

██████████, PARENT,
ON BEHALF OF,

██████████, STUDENT

v.

MONTGOMERY COUNTY
PUBLIC SCHOOLS

BEFORE DENISE O. SHAFFER
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-MONT-OT-24-07799

DECISION

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ORDER

STATEMENT OF THE CASE

In the fall of 2023, Montgomery County Public Schools (MCPS) 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 December 13, 2023, an IEP team meeting was held. At that meeting, the team proposed an IEP for the Student at MCPS. ██████████ (Parent) informed the MCPS at that meeting that she rejected the placement proposed by the IEP team and requested that the MCPS fund the Student's placement at the ██████████ ██████████).

On March 21, 2024, the Parent filed a Due Process Complaint with the Office of Administrative Hearings (OAH) alleging that the MCPS violated the IDEA by denying the Student a free appropriate public education (FAPE) by failing to develop an appropriate IEP,

including an appropriate placement, to address all of the Student's educational needs and to allow the Student to make progress in light of her unique circumstances for the 2023-2024 school year. The requested remedies are 1) reimbursement for non-public placement tuition at the [REDACTED] for the 2023-2024 school year and 2) prospective placement at the [REDACTED].¹

I held a prehearing conference (conference) on May 8 and 13, 2024. At the conference, I advised the parties of the federal forty-five-day timeline for issuing a decision:

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

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

As indicated, the forty-five-day timeline ordinarily begins to run at the end of a thirty-day resolution period triggered by filing a due process complaint.³

Under the regulatory timeline, the decision in this case normally would be due on Friday, June 4, 2024, forty-five days after the thirty-day resolution period ends.⁴ However, the regulations authorize me to grant a specific extension of time at the request of either party.⁵ The parties anticipated that the hearing would last nine days.⁶ During the conference, the parties reviewed their calendars and their witnesses' availability to determine the first available dates to

¹ 20 U.S.C.A. § 1415(f)(1)(A) (2017).

² 34 C.F.R. § 300.515(a).

³ *Id.* § 300.510(b)(2).

⁴ 34 C.F.R. §§ 300.510(b)(2), 300.515(a).

⁵ *Id.* § 300.515(c).

⁶ The attorneys were prepared and organized. They stipulated to uncontested facts. As a result, the hearing proceeded efficiently, and three days of the hearing, June 28, July 3, and July 9, 2024, were canceled as unnecessary.

schedule the hearing, which were June 25, 26, 27, 28, and July 1, 2, 3, 8, and 9, 2024.⁷ These dates all fall outside of the regulatory timeline. The parties jointly requested that I extend the timeline to accommodate their schedules and allow the hearing to start on June 25, 2024, and then for thirty days after the conclusion of the hearing to allow time for me to consider and weigh all the evidence. Based on the scheduling constraints noted, I found good cause to extend the timelines. As the hearing concluded on July 8, 2024,⁸ the decision must be issued on or before August 7, 2024.

I held the hearing on June 25, 26, 27, July 1, 2 and 8, 2024. Attorneys Robin Silver, Susan DuMont, and Darnisha Mitchell, Miles & Stockbridge, represented MCPS. Attorney Michael Eig represented the Student (Parent). 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.⁹

ISSUES¹⁰

I. Did MCPS fail to provide the Student a FAPE for the 2023-2024 school year by:

A. failing to develop an appropriate IEP by not including (1) more intensive intervention, (2) small, non-distracting classrooms with [REDACTED] students, and by including (3) time in a general education classroom and without special education support;

⁷ We considered dates beginning on May 20, 2024 to allow for the five-day disclosure. Attorneys for both parties had due process hearings during the week of May 20-24. I had a specially set police accountability hearing on May 28, 2024, and a specially set due process hearing on May 29 and 30, 2024. Witnesses for the school were not available the first week of June (3-7), and Mr. Eig was out of the country from June 10 through June 24, 2024. July 4, 2024, is a holiday, and witnesses for the school were not available on July 5, 2024.

⁸ On July 12, 2024, the parties submitted their respective memorandum of authority.

⁹ Educ. § 8-413(e)(1) (Supp. 2023); Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2023); COMAR 13A.05.01.15C; COMAR 28.02.01.

