the Student was making progress toward the goal.

The same analysis applies to the Student's social emotional/behavioral goals, reading comprehension, and self-management goals. The IEPs state that the Student was making progress, but there was no data, or insufficient data to support that conclusion.¹⁵² Testimony from ██████████ did not persuade me otherwise. ██████████ generally spoke highly of the Student, and it was clear that she was fond of him and proud of his hard work. However, her testimony about his progress did not align with the City School's documentation and appeared inflated and overly positive. For instance, ██████████ testified that the Student "was making rapid growth on his iReady and showing more and more mastery and progress in his grade level reading. And he was also meeting with a lot of success in his general

¹⁵¹ "[The Student] has been able to edit small chinks [sic] of presented text for errors and beginning to use the same editing techniques with his original compositions when prompted. Please encourage [the Student] to bring his work home to read over/study especially when absent." BCPSS Ex.7, p.34.

¹⁵² See Finding of Fact (FOF) 122, 123.

ed. classroom and on those standards.”¹⁵³ She further testified, “by the time he left us in seventh grade, he was reading on a seventh-grade level.”¹⁵⁴ There is no evidence that the Student was reading on grade level when he left City Schools, nor did [REDACTED] explain what data she relied upon to reach this conclusion.

The IEP team held one more IEP meeting, on May 9, 2023, while the Student was attending the City Schools. Despite the Student’s stagnation in the grade levels within his Present Levels from March 2022 to March 2023, the May 2023 IEP noted that from March 2023 to May 2023, the Student apparently advanced an entire grade level in reading phonics and reading comprehension. The May 2023 IEP also noted a slight advancement in grade level for the Student’s Present Levels in written language mechanics and written language expression.

There are additional data points that shed light on the Student’s progress, or lack thereof, between March 2023 and June 2023. However, none of that evidence supports the City Schools’ contention that the Student was making progress. Additionally, the June 2023 progress note is not helpful in this analysis because there is only a month of data to report progress on the revised goals.

On the April 2023 MCAP, the Student remained on a level two (developing learner), which did not demonstrate an improvement from his previous MCAP. A work sample from April 2023, as reviewed by [REDACTED], supports the Parents contention that the Student was not making sufficient progress. In particular, [REDACTED] testified,

it actually looks the same as what we saw before. . . he has more lines to write on, it’s shorter. But we still see issues of capitalization, punctuation. He’s using some final periods. He’s just so inconsistent about it. And again, below what we would expect for a kid his age. And it gets worse as it goes on. You can see the fatigue, right, on page three. That’s like, sort of, maybe ok. We get to page four, you see a massive decline in the legibility of the handwriting. It just speaks to how effortful the process is for him.¹⁵⁵

¹⁵³ Tr., p. 1486.

¹⁵⁴ Tr., p. 1487.

¹⁵⁵ Tr., pp.462-463.

The City Schools assessed the Student with a DIBELS benchmark assessment, which was meant to be given mid-year but was not. The results indicated that the Student still required intensive support.

As with prior IEPs, the June 13, 2023 progress reports lack measurable data to substantiate his progress. For instance, the Student had two spelling goals (multi-syllabic words and syllable division patterns), the first of which the Student achieved by June 13, 2023. The progress note stated, “[the Student] will correctly spell multi-syllabic words with open syllables, exceptions, and suffixes with 80% accuracy in three out of four trials. The final assessment will be in a few days on these skills before moving on to the next unit.”¹⁵⁶ This is almost a verbatim restatement of the goal. The goal called for measurement by teacher-created and reading program assessments, which are not referenced in the progress report. The goal also required 80% mastery in four out of five trials, but the progress note mentions only three out of four trials, which raises the question of whether the Student achieved the goal. Again, the person who could have answered questions about the Student’s goal achievement, [REDACTED], did not testify. The second spelling goal and the reading phonics goal likewise had flawed progress notes that merely restated the goal and/or did not provide any data measurable data to indicate that the Student was making progress toward his goal.¹⁵⁷

The same is true for the June 13, 2023 progress notes for reading phonics and reading fluency. The reading phonics progress note makes subjective statements that the Student is “doing well” and is “a lot more fluent now,” but it lacks measurable data to support those statements.¹⁵⁸ The reading fluency progress note from June 13, 2023 is identical to the March 8, 2023 progress note, which states, “[the Student] was able to fluently blend as he decodes 106

¹⁵⁶ BCPSS Ex. 9, p. 32.

¹⁵⁷ See FOF 133, 134.

¹⁵⁸ *Id.*, at p. 34.

WCPM with 96% accuracy on grade level passages containing subjects and terms of which he has previously [been] exposed.”¹⁵⁹

In addition, the City Schools also failed to provide a FAPE for the 2021-2022 and 2022-2023 school years because it did not provide the [REDACTED] intervention with fidelity.¹⁶⁰ The Parents presented overwhelming evidence, both documentary and testimonial, in support of this conclusion. During multiple observations of the Student’s [REDACTED] intervention, [REDACTED] and [REDACTED] observed the special educators failing to clip sounds, which resulted in the students also not clipping their sounds. This issue persisted for the Student, as [REDACTED] observed him failing to clip sounds when she assessed him in September 2022 and May 2023. When asked about [REDACTED] observation of her failing to clip sounds, [REDACTED] testified, “that is not correct,” citing her own memory of that intervention, although it was over two years prior, and she did not keep any notes from that intervention.¹⁶¹

Another concern was the lack of error correction during the intervention. Regarding her January 2022 observation, [REDACTED] testified, “if the student struggles, immediately we address the error that they’ve made. Because if we don’t make explicit, direct, multi-sensory correction, they don’t really know what part of the word they’ve done incorrectly, they’re not able to then show mastery of it later.”¹⁶² When reviewing [REDACTED] observations in January and February 2023, [REDACTED] testified, “there’s still a lack of error correction, even when requested. Some of the error correction was done orally, but not necessarily done in any kind of multi-sensory way, was incorrect, as far as the rules that we know for phonics.”¹⁶³ [REDACTED] expanded that the error correction “was either not addressed, or [not addressed] in a way that a

¹⁵⁹ *Id.*

¹⁶⁰ I did not include the 2023-2024 school year in this analysis because the Student did not attend the City Schools at that time.

¹⁶¹ Tr., pp.1548-1549.

¹⁶² Tr., p. 577.

¹⁶³ Tr., p. 593.

██████████ would need it addressed; and the sounds were all—still being—they were not instructed correctly.”¹⁶⁴

██████████ also testified about the lack of error correction during ██████████ observations of the Student’s ██████████ intervention. ██████████ provided a specific example that ██████████ observed in which the Student made an error dividing the word bandit, and ██████████ did not correct the error. ██████████ testified, “so just what you’ve been working on the whole time, that pattern, and he actually divided it after the consonant, and there were no error corrections for that. Again, this is how they learn, right? So that immediate error correction is part of that structured literacy.”¹⁶⁵ The same issue persisted during ██████████ February 2023 observation, despite recommendations from ██████████ and ██████████ observations to incorporate error correction.