¹⁰ The parties agreed with these issues at the conference, and I communicated them in a prehearing conference report and order. That order allowed the parties the opportunity to correct any error in the issue statements. No party offered any correction.

B. failing to make an appropriate placement decision by including (1) time in a general education classroom and without special education support, and (2) declining to place the Student at the [REDACTED]?

II. Is the [REDACTED] a proper placement for the Student?

III. Is the Student/Parent entitled to the requested remedies:

- A. reimbursement for tuition at the [REDACTED] for the 2023-2024 school year, and
- B. prospective placement at the [REDACTED]?

SUMMARY OF THE EVIDENCE

I have attached a complete Exhibit List as an Appendix.

Testimony

The Parent testified¹¹ (Tr. 264-388) and presented the following witnesses:

- [REDACTED], accepted as an expert in psychology. (Tr. 35-136)
- [REDACTED], executive director of the [REDACTED], accepted as an expert in special education. (Tr. 138-250; 954-968)
- [REDACTED], director of speech-language pathology, [REDACTED], accepted as an expert in speech-language pathology. (Tr. 389-420)
- [REDACTED], director of jurisdictional services, [REDACTED], accepted as an expert in special education. (Tr. 430-515)

The MCPS presented the following witness(es):

- [REDACTED], home school model teacher, [REDACTED] ([REDACTED]), accepted as an expert in special education. (Tr. 524-629)
- [REDACTED], special education supervisor for MCPS' [REDACTED] ([REDACTED] and [REDACTED]), accepted as an expert in special education with a concentration in [REDACTED]. (Tr. 634-708)

¹¹ The Parent holds a [REDACTED] in clinical psychology and sought to be accepted as an expert in psychology. For the reasons stated on the record (Tr. 277-279), I denied that request, and the Parent testified as a fact witness only. COMAR 28.02.01.21D.

- Catherin [REDACTED] in speech-language pathology with a concentration in [REDACTED] communications. (Tr. 720-759)
- [REDACTED], school psychologist, MCPS, [REDACTED] Office, accepted as an expert in school psychology with a specialization in [REDACTED]. (Tr. 760-814)
- [REDACTED], educational [REDACTED], MCPS, accepted as an expert in educational [REDACTED]. (Tr. 817-898)
- [REDACTED], speech-language pathologist, MCPS, accepted as an expert in speech-language pathology. (Tr. 905-953)

FINDINGS OF FACT

The parties stipulated to thirteen facts.¹² Based on the evidence presented, I find the additional facts by a preponderance of the evidence:

1. *The Student is nine years old, and her date of birth is [REDACTED].* (Stipulation)
2. *The Student has [REDACTED].* (Stipulation)
3. *The Student has [REDACTED].* (Stipulation) The Student received the [REDACTED] when she was seven months old, [REDACTED] when she was eight months old. (Tr. 50, 281)
4. [REDACTED] do not [REDACTED], and students with [REDACTED] benefit from learning alongside peers with [REDACTED]. (Tr. 316) The Student's [REDACTED] are adjusted regularly by her [REDACTED] and are very effective. (Tr. 698)
5. *The Parents declined to enroll the Student in the MCPS Infant and Toddler Program services.* (Stipulation)
6. *The Student received services through the [REDACTED] and attended the [REDACTED] from the time she was an infant through the 2022-2023 school year.* (Stipulation)
7. The [REDACTED] is a small private, general education school that supports the needs of children who are [REDACTED] alongside typically developing [REDACTED]. (Tr. 42) The instruction is delivered by co-teachers (a general educator and a speech-language pathologist) in a small group, multisensory setting, in physically small classrooms. (Tr. 42,

¹² Stipulated facts are italicized and have the reference (Stipulation). Other than to redact the Student's name, I have set them out as submitted.