Although ██████████ did not observe the Student’s ██████████ interventions personally, she reviewed those of ██████████ and ██████████ and offered testimony regarding the importance of error correction. I found ██████████ testimony on this issue particularly persuasive given the severity of the Student’s diagnosis. She testified,

what we’re really trying to do, with this kind of intervention, is literally rewire the brain. We know that high-quality reading instruction can improve the structure and function of language areas of the brain, that’s what makes you a better reader. But error correction is a critical piece of that. You can’t just be allowed to make the same mistakes, or we’re allowing the wiring of the brain to be—the wrong wiring, if you will.¹⁶⁶

██████████ repeated the need for immediate error correction multiple times during her testimony, which underscored its importance.

Another way the City Schools failed to implement the ██████████ intervention with fidelity was the way in which it was provided to the Student. The City Schools did not provide the

¹⁶⁴ *Id.*

¹⁶⁵ Tr., p. 224.

¹⁶⁶ Tr., p. 459.

intervention in a small group setting, which the Student required to meet his unique educational needs. The Student's [REDACTED] intervention class consisted of eight students. [REDACTED] testified,

the research is very clear about one-on-one, or very small group intervention. So, [a] very small group is two or three students. You can go up to four, in the research if they're matched based on skills. . . There were seven students plus [the Student], in the room. So, we're far exceeding what the research tells us is effective for older and severe [REDACTED] and [REDACTED] students.¹⁶⁷

[REDACTED] was also concerned about the class size for the Student's [REDACTED] intervention. She testified, "having eight students, for a student on any intervention, is nearly impossible to achieve what you are hoping to achieve for all of the students[.]"¹⁶⁸ Regarding whether the Student was receiving a tier two or tier three intervention, [REDACTED] testified that group size is considered when determining the intensity of the intervention. In the Student's case, "he's pulled out, but he's in a larger group size. So, the intensity is less than someone who is pulled out and put into a size three or less, using an intensive program."¹⁶⁹

The [REDACTED] intervention, as provided to the Student by the City Schools, did not incorporate multi-sensory opportunities. For instance, [REDACTED] observed a [REDACTED] intervention in January of 2023 taught by [REDACTED], who was a last-minute substitute for [REDACTED]. In January 2023, [REDACTED] discussed the observation with [REDACTED], who testified "there was a lot of language in this lesson," which is difficult for a [REDACTED] student.¹⁷⁰ [REDACTED] further testified, "you need to be mindful of how much language is thrown at them, and they really need that multi-sensory, three senses at once."¹⁷¹ [REDACTED] documented an interaction between [REDACTED] and the students during which the students, including the Student, answered her question out loud, but she did not respond. [REDACTED] testified, "what was not observed is explicit demonstration in a multi-sensory manner, essentially what letter teams

¹⁶⁷ Tr., p. 448.

¹⁶⁸ Tr., p. 577.

¹⁶⁹ Tr., p. 683.

¹⁷⁰ Tr., p. 225.

¹⁷¹ Tr., p. 227.

mean.”¹⁷² In addition, the [REDACTED] interventions observed by [REDACTED] primarily used worksheets, which are not multi-sensory.

[REDACTED] also testified about [REDACTED] observation of a missed opportunity to incorporate the lesson in a multi-sensory way. During the observation on January 9, 2023, [REDACTED] worked with the Student and two other students during lunchtime. This was the additional service time that was added to the Student’s IEP in November 2022 but was not explicitly the [REDACTED] intervention. During the class, [REDACTED] asked the students to define a syllable. The Student did not answer correctly, and rather than use a multi-sensory approach to demonstrate a syllable, [REDACTED] told him the answer. [REDACTED] testified, “it’s not student-centered, and this is a great opportunity where you can invoke that multi-sensory . . . he could have used his chin on the chair and mouth[ed] [the syllable].”¹⁷³ [REDACTED] further testified, “an opportunity came up, it could have been addressed in a multi-sensory way, and it would have had meaning, and it would have worked on his strengths because we know that [the Student] likes to move.”¹⁷⁴

Finally, the [REDACTED] intervention was not implemented with fidelity because it was not implemented for the duration required by the manufacturer specifications. When provided in its entirety, [REDACTED] is a sixty-minute lesson. There was never an opportunity for the Student to have a full sixty-minutes of the intervention. [REDACTED] does permit the instructor to break up the steps. However, [REDACTED] testified that in her expert opinion, it would not be appropriate to deliver the [REDACTED] intervention in that manner. Specifically, [REDACTED] testified in great detail about how the brain processes an intervention. I found her testimony to be informative and persuasive because she provided an explanation about why it is necessary to deliver the intervention as a whole. [REDACTED] testified,

¹⁷² Tr., p. 228.

¹⁷³ Tr., p. 222.

¹⁷⁴ *Id.*

[It] might technically be true for some children. But when we are dealing with late identified, severely [REDACTED] children we really want to pay attention to the neuro—the underlying neuropsychology. We know that really high-quality reading intervention can rewire the brain. How that parts of the brain that are responsible for reading and writing connects to one another, and the size that they are. And we know, from research, that the sort of minimal standard to reach that rewiring is usually [fifty] minutes per day, five days-a-week. Of course, there's some minimal variability that happens during the school day.

But when we're only doing [thirty] minutes a day, we're not really getting in there and massaging the brain, so to speak, to do that rewiring that is so critically important. It also slows the rate of progress. It's not a wait and see situation. This is a kid who needs to get caught up as quickly as he possibly can, or he won't get caught up at all. And so, if we're breaking one lesson into two pieces, we're essentially kind of doubling the amount of time to complete the program, which could mean he won't learn to read before that critical period is over.¹⁷⁵

I contrasted [REDACTED] testimony on this issue. [REDACTED] did not deliver the [REDACTED] intervention, but rather she had observed [REDACTED] doing so with the Student.

When asked whether [REDACTED] was typically able to get through all ten steps, [REDACTED] testified,

So, we followed the directions given to us by [REDACTED]. So, we want to get to at least step [six]. And then you can do [seven] to [ten] in a separate lesson. So, it is common practice. Of course, the optimal would be you get through all [ten] steps in every lesson. But working with the representative, he gave us alternatives for what would be an appropriate implementation if a lesson needed to be augmented due to lack of time.¹⁷⁶

The Student never had an hour-long [REDACTED] intervention as part of any IEP. In fact, [REDACTED] testified that intensive time when the [REDACTED] intervention was offered “was a [forty-five]-minute block instead of the hour block. So, just for a time constraint, that could impede being able to go through all [ten] steps on a daily basis.”¹⁷⁷ It follows that the lesson would always have to be augmented for the Student due to lack of time. On cross-examination, [REDACTED] acknowledged that this was a general recommendation about implementing the

¹⁷⁵ Tr., pp. 1178-1179.

¹⁷⁶ Tr., p. 1472.