147) Each classroom has a sound field, and the teachers wear microphones. (Tr. 287) A typical [REDACTED] classroom has 12-14 students, and each classroom has a few [REDACTED] students. (Tr. 147, 286)

8. The Student has never participated in an academic class with more than twelve students (Tr. 319)
9. The Student received extensive audiological and speech-language services at the [REDACTED]. In addition to the integrated services provided by the co-teacher, she met with a speech-language pathologist twice a week. She also had a tutor for reading and math. (Tr. 291-293)
10. While at the [REDACTED], the Student thrived socially and “did beautifully” in terms of her [REDACTED]. (Tr. 289) The Student’s speech-language skills are typical/average when compared to [REDACTED] peers. (Tr. 924-926; MCPS 2, 4)
11. During the Student’s first and second-grade years at the [REDACTED], she struggled academically. Her reading and writing did not progress, and she showed signs of anxiety at home, including inflexibility with new things and restrictive eating. (Tr. 148, 289, 302) She had difficulty transitioning from school to home. (Tr. 302)
12. [REDACTED] initially consulted with the Parents in August of 2022, the end of the Student’s first-grade year. Rather than pursue an extensive assessment at that time, the Parent hired [REDACTED], an academic therapist, to provide an intensive reading program for the Student four times a week during second grade. (Tr. 41, 290, 299)
13. This one-on-one pull-out intervention focused on a program of phonics targeting phonological processing¹³ and phonemic awareness.¹⁴ (Tr. 43, 67) Despite the intervention, consisting of over fifty pull-out sessions with [REDACTED] the Student only made incremental progress and continued to struggle with foundational reading skills.¹⁵ (Tr. 42; P. 17, p. 3)
14. [REDACTED] prepared a Psychoeducational Evaluation Report in June 2023 to update the Student’s “testing to better understand [the Student’s] learning support needs as she prepares to transition to the [REDACTED] for third grade.” (P. 17, p. 1) The testing “was conducted to inform educational and treatment interventions.” (*Id.*)
15. The Student has typical intelligence and no cognitive impairments. (Tr. 51, 58-59, 771-772; P. 17, p.5) *The Student has strengths in some areas of receptive language and expressive language, verbal comprehension, spatial reasoning, and verbal fluency.* (Stipulation)

¹³ Phonemic processing is perceiving and discriminating between individual speech sounds that make up words. (Tr. 45)

¹⁴ Phonological awareness refers to the child's ability to extract meaning from the speech stream. (*Id.*)

¹⁵ [REDACTED] reported that the Student “demonstrated marked improvement in skills,” (P. 15, p. 6) but this conclusion was not supported by [REDACTED] objective testing.

16. *The Student has been diagnosed with [REDACTED], [REDACTED], and [REDACTED].* (Stipulation)
17. At the time of [REDACTED] testing in June 2023, the Student’s basic reading skills were below average, her decoding skills were significantly below average, and her orthographic fluency and writing fluency¹⁶ were low. (Tr. 57; P. 17, p. 32-33)
18. Characteristics of an appropriate placement for the Student include reading ([REDACTED] remediation/comprehensive phonics) and writing ([REDACTED]) interventions in a small group, quiet setting with frequent curriculum-based measurements. (Tr. 74, 77; P. 17, p. 20)
19. Small group special education instruction is necessary for the Student because she has intensive, urgent language-based learning needs that did not respond to previous interventions provided by the [REDACTED] and [REDACTED]. (Tr. 78)
20. A large general education classroom has reverberation and ambient noise, which would be challenging for the Student. (Tr. 75, 319) Push-in services¹⁷ are unlikely to be effective due to her [REDACTED] processing difficulties. (*Id.*)
21. The Student’s anxiety increased as she grew older but did not result in significant behaviors during the school day and rather “manifest[ed] at home after school days in particular.” (Tr. 66, 73; P. 17, pp. 34-35) The Student’s [REDACTED] manifests as an internalizing disorder. She does not externalize her [REDACTED], and she is not disruptive. (Tr. 132, 223; P. 16, 22)
22. It is common for a student with [REDACTED] to have [REDACTED], [REDACTED], or [REDACTED]; 40% of students with [REDACTED] have an additional disability. (Tr. 775)
23. In August of 2023, the Parent hired [REDACTED], executive director of the [REDACTED] [REDACTED], a consulting group that provides services to families designed to “ensure that students are getting appropriate services and program placement.” (Tr. 141, 144)
24. On August 21, 2023, the Parent referred the Student to MCPS and requested special education services. (MCPS 40; Tr. 304) The Parent submitted “comprehensive” information with the referral, including formal and informal assessments, a parent interview and questionnaire, teacher referral forms from the [REDACTED] and the [REDACTED], and psychological, speech-language, and audiology evaluations and reports. (Tr. 538-539, MCPS 46, 47)