¹⁷⁷ *Id.*

intervention. She also acknowledged that augmenting the [REDACTED] intervention was not specific to the Student and whether it would be appropriate for him.¹⁷⁸

For all of these reasons, I conclude that the November 10, 2022, March 7, 2023 and May 9, 2023 IEPs were not appropriately ambitious to meet the Student's unique educational circumstances and were not properly implemented with regards to the reading intervention.¹⁷⁹ Evidence of actual progress during the period of an IEP may also be a factor in determining whether a challenged IEP was reasonably calculated to confer educational benefit.¹⁸⁰ As such, I find that the data noted by the City Schools in its progress reports for the 2022-2023 school year were not sufficient to show that the Student made progress and therefore, show that the corresponding IEPs were not reasonably calculated to meet his educational needs.

C. 2023-2024 School Year

The Student left the City Schools after seventh grade. However, the City Schools convened an IEP meeting in August 2023 to put in place an updated IEP for the 2023-2024 school year. Despite the Student's lack of progress in the previous school year, the IEP team refused, among other requests from the Parents, to increase special education services OGE.

The IEP team also did not make any changes to the Student's goals and objectives in the August 2023-2024 IEP. The adoption of a previous year's annual goals in a subsequent IEP does not automatically equate to a denial of FAPE, assuming the LEA can provide a cogent explanation as to why the goals were repeated.¹⁸¹ In *Edward M.-R.*, the court concluded that the student, who had multiple disabilities including autism spectrum disorder and ADHD, was not denied a FAPE because, in part, the LEA had repeated goals on the student's IEP. The student in

¹⁷⁸ See Tr., p. 1681-82.

¹⁷⁹ See *Andrew F.* at 402.

¹⁸⁰ *M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 327 (4th Cir. 2009); see also *M.M. v. Sch. Dist. of Greenville Cnty.*, 303 F.3d 523, 532 (4th Cir. 2002).

¹⁸¹ See, *Edward M.-R. v. District of Columbia*, 660 F.Supp.3d 82 (D.D.C. 2023) (holding that FAPE was not denied merely because the district repeated some annual goals).

that case was regressing in his skills and not meeting his goals, resulting in their repetition. That is not so in this case. On virtually every progress report, the City Schools continued to argue that the Student was making progress toward his goals, without proper support in the progress notes, and only achieving two of his IEP goals between September 2020 and August 2023.

Given my conclusion that the City Schools failed to provide sufficient special education services in the previous school year, preventing him from making progress toward his goals and objectives, the same rationale applies for the 2023-2024 school year because the City Schools did not offer any additional special education services in the August 2023 IEP.

III. The City Schools did not fail to provide an appropriate LRE.

The Parents argued that the City Schools failed to provide an appropriate LRE to meet the Student's unique disability related needs for the 2021-2022, 2022-2023, and the 2023-2024 school years. The Parents contended that their only option was to place the Student in a private separate day school, specifically [REDACTED], because it is specially designed in all the areas of intervention that the Student requires to allow him to make academic progress and offers support services which are meeting or exceeding what he would get at the City Schools. The crux of the Parents' argument was that [REDACTED] was not an appropriate intervention for the Student and did not meet his needs. Based on the evidence before me, I cannot conclude that the City Schools failed to provide an appropriate LRE for the 2021-2022, 2022-2023, and the 2023-2024 for the following reasons.

The Parents' presented extensive expert testimony from [REDACTED], [REDACTED], and [REDACTED] about the Student's need for a systematic, sequential, explicit, and multi-sensory intervention. The Parents experts went on to specifically recommend OG, a reading intervention that is not offered at the City Schools. Whether OG was the best or ideal intervention for the

Student—and it might be—is not for me to determine.¹⁸² But it does not follow that the City Schools failed to provide an appropriate LRE because it did not approve placement at a private separate day school where he could receive that particular intervention.

██████████, though not OG, is an OG-based intervention that is systematic, sequential, explicit, and multi-sensory intervention *when implemented with fidelity*. As discussed above, the City Schools did not implement the ██████████ intervention with fidelity. If the City Schools had implemented ██████████ with fidelity, that is, in an appropriately small group (one-to-one or no more than three students), for a full sixty minutes per lesson, and incorporated multi-sensory opportunities, the Student might have made progress toward his reading goals. Further, if the special educators had provided opportunities for immediate error correction and clipped sounds correctly, the Student might have made progress toward his reading goals.

However, the City Schools did not implement ██████████ with fidelity. Furthermore, by the time the Student left the City Schools, he was receiving an average of 87.37% per day of his instruction inside general education. The law requires “to the maximum extent appropriate,” the LEA shall ensure that students with disabilities are educated with nondisabled students.¹⁸³ There remains a great distance on the continuum of alternative placements between what the Student received at the City Schools and placement in a private separate day school, where the Student would be educated with only disabled peers.

As set forth above, removing a student from the regular education environment and placing him in a setting without any non-disabled peers requires a showing that “the nature or severity of the disability is such that education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily.”¹⁸⁴ The Parents have not met

¹⁸² “The IDEA cannot and does not promise ‘any particular [educational] outcome.’” *Andrew F.* at 398 (internal citation omitted).

¹⁸³ COMAR 13A.05.01.10A(1).

¹⁸⁴ 34 C.F.R. § 300.114(a)(2).

that burden as to the Student's academic needs, but they also argued that the Student had social emotional/behavioral needs that could not be addressed at the City Schools.

In selecting the LRE, one must also consider any potential harmful effect on the student or on the quality of services they need.¹⁸⁵ While the Parent made passing reference to the Student's ██████ in her testimony, the Parents did not present further evidence to suggest that remaining at the City Schools would have a harmful or detrimental effect on the Student. The Student was meeting with ██████ monthly to address his social emotional/behavioral needs, and nothing in ██████ progress notes suggested that the Student was having difficulty with his behavior or ██████ to the extent that it could not be addressed during their sessions. In fact, ██████ stated, "I don't think he had super high social emotional needs" but he did benefit from counseling services.¹⁸⁶ The Parents didn't present any evidence that the Student's ██████ was worsening or that it was much of an issue at all. The Parents have not met their burden that the City Schools failed to provide an appropriate LRE for the 2021-2022, 2022-2023, and 2023-2024 school years.

IV. The City Schools failed to offer an appropriate IEP for the 2023-2024 school year, but did not fail to offer an appropriate IEP for the 2024-2025 school year.

The Parents argued that the City Schools failed to offer an appropriate IEP for the 2023-2024 school year because the City Schools refused to include ██████ and ██████ ██████, refused to increase special education services OGE, and failed to make any changes to the Student's goals. The Parents also argued that the City Schools' failure to place the Student in a private separate day school constituted a failure to provide an appropriate IEP. As to the 2024-2025 school year, the Parents contended that the City Schools failed to offer an appropriate IEP because it did not have an IEP in place for the upcoming school year. For the reasons that follow,

¹⁸⁵ 34 C.F.R. § 300.116(d).

¹⁸⁶ Tr., p. 1068.

I conclude that the City Schools failed to offer an appropriate IEP for the 2023-2024 school year, but not for the 2024-2025 school year.

A. 2023-2024 School Year

The Parents first took issue with the City Schools' refusal to implement specific writing interventions, [REDACTED] and [REDACTED], to assist the Student with writing, another area with which he struggled. Although [REDACTED] is taught as part of the curriculum at [REDACTED], anyone, including public school educators, can sign up for training in [REDACTED].

[REDACTED] recommended [REDACTED] and [REDACTED] as writing interventions for the Student, which was discussed during the November 2022 and the August 2023 IEP meetings. The November 14, 2022 PWN mentioned Ms. Migdal's recommendation but did not specifically mention the City Schools' rejection of the interventions. In the August 2023 IEP, the City Schools formally rejected the Parents' request to implement the interventions for the Student. In the August 25, 2023 PWN, the City Schools wrote,

The IEP team refused to include in the IEP the specific methodology proposed by the parent of [REDACTED] and [REDACTED]. The educational consultant described each program and the team determined that the current specially designed instruction for [the Student] was appropriate and providing [sic] him with the meaningful access to the general education curriculum so that he can participate and make progress on his goals and in the general education curriculum. Multisensory instruction was not required for [the Student] to make progress in writing, although the team noted that many different instructional strategies are used to support writing. Specifying a particular methodology would not be appropriate at this time, and the team asked for further information about the programs from the educational consultant.¹⁸⁷

The Parents did not provide any authority in support of their position that the IEP team was required to accept their suggestion to implement [REDACTED] and/or [REDACTED].

The IEP team considered the recommendation and decided not to implement the interventions

¹⁸⁷ BCPSS Ex. 22.

for the reasons cogently stated in the PWN. I decline to second guess the City Schools' decision. In fact, in *Hartmann v. Loudoun County Board of Education*, the Fourth Circuit held, “[l]ocal educators deserve latitude in determining the individualized education program most appropriate for a disabled child. The IDEA does not deprive these educators of the right to apply their professional judgment.”¹⁸⁸

However, as I previously concluded, the City Schools failed to provide a FAPE during the 2023-2024 school year because it refused to increase special education services OGE. That failure also contributes to the City Schools' failure to offer a proper IEP for the 2023-2024 school year. It is well-documented that the Parents and the educational consultants they hired repeatedly requested that the City Schools increase the Student's special education services, based on the Student's performance on assessments and lack of progress. Despite their requests, the Student received the same amount of special education services from September 2020 until November 2022, when the City Schools slightly increased the Student's push-in and pull-out services. After November 2022, despite meeting only two goals since September 2020, and remaining as many as four years below grade level in certain academic areas, the City Schools did not increase the Student's special education services. At a minimum, the Student should have received the number of special education services to allow the special educator to provide the full [REDACTED] instruction at the duration and intensity that is intended and required for the Student based on his unique needs.

Accordingly, as stated above, I conclude that the City Schools failed to offer an appropriate FAPE for the 2023-2024 school year because the City Schools did not provide sufficient special education services in order for the Student to make progress toward his IEP goals and objectives.

¹⁸⁸118 F.3d 996, 1001 (4th Cir. 1997).

A. 2024-2025 School Year

In support of their position, the Parents argued that as of the last day of the hearing (August 15, 2024), the City Schools did not have an IEP in place for the upcoming school year. The Parents contended that they requested an IEP for the 2024-2025 school year in February 2024, but one was not scheduled at the time of the May 6, 2024 prehearing conference. The Parents argued that the City Schools had until July 2024 to draft an IEP, and rather than do so and give the Parents an opportunity to agree or disagree with it, the City Schools requested to assess the Student. The Parents asserted that even though the City Schools convened an IEP meeting on July 10, 2024, it was highly unlikely that an IEP would be developed in time for the beginning of the school year.

The City Schools contended that the Parents' intention was not to return the Student to the City Schools for ninth grade, having provided notice of the Student's unilateral placement at [REDACTED] in February 2024. The City Schools argued it had no obligation to develop an IEP for a student who is not enrolled. However, the City Schools also argued that multiple City Schools experts testified to the ability of any comprehensive high school to be able to meet the Student's needs and implement an IEP. Finally, the City Schools argued that the delay in the development of an IEP for the 2024-2025 school year has not caused a deprivation of educational benefits to the Student because the school year had not yet begun, nor has it impeded the Parents' opportunity to participate in the decision-making process.

If the Student had attended the City Schools during the 2023-2024 school year, his annual IEP meeting would have been due in November 2023. However, the IEP Team held an IEP meeting for the Student on August 25, 2023 to review/revise the Student's IEP and review

outside assessments and end of year data and progress reports. The City Schools did not hold any subsequent IEP meetings for the Student. Accordingly, an updated IEP was due by August 2024.¹⁸⁹

The Parents filed the Complaint on March 29, 2024, and I held a prehearing conference on May 6, 2024, during which we discussed the issues presented in the Complaint. The City Schools was, therefore, on notice no later than May 6, 2024 (and, arguably, as early as March 29, 2024) that the Parents alleged that the City Schools failed to provide an appropriate IEP for the Student for the 2024-2025 school year. However, the City Schools did not attempt to convene an IEP meeting until June 26, 2024, when ██████ emailed the parties regarding their availability.

On July 10, 2024, the City School held an IEP meeting to discuss the development of an IEP for the 2024-2025 school year. At the IEP meeting, the IEP Team determined that in order to develop an appropriate IEP, it needed updated assessments of the Student. Although ██████ does not participate in IEP meetings, there is no dispute that the Parents were fully cooperative with the IEP process and provided documents from ██████ that the City Schools would otherwise not have had access to in developing an IEP. In fact, on July 14, 2024, the Parents received and immediately signed and returned the required consent forms to allow the City Schools to complete assessments of the Student. After some scheduling issues on the part of the provider, the Student's assessment was scheduled on August 16, 2024. I find that the City Schools is making an effort to expedite the process in order to put an IEP in place for the 2024-2025 school year.

As of August 15, 2024, there was no IEP in place for the 2024-2025 school year. Given the timeline of the Student's assessment and the necessity of the City Schools to review the results of the assessment before drafting an IEP and holding an IEP meeting, I agree with the

¹⁸⁹ The parties did not explain why they believed an updated IEP was due in July 2024.

Parents that it is highly unlikely that an IEP would be in place before the start of the 2024-2025 school year, which is a procedural defect in violation of the IDEA.¹⁹⁰

However, a procedural defect does not equate to a denial of FAPE.¹⁹¹ Here, in order to find a denial of FAPE, I must also find that “the procedural inadequacies—(I) impeded the Student’s right to a [FAPE]; (II) significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a [FAPE] to the parents’ child; or (III) caused a deprivation of educational benefits.”¹⁹² I conclude that, in this matter, the absence of an IEP at the start of the 2024-2025 school year does not amount to a FAPE violation.