¹⁶ The “fluid” performance of skills indicates a level of mastery such that the Student no longer must devote a lot of cognitive attention and labor toward the task. (Tr. 61)

¹⁷ Push-in is a mode of service delivery where either a special educator or related service provider provides supplementary aides and services in the general education setting. (Tr. 122)

25. At the Child Find/Initial Eligibility meeting on October 17, 2023, MCPS determined that the evaluations provided by the Parent were sufficient, and no additional data was needed to determine that the Student was eligible for special education services with the primary disability of [REDACTED]: [REDACTED] and [REDACTED]. (Tr. 158; P. 27, p.1, MCPS 47)
26. The team discussed the Student's strengths and needs and the current interventions she was receiving based on input from the Parent and the [REDACTED]. (Tr. 534; MCPS 36, 39)
27. At the conclusion of the meeting, the team determined that they needed input concerning the best way to code the Student's disabilities. They adjourned to seek guidance from MCPS staff concerning the codes being considered, including multiple disabilities, [REDACTED], [REDACTED] and [REDACTED]. The MCPS members of the team were prepared to reconvene on November 14, 2024. However, at the request of the Parent, the team agreed to reconvene on December 13, 2023. (Tr. 539-540; MCPS 49)
28. Between the Child Find/Initial Eligibility meeting and the December 13, 2023 IEP meeting, [REDACTED] and [REDACTED] joined the team (Tr. 583, 648).
29. During the Child Find/Initial Eligibility meeting, the Parent, through [REDACTED], inquired about MCPS' programs for [REDACTED] students. The IEP team advised the Parent to contact [REDACTED]. (Tr. 160) The Parent and [REDACTED] visited the [REDACTED] program at [REDACTED] ([REDACTED]) on November 2, 2023. (Tr. 652)
30. [REDACTED] is a comprehensive elementary school with a center-based program for [REDACTED] students. There are approximately thirty students in grades K-5 in the center-based program. (Tr. 702) It has small group instruction for [REDACTED] students with specific learning disabilities in reading, writing, and math. (Tr. 161-162) The small group instruction at [REDACTED] [REDACTED] could have met the Student's specific learning disability needs in the small group setting. (Tr. 161-162)
31. [REDACTED] offers a continuum of services for [REDACTED] students, from full-time general education classes with [REDACTED] support, through full-time, self-contained classrooms for academics, or a "combination of the two." (Tr. 653)
32. [REDACTED] center is an [REDACTED] program whose students use [REDACTED] or [REDACTED] to learn to [REDACTED]. (Tr. 723) Students there primarily use spoken communication, but some use [REDACTED] or [REDACTED]. (Tr. 316)
33. After the visit to [REDACTED], the Parent, through [REDACTED], communicated to MCPS that she believed the program was too restrictive because the Student would not be attending small groups with students who were not [REDACTED] and who would provide good speaking models for the Student. (Tr. 161-163) The IEP team did not discuss the program at [REDACTED] at the December 13, 2023 IEP meeting.
34. [REDACTED], the Student's IEP case manager, visited the [REDACTED] on October 5, 2023 to observe the Student. (MCPS 42) The Student was engaged in her small group reading

instruction for approximately 45 minutes. ██████████ documented her observation. (*Id.*)

35. ██████████, ██████████, and ██████████ visited the ██████████ on November 1, 2023, to observe the Student (Tr. 536; MCPS 42). Each visitor observed the Student for 30-40 minutes in total and for 10-15 minutes of classroom instruction in the small group for reading.¹⁸ (Tr. 648, 737) These observations were not documented.

36. Other than these observations at the ██████████, MCPS relied solely on the reports and information submitted by the Parent and the ██████████ when it reconvened.