The Parents have not advanced an argument that satisfies any of the requirements necessary for me to find a FAPE violation. First, I cannot evaluate the appropriateness of an IEP that does not yet exist; therefore, it would be premature for me to determine that the absence of said IEP impedes the Student’s right to a FAPE when the Student is not enrolled in the City Schools. Second, the Parents’ opportunity to participate in the decision-making process has not been impacted. In fact, the July 10, 2024 IEP meeting would have been held on July 2, 2024 if Ms. VanCleaf had been available. The Parents and their attorney were present at the July 10, 2024 meeting, their input was noted, they provided documentation about the Student’s progress at [REDACTED], and consent to updated formalized assessments to be completed by the City Schools. Based on the evidence before me, I have no reason to believe that the City Schools will not continue to involve the Parents in the decision-making process. Third, the Student is not currently enrolled in or attending the City Schools, and therefore, the absence of an IEP did not cause a deprivation of educational benefits. Again, this analysis is premature. The school year had not started at the time of the hearing, and therefore, the Parents could not present any

¹⁹⁰ “At the beginning of each school year, each [LEA], SEA, or other State agency, as the case may be, shall have in effect, for each child with a disability in the agency’s jurisdiction, an [IEP], as defined in paragraph (1)(A).” 20 U.S.C.A. § 1414(d)(2)(A).

¹⁹¹ See *MM ex rel. DM v. Sch. Dist. of Greenville Cnty*, 303 F.3d 523 (4th Cir. 2002).

¹⁹² 20 U.S.C.A. § 1415(f)(3)(E)(ii).

evidence of a future, unknown deprivation. Based on this analysis, I must conclude that the City Schools did not fail to offer an appropriate IEP for the 2024-2025 school year, and therefore, I decline to award the Parents reimbursement of tuition at ██████ for the 2024-2025 school year.

As the technical IDEA violation, i.e., failure to develop an IEP for the 2024-2025 school year, has the potential to still be ongoing as of the date this decision is issued. It nevertheless can be cured by City Schools completing the evaluation process and reconvening an IEP meeting to develop a new IEP.

Courts have held that a “finding that the directives of IDEA would be best effectuated by ordering an IEP review and revision, rather than prospective placement in a private school” is not improper on its face.¹⁹³ The *Adams* Court further explained:

Even when a Hearing Officer finds “an actionable violation of the IDEA,” courts have therefore upheld an HOD ordering the parties to “convene an . . . IEP meeting within ten days of [the decision]” so that prospective placement would “not be addressed by this Court, but instead, by the IEP team, as soon as practicable.” . . . Such relief comports with the collaborative, team-based process envisioned under IDEA as the best way of pursuing the “fact-intensive exercise” of “crafting an appropriate program of education” for students with disabilities.¹⁹⁴

Guided by this principle, in deference to the evolving nature of the Student’s needs, the educational expertise of the IEP team, and that the Student did not require specially designed instruction during lunch/recess and specials, I find that it is appropriate to order the IEP team to complete the outstanding assessment and to convene an IEP team meeting within thirty days of its receipt of this decision, to develop an IEP for the 2024-2025 school year, rather than to order prospective placement at ██████ for the 2024-2025 school year.

¹⁹³ *Adams v. Dist. of Columbia*, 285 F. Supp. 3d 381, 393 (D.D.C. 2018) (“[T]his remedy was a reasonable reflection of the issues before the Hearing Officer and the administrative record. It appears, moreover, that such relief is not unusual in IDEA cases, including those in which the plaintiff requests private-school placement.”); *see also Pinto v. Dist. of Columbia*, 938 F. Supp. 2d 25, 28 (D.D.C. 2013) (noting that Hearing Officer determined that [school system] had developed an inappropriate IEP, but declined to grant placement at private school and instead ordered District to “convene a meeting to revise [the] IEP as appropriate within 30 days of a written request by Plaintiffs”).

¹⁹⁴ *Id.* at 387.

In her closing argument, Ms. VanCleaf requested, if I could not award reimbursement of tuition at ██████ for the 2024-2025 school year, that this portion of the case “remain open and be bifurcated” to allow me to hear additional evidence and testimony if the Parents dispute the IEP that is ultimately drafted.¹⁹⁵ Ms. VanCleaf did not cite any authority for her request, and I am not familiar with any authority that would allow me to hold open a portion of the case in the event that a party disputes a hypothetical IEP. If the City Schools ultimately drafts an IEP for the 2024-2025 school year, and the Parents disagree with any portion of that IEP, the Parents’ recourse is to file a new due process complaint.

B. Reimbursement for ██████

As noted above, parents may recover the cost of private education if the school system failed to provide a FAPE, the private education services obtained by the parent were appropriate to the child’s needs, and the overall equity of the case favors reimbursement.¹⁹⁶ The private education services need not be provided in the LRE.¹⁹⁷

As set forth above, I conclude that the City Schools denied the Student a FAPE for the 2021-2022, 2022-2023, and 2023-2024 school years. *Burlington* sets for the standard that a school district may be required to pay for educational services obtained by parents for their child if (1) the services offered by the school district were inadequate or improper (Prong I), (2) the services obtained by the parents were appropriate (Prong II), (3) equitable considerations support the parents’ claim (Prong III).¹⁹⁸ As I concluded that the City Schools failed to provide sufficient special education services in order for the Student to make progress toward his IEP goals and objectives and the general education curriculum based on his unique disability related needs for

¹⁹⁵ Tr., p. 1852.

¹⁹⁶ *Sch. Comm. of Burlington v. Dep’t of Educ.*, 471 U.S. 359, 370 (1985); *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993).

¹⁹⁷ *M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009).

¹⁹⁸ *Sch. Comm. of Burlington*, 471 U.S. at 369; See also *Florence Cnty. Sch. Dist.*, 510 U.S. at 12, 16.

the 2021-2022, 2022-2023, and 2023-2024 school years, and because the City Schools failed to offer an appropriate IEP for the 2023-2024 school year, the Parents have met Prong I.

Next, I will address whether the services obtained by the Parents were appropriate. The Parents unilaterally placed the Student at ██████ for eighth grade. The Parents presented testimony from ██████, a now-former ██████ teacher, who taught the Student in two classes and was his advisor. I found her testimony credible and persuasive, not only because of all of the expert witnesses who testified, she had the most experience with the Student in the classroom, but also because she was candid. Although she values ██████ and the methodologies and interventions it espouses, she did not overstate or exaggerate the Student's progress:

I don't think he's quite on his grade level, as far as reading and writing, and he would—we always say, if a student is diagnosed so late in their learning journey, that one year isn't quite enough. They need multiple years of those more intensive skills to get back up to grade level.¹⁹⁹

██████ was able to discuss the progress the Student made in the year that she taught him at ██████. ██████ taught the Student in a variety of subject areas and was the most qualified to testify about his present-day skills in those subject areas, as compared to when he began at ██████. She testified that at the beginning of the 2024-2025 school year, “[the Student] just didn't have a lot of confidence in that independent piece, with writing,” but once he understood the paragraph organizer (P ██████), “he grew in his ability to get those thoughts down more independently.”²⁰⁰ She saw a lot less repetition, his ideas flowed more smoothly, and the Student advocated for her help but only after he finished with the graphic organizer.

██████ was confident in her testimony that the Student needed the level of instruction and intervention that was offered at ██████ and referred to the small class size in particular (for

¹⁹⁹ Tr., p. 1640.

²⁰⁰ Tr., p. 1626.

example, the Student's decoding class was only three students) as being helpful to the Student because of his [REDACTED]-related impulsivity, as well as being with students who shared his learning experience. [REDACTED] elaborated that the Student is "a typical [REDACTED] student," who "just fit right in, in that community. And the skills that we were teaching him, he really latched onto them, and they really helped him a lot. Like, he was a [REDACTED] kid. It worked great for him."²⁰¹

[REDACTED] also testified that [REDACTED] offered executive functioning supports through the [REDACTED] program, which helped the Student with organization, self-advocacy skills, study skills, and time management. [REDACTED] testified, "they worked on time management a lot, predicting how long assignments would take, timing them," and went "through every single executive function, at the beginning of the year," so students learned how to identify their own executive function strengths and weaknesses.²⁰² For the Student, who struggled with all aspects of executive function, this was beneficial.

The assessments completed by [REDACTED] and [REDACTED] in the spring of the Student's eighth-grade year indicated that the Student's skills were improving. The Student showed statistical gains in fluency, accuracy, spelling, and sentence composition. He also demonstrated improvement in accuracy, which [REDACTED] testified is more important than WCPM (speed) because it indicates that the Student is applying skills, which takes longer.²⁰³

The parties did not dispute that the Student did not require specially designed instruction for lunch, physical education, and art. [REDACTED] testified that at [REDACTED], the entire school eats lunch together, which was an advantage for the Student, as he spent a portion of his lunchtime, twice-a-week, in a small group intervention with [REDACTED]. In addition, at [REDACTED], the Student had access to foreign language. According to the Parent, the Student also did not need [REDACTED] for [REDACTED] while at [REDACTED] because he was among other students like him.

²⁰¹ Tr., pp. 1639-40.

²⁰² Tr., p. 1629.

²⁰³ Tr., p. 403.

This is noteworthy in that the Student never achieved his social emotional/behavioral goals at the City Schools, despite working with a [REDACTED].

[REDACTED] is a school that is specially designed for students like the Student. It is accredited by the [REDACTED]. It provides an education that is specially designed in all areas of intervention that he requires, in a small setting with highly trained staff. Based on the testimony of [REDACTED] and the evidence of the Student's progress during the past school year, [REDACTED] is an appropriate placement for the Student, which satisfies Prong II. [REDACTED] provides more than what is required to provide the Student a FAPE, as the Student is in a special education setting throughout his entire day. But the Parents do not have the same obligation to place their child in the LRE.²⁰⁴ All of the Parents' witnesses testified that the Student has been making progress at [REDACTED]. That testimony was uncontroverted. As such, I find that the Student's education at [REDACTED] was reasonably calculated to enable the Student make progress and therefore is appropriate for purposes of the tuition reimbursement analysis.²⁰⁵

In light of the City Schools' failure to provide a FAPE to the Student for the 2021-2022, 2022-2023, and 2023-2024 school years, equitable considerations support reimbursement of the expenses associated with his attendance for the 2023-2024 school year, including the summer of 2023, to the extent that the Student attended ESY at [REDACTED]. I considered the fact that the Parents did not allow the Student to access the 100 hours of compensatory services to make up for prior FAPE violations, that the Student could have received a FAPE had the [REDACTED] intervention been implemented with fidelity, and that the evidence did not demonstrate that the Student required such a restrictive, separate day school for the applicable school years between 2021 and 2024.

²⁰⁴ See *M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 327 (4th Cir. 2009).

²⁰⁵ *M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 326 (4th Cir. 2009) (quoting *Carter*, 950 F.2d at 163 and *Burlington*, 471 U.S. at 369).

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that:²⁰⁶

1. The City Schools did not fail to provide the Student with a FAPE for the 2021-2022, 2022-2023, and 2023-2024 school years by failing to offer proper compensatory services to the Student based upon the City School's assessment of the Student's relevant educational data. 20 U.S.C.A. §§ 1412(a)(1)(A); *Andrew F. v. Douglas Cnty. Sch. Dist.*, 580 U.S. 386 (2017); *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230 (2009); *G. v. Fort Bragg Dependent Sch.*, 343 F.3d 295 (4th Cir. 2003); *G.I. v. Ligonier Valley Sch. Dist. Auth.*, 802 F.3d 601 (3d Cir. 2015); *Y.B. v. Bd. of Educ. of Prince George's Cnty.*, 895 F. Supp. 2d 689 (D. Md. 2012); *Reid ex rel. Reid v. D.C.*, 401 F.3d 516, 523 (D.C. Cir. 2005).
2. The City Schools failed to provide the Student with a FAPE because it failed to provide sufficient special education services in order for the Student to make progress toward his IEP goals and objectives and the general education curriculum based on the Student's unique disability related needs for the 2021-2022, 2022-2023, and 2023-2024 school years. 20 U.S.C.A. § 1414(d)(1)(A)(i), (d)(3)(A); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117. *Andrew F. v. Douglas Cnty. Sch. Dist.*, 580 U.S. 386 (2017); *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315 (4th Cir. 2009); *M.M. v. Sch. Dist. of Greenville Cnty.*, 303 F.3d 523 (4th Cir. 2002).

²⁰⁶ *Sch. Comm. Town of Burlington v. Dep't of Educ.*, 471 U.S. 359 (1985); *Florence Cnty. Sch. Dist. #4 v. Carter*, 510 U.S. 7 (1993); *Forest Grove Sch. Dist. v. TA*, 557 U.S. 230 (2009); 34 C.F.R. § 300.148(c).

3. The City Schools did not fail to provide an appropriate LRE to meet the Student's unique disability related needs for the 2021-2022, 2022-2023, and 2023-2024 school years. 20 U.S.C.A. §§ 1412(a)(5); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117; *Andrew F. v. Douglas Cnty. Sch. Dist.*, 580 U.S. 386 (2017).
4. The City Schools failed to provide the Student with a FAPE because it failed to offer an appropriate IEP for the 2023-2024 school year. 20 U.S.C.A. §§ 1412(a)(5), 1414; 34 C.F.R. §§ 300.114(a)(2)(i), 300.117; *Andrew F. v. Douglas Cnty. Sch. Dist.*, 580 U.S. 386 (2017); *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982).
5. The City Schools did not fail to provide the Student with a FAPE by failing to offer an appropriate IEP for the 2024-2025 school year. 20 U.S.C.A. §§ 1414(d)(2)(A), 1415(f)(3)(E)(ii), 1412(a)(5), 1414; 34 C.F.R. §§ 300.114(a)(2)(i), 300.117; *Andrew F. v. Douglas Cnty. Sch. Dist.*, 580 U.S. 386 (2017); *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *MM ex rel. DM v. Sch. Dist. of Greenville Cnty.*, 303 F.3d 523 (4th Cir. 2002).
6. The Parents are entitled to tuition reimbursement and associated expenses they paid for the 2023-2024 school year that the Student attended eighth grade at [REDACTED]. 34 C.F.R. § 300.148(c); *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985); *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993).