37. The IEP team reconvened on December 13, 2023, and included ██████████ and ██████████ ██████████ as secondary disabilities. (Tr. 166; P. 27, p. 4) The team determined that the Student has “a complex and unique learning profile.” (P. 27, p. 4)

38. The present levels of performance in the IEP were based on the data received from the Parent and the observations from the MCPS visitors to the ██████████. (Tr. 538, 656; P. 27, pp. 8-25) The IEP team relied upon and incorporated the data in ██████████ report, ██████████ reports, the speech-language evaluations, and the ██████████ records in every present level listed in the IEP. (Tr. 549)

39. *The goals in the proposed IEP were appropriate.* (Stipulation)

40. *Pursuant to the proposed IEP for the Student for the 2023-2024 school year, the Student’s 32 hours and 5 minutes of weekly educational time would be divided as follows:*

30 minutes per week for ██████████ Services¹⁹ outside of the general education setting (P. 27, p.46);

2 hours per week of Reading Intervention Services outside of the general education setting (P. 27, p.46); and

1 hour per week of Speech/Language Therapy outside of the general education setting (P. 27, p.47).

These together total 3 hours and 30 minutes of Special Education and Related Services outside of the general education setting per week.

In addition, the Student would receive:

12 hours and 30 minutes per week of Special Education services within the general education setting (P, 27, p.46); and

¹⁸ The Student was in Physical Education (P.E.) and then transitioned to her reading class. The small group reading occurred in a small space, so the MCPS visitors rotated into the classroom for the observation.

¹⁹ These services would have been delivered by a ██████████ teacher, i.e., an educator providing classroom instruction. (Tr. 658)

30 minutes per week of [REDACTED] Services inside the general education setting (P. 27, p.-46).

These together total 13 hours of Special Education Services inside the general education setting per week. Broken down daily, the Student would receive 1 hour of ELA²⁰ reading support, 1 hour of math support, and 30 min of remaining support daily across the curriculum (P-27. P.47&53).

The remainder of the Student's time during the week, 16 hours and 5 minutes, would be in the general education classroom without special education or related services.

In addition, the Student would receive 2 hours per year of [REDACTED]²¹ outside of the general education setting (P-27-47). The breakdown of how this two hours would be provided would depend on the Student's needs and the provider but would typically be provided as either 1 hour provided twice per year, or 30 minutes provided four times per year. (Stipulation)

41. The team recommended delivering these services at [REDACTED], the Student's home school. (P. 17) The general education classroom at [REDACTED] typically has 22-25 students per class. (Tr. 178, 596) The pull-out reading intervention group may have had one to five students (Tr. 618)
42. *The only disagreements regarding the IEP were the lack of inclusion of a goal related to generalized anxiety disorder, the amount of special education called for in the IEP, and the recommendation that the Student have any of her special education services provided in the general education classroom. (Stipulation)*
43. The IEP specified that the reading instruction (decoding and phonemic processing) would be multi-sensory, evidence-based, and delivered with fidelity. (P. 27, p. 47; Tr. 170) The MCPS delivered reading instruction using various methods, including Really Great Reading and Orton Gillingham. (Tr. 558-560) Had the Student enrolled with MCPS, MCPS would have provided reading instruction as set out in the Student's IEP. (*Id.*)
44. The IEP team did not include an [REDACTED] goal because the data showed that the Student's [REDACTED] did not manifest at school.²² (Tr. 560) The team did include support for [REDACTED] in the services section of the proposed IEP. It provided daily social/behavioral support from the Student's teachers in the form of strategies for coping with [REDACTED]. (Tr. 216; P. 27, p. 33)
45. The December 13, 2023 IEP proposed more special education services than the Student received at the [REDACTED]. (Tr. 114)

²⁰ English Language Arts

²¹ These services would have been provided by an educational [REDACTED], the person responsible for [REDACTED] evaluations, assistive technology, and consultative services.