ORDER

I **ORDER** that the March 29, 2024 Due Process Complaint filed by the Parents is hereby **GRANTED**, in part, and **DENIED**, in part; and

I **ORDER** that the Baltimore City Public School System shall, within thirty (30) days of the date of this decision, make arrangements with the Parents for the Student to begin to receive

100 hours of compensatory services for academics to address free appropriate public education violations that occurred during the 2018-2019, 2019-2020, and 2020-2021, and 2021-2022 school years; and

I **ORDER** that the Baltimore City Public School System shall, within thirty (30) days of the date of this decision, reimburse the Parents for all tuition and related costs associated with the Student's attendance at the [REDACTED] for the summer of 2023²⁰⁷ and the 2023-2024 school year; and

I **ORDER** that the Baltimore City Public School System shall, within thirty (30) days of the date of this decision, complete the formalized assessments and prepare an Individualized Education Program for the Student, [REDACTED], for the 2024-2025 school year, and furnish it to the Parents, [REDACTED] and [REDACTED]; and

I **ORDER** that the Baltimore City Public School System 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.

September 13, 2024
Date Decision Issued

Tracee Orlove Fruman
Administrative Law Judge

TOF/ja
#212970

²⁰⁷ If the Student attended [REDACTED] for ESY in the summer of 2023.

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 and/or Emailed To:

Ashley VanCleaf, Esquire
Law Office

[REDACTED]

[REDACTED]

Samara Scott, Esquire
Office of the Attorney General

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

██████████ & ██████████, BEFORE
TRACEE ORLOVE FRUMAN,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-CITY-OT-24-08852
PARENTS,
ON BEHALF OF ██████████,
STUDENT,
v.
BALTIMORE CITY PUBLIC SCHOOLS

APPENDIX: FILE EXHIBIT LIST^{1,2}

Except as noted, I admitted the following exhibits on behalf of the Parents:³

- Parents Ex. 1 – CV⁴ ██████████
- Parents Ex. 2 – CV ██████████
- Parents Ex. 3 – CV ██████████
- Parents Ex. 4 – CV ██████████
- Parents Ex. 5 – OFFERED, NOT ADMITTED
- Parents Ex. 6 – NOT OFFERED
- Parents Ex. 7 – NOT OFFERED
- Parents Ex. 8 – November 27, 2018⁵ Email Re: OT Evaluation
- Parents Ex. 9 – NOT OFFERED
- Parents Ex. 10 – OFFERED, NOT ADMITTED
- Parents Ex. 11 – NOT OFFERED

¹ Exhibits that were neither offered nor admitted into evidence are retained for the record for the purpose of judicial review. See COMAR 28.02.01.22C.

² The exhibit names are listed exactly as the parties' provided in their respective exhibit lists, except for the dates, which are spelled out for clarity.

³ The City Schools did not object to the admission of the Parents' Exhibits, with the exception of Parents Exhibits 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 17, 18, 23, 24, 29, 36, and 79. Therefore, at the start of the hearing, I admitted all of the Parents Exhibits, except for those to which the City Schools objected.

⁴ Curriculum vitae.

⁵ In the Parents' Exhibit List, the date of Parents Ex. 8 is May 18, 2021, which appears to be a typographical error based on the contents of the exhibit.

Parents Ex. 12 – NOT OFFERED

Parents Ex. 13 – NOT OFFERED

Parents Ex. 14 – OFFERED, NOT ADMITTED

Parents Ex. 15 – NOT OFFERED

Parents Ex. 16 – August 18, 2020 [REDACTED] Assessment

Parents Ex. 17 – NOT OFFERED

Parents Ex. 18 – NOT OFFERED

Parents Ex. 19 – September 25, 2020 Prior Written Notice and IEP

Parents Ex. 20 – February 5, 2021 OT Assessment

Parents Ex. 21 – May 5, 2021 IEP

Parents Ex. 22 – June 10, 2021 BCPS Educational Assessment

Parents Ex. 23 – NOT OFFERED

Parents Ex. 24 – NOT OFFERED

Parents Ex. 25 – December 2021 [REDACTED] Testing and Recommendations by [REDACTED]

Parents Ex. 26 – January 18, 2022 Observation by [REDACTED]

Parents Ex. 27 – February 1, 2022 Reading Inventory Scores

Parents Ex. 29⁶ – NOT OFFERED

Parents Ex. 30 – March 9, 2022 City Schools Investigation

Parents Ex. 31 – April 7, 2022 Prior Written Notice and IEP

Parents Ex. 32 – September 2022 Educational Testing Report [by] [REDACTED]

Parents Ex. 33 – September 12, 2022 Email Re[:] Progress

Parents Ex. 34 – September 12, 2022 Informal Reading Data

Parents Ex. 35 – November 7, 2022 Writing Work Sample

⁶ The Parents exhibits did not include an Exhibit 28.

Parents Ex. 36 – NOT OFFERED

Parents Ex. 37 – September 1, 2023 [REDACTED] Observation Notes

Parents Ex. 38 – February 9, 2023 Work Sample

Parents Ex. 39 – February 16, 2023 Decision Letter

Parents Ex. 40 – April 2023 DIBELS Scores

Parents Ex. 41 – April 11, 2023 Data Recording Form

Parents Ex. 42 – April 24, 2023 Work Sample 7th Grade

Parents Ex. 43 – May 9, 2023 IEP with Notice of Unilateral Placement

Parents Ex. 44 – May 24, 2023 Educational Testing [by] [REDACTED]

Parents Ex. 45 – June 2023 Seventh Grade Report Card

Parents Ex. 46 – June 12, 2023 IEP Progress Report

Parents Ex. 47 – July 26, 2023 Unilateral Placement and Funding Request Response

Parents Ex. 48 – August 25, 2023 Prior Written Notice and IEP

Parents Ex. 49 – September 25, 2023 Unilateral Placement and Funding Request Response

Parents Ex. 50 – Undated⁷ Work Sample Story Planning

Parents Ex. 51 – November 2023 Work Sample Story

Parents Ex. 52 – February 2024 [REDACTED] Testing and Recommendations [by] [REDACTED]

Parents Ex. 53 – February 12, 2024 Continued Notice of Unilateral Placement

Parents Ex. 54 – February 16, 2024 Denial of Unilateral Placement

Parents Ex. 55 – March 2024 [REDACTED] and Explanations

Parents Ex. 56 – Undated⁸ Work Sample 3 Paragraph Organizer

⁷ The Parents submitted an exhibit list which provided November 2023 as the date for Parents Ex. 50. I could not locate any such date on the document.

⁸ The Parents submitted an exhibit list which provided March 2024 as the date for Parents Ex. 56. I could not locate any such date on the document.