²² The statement in the prior written notice from the December 13, 2023 meeting: "Create a goal for [REDACTED]" was an error. The team did not agree to create that goal. (Tr. 560-561; MCPS 52, p.2)

46. The December 13, 2023 IEP incorporated all of [REDACTED] recommendations except for a small group, full-time specialized special education setting. (Tr. 111, 577)
47. The December 13, 2023 IEP required the Student to receive a significant portion of her instruction (88.83%) in a general education classroom and relied upon the Student's facility with assistive technology to be able to access the curriculum in that setting. (P. 27, p. 49; Tr. 664, 941). At the time of the proposed IEP the Student had no experience using the assistive technology proposed in the IEP.
48. The Student had no experience using the [REDACTED] ([REDACTED])²³ equipment central to the December 13, 2023 IEP. The Student used sound fields²⁴ at the [REDACTED] and the [REDACTED]. Sound fields are not used at [REDACTED] and were not included in the IEP. (Tr. 655)
49. The Student needs access to good language models and [REDACTED]. (Tr. 847) The Student would not be able to access good language models in a large classroom. (Tr. 318-319)
50. At the December 13, 2023 IEP meeting, the Parent sought placement at the [REDACTED]. (Tr. 306)
51. The Parent applied to the [REDACTED] in January of 2023, in the middle of the Student's second-grade year. (Tr. 301) At that time, the Parent did not consider a public school option for the Student. (*Id.*) *The Student was enrolled in the [REDACTED] for the 2023-2024 school year.* (Stipulation)
52. The [REDACTED] does not employ an educational [REDACTED], or a teacher specifically trained to work with [REDACTED] students. [REDACTED], which is one mile from the [REDACTED], continued to provide for the Students' [REDACTED] assessments and needs while at the [REDACTED]. (Tr. 324) The [REDACTED] staff is willing to and has worked collaboratively with the Student's educational [REDACTED], [REDACTED] (Tr. 324, 447)
53. At the beginning of third grade, the Student attended a short-term therapy group for lower school girls who were new to the [REDACTED] and had an [REDACTED] diagnosis. (MCPS 16; Tr. 168, 360) At the end of the eight-week group, the Student reported no school-related [REDACTED]. (MCPS 16, p. 2; Tr. 363)
54. The Parent enrolled the Student in 45 minutes weekly of pull-out speech-language services through the [REDACTED] while she attended the [REDACTED]. (MCPS 12; Tr. 357, 359) The Parent is charged separately for that service. (Tr. 386)

²³ A [REDACTED] system involves the teacher using a [REDACTED] being delivered directly to a student's [REDACTED]. (Tr. 666, 698) The [REDACTED] system monitors and adjusts to the [REDACTED] in a room. (Tr. 828) The [REDACTED] can also be used in small groups by placing it on the table, or it may be worn by another student for peer-to-peer work. (Tr. 829-830)

²⁴ A [REDACTED] the teacher's voice, via a [REDACTED] to the entire classroom. (Tr. 665)

55. [REDACTED], a speech-language pathologist who worked directly with the Student, provides those services. [REDACTED] also worked with the Parent and [REDACTED] to accommodate the Student's [REDACTED] at the [REDACTED]. (Tr. 397) The Student made progress on her speech-language goals while at the [REDACTED]. (Tr. 402-405; P. 40)
56. While at the [REDACTED], the Student was in small group settings for reading (two students to one teacher = 2:1), writing (7:1) and math (6:1). For science and social studies, she was in a class of 11-13 students with two teachers. (Tr. 150; P. 20, p.3)
57. In the fall of 2023, the Student was not [REDACTED] in some of her classes at the [REDACTED] due to background noise in the larger classes and poor acoustics. (P. 20, p.4; MCPS 20 & 21; Tr. 151, 364, 483-484, 651-652)
58. [REDACTED] observed the Student at the [REDACTED] on November 2, 2023. She assessed the acoustics of the Student's classroom, determined that they were "sub-optimal," and made recommendations. (MCPS 22, p. 2; Tr. 154, 366, 660-661) These recommendations included the following:
- a. A [REDACTED] for [the Student's] larger classrooms – especially Science and Club
 - b. Padding for the bottom of metal chairs to reduce noise
 - c. Ideal placement of [REDACTED] acoustic tiles (hanging near a window)
 - d. The use of an [REDACTED] (see below)²⁵
 - e. Teachers repeating/summarizing any student's comments/questions
 - f. Closed captioning with videos and/or streaming with the [REDACTED].
- (MCPS 22; Tr. 308)
59. The [REDACTED] split the Students' Club²⁶ class into two smaller groups but did not change the size of the science class. (Tr. 153) [REDACTED] were installed in the Student's science class and homeroom. The feet