Parents Ex. 57 – Undated⁹ Work Sample Writing

Parents Ex. 58 – March 20, 2024¹⁰ Work Sample Writing Draft

Parents Ex. 59 – May 20, 2024 Work Sample Romeo and Juliet

Parents Ex. 60 – June 2024 Eighth Grade Final Report Card

Parents Ex. 61 – June 5, 2024 Educational Assessment [by] [REDACTED]

Parents Ex. 62 – June 5, 2024 Work Sample Spelling Words

Parents Ex. 63 – June 5, 2024 Writing Sample

Parents Ex. 64 – June 7, 2024 Attendance Report

Parents Ex. 65 – March 7, 2024¹¹ [REDACTED] Data and Explanations

Parents Ex. 66 – Grade Level Expectations Foundational Writing

Parents Ex. 67 – Grade Level Expectations Writing

Parents Ex. 68 – iReady Guidance

Parents Ex. 69 – Research Integrating RTI with Cognitive Neuropsychology

Parents Ex. 70 – Research National Reading Report

Parents Ex. 71 – Research [REDACTED] Congressional Testimony

Parents Ex. 72 – Research [REDACTED]

Parents Ex. 73 – Research [REDACTED] et al[.,] 2001 Intensive Remedial Instruction for Children

Parents Ex. 74 – [REDACTED] Accreditations and Affiliations

Parents Ex. 75 – Tuition Letter for 24-25

Parents Ex. 76 – [REDACTED] Student and Family Handbook

Parents Ex. 77 – 23-24 [REDACTED] Contract

⁹ The Parents submitted an exhibit list which provided March 2024 as the date for Parents Ex. 57. I could not locate any such date on the document.

¹⁰ The Parents submitted an exhibit list which provided March 24, 2024 as the date for Parents Ex. 58. The correct date of the document is March 20, 2024.

¹¹ The Parents submitted an exhibit list which provided June 13, 2024 as the date for Parents Ex. 65. I could not locate any such date on the document. The test date was March 27, 2024 and the report date was June 3, 2024.

Parents Ex. 78 – 24-25 [REDACTED] Costs

Parents Ex. 79 – 2017 Fluency Norms

Parents Ex. 80 – [REDACTED] Bridge to Reading Scope and Sequence

Parents Ex. 81 – [REDACTED] Scope and Sequence and Lesson Overview

Parents Ex. 82 – [REDACTED] [REDACTED] and [REDACTED] Connection

Parents Ex. 83 – April 2020 [REDACTED]¹² Assessment

Parents Ex. 84 – Niebaum 2023 “Why doesn’t executive function training improve academic achievement? Rethinking individual differences, relevance, and engagement from a contextual framework”

Parents Ex. 85 – CHADD 2016 “Tips for Educators Helping Students with [REDACTED] Using the Instructional Process”

Parents Ex. 86 – [REDACTED] [REDACTED]

Parents Ex. 87 – [REDACTED] Essential Excerpts

Parents Ex. 88 – [REDACTED] Student Handbook

Parents Ex. 89 – CV of [REDACTED]

Parents Ex. 91¹³ – CV of [REDACTED]

Parents Ex. 92 – Level Books, Not Children: The role of text levels in literacy instruction

Parents Ex. 93 – June 15, 2021 Email from [REDACTED]

Parents Ex. 94 – [REDACTED] by [REDACTED], [REDACTED].

Parents Ex. 95 – August 8-9, 2024 Emails between [REDACTED] and the Parent

Parents Ex. 97¹⁴ – Multi-Tiered System of Supports (MTSS) / Response to Intervention (RTI) Process Cannot be Used to Delay/Deny an Initial Evaluation

¹² [REDACTED].

¹³ The Parents exhibits did not include exhibit 90.

¹⁴ The Parents exhibits did not include an exhibit 96.

I admitted the following exhibits on behalf of the City Schools:¹⁵

BCPSS Ex. 1 – OAH’s Pre-Hearing Conference Report and Order, May 9, 2024

BCPSS Ex. 2 – Due Process Complaint, March 29, 2024¹⁶

BCPSS Ex. 3 – IEP September 25, 2020

BCPSS Ex. 4 – IEP March 4, 2021

BCPSS Ex. 5 – IEP May 5, 2021

BCPSS Ex. 6 – IEP December 14, 2021

BCPSS Ex. 7 – IEP March 31, 2022

BCPSS Ex. 8 – IEP November 10, 2022

BCPSS Ex. 9 – IEP March 7, 2023

BCPSS Ex. 10 – IEP May 9, 2023

BCPSS Ex. 11 – IEP August 25, 2023

BCPSS Ex. 12 – Status Report August 25, 2023 (Exited)

BCPSS Ex. 13 – Prior Written Notice, September 16, 2020

BCPSS Ex. 14 – Prior Written Notice, September 25, 2020

BCPSS Ex. 15 – Prior Written Notice, March 4, 2021

BCPSS Ex. 16 – Prior Written Notice, May 5, 2021

BCPSS Ex. 17 – Prior Written Notice, December 14, 2021

BCPSS Ex. 18 – Prior Written Notice, April 7, 2022

BCPSS Ex. 19 – Prior Written Notice, November 14, 2022

BCPSS Ex. 20 – Prior Written Notice, March 8, 2023

BCPSS Ex. 21 – Prior Written Notice, May 10, 2023

BCPSS Ex. 22 – Prior Written Notice, August 25, 2023

¹⁵ The City Schools pre-marked their exhibits “BCPSS,” and I retained that designation for clarity.

¹⁶ The City Schools dated this exhibit April 1, 2024. I corrected the date to March 29, 2024. *See* footnote 2.

- BCPSS Ex. 23 – Parent Contact Log and Email Communications, September 9, 2020 to July 3, 2024
- BCPSS Ex. 24 – City Schools Occupational Therapy Report, February 11, 2021
- BCPSS Ex. 25 – City Schools Educational Report, June 10, 2021
- BCPSS Ex. 26 – [REDACTED] Neuropsychological Assessment Report, April 30, 2020
- BCPSS Ex. 27 – [REDACTED] Neuropsychological Assessment Report, August 25, 2020
- BCPSS Ex. 28 – City Schools [i]Ready Diagnostic Results, September 15, 2022
- BCPSS Ex. 29 – City Schools [i]Ready Diagnostic Results, January 12, 2023
- BCPSS Ex. 30 – City Schools [i]Ready Diagnostic Growth, June 5, 2023
- BCPSS Ex. 31 – City Schools [i]Ready Historical Results, 2021-2022
- BCPSS Ex. 32 – City Schools Data Link, July 3, 2024
- BCPSS Ex. 33 – [REDACTED] Test Results, December 23, 2021
- BCPSS Ex. 34 – [REDACTED] Recommendations, January 4, 2022
- BCPSS Ex. 35 – [REDACTED] Observation Report, March 6, 2023
- BCPSS Ex. 36 – Response to Request for Educational Funding, September 25, 2023
- BCPSS Ex. 37 – [REDACTED] Continued Notice of Unilateral Placement, February 12, 2024
- BCPSS Ex. 38 – Response to Request for Educational Funding Letter, February 13, 2024
- BCPSS Ex. 39 – Notice of IEP Team Meeting on July 10, 2024
- BCPSS Ex. 40 – Five Day Notice IEP Meeting, July 10, 2024
- BCPSS Ex. 41 – [REDACTED] Report Card, 2022-2023
- BCPSS Ex. 42 – Resume – [REDACTED]
- BCPSS Ex. 43 – Resume – [REDACTED]
- BCPSS Ex. 44 – Resume – [REDACTED]
- BCPSS Ex. 45 – Resume – [REDACTED]
- BCPSS Ex. 46 – Resume – [REDACTED]

BCPSS Ex. 47 – Resume – [REDACTED]

BCPSS Ex. 48 – Resume – [REDACTED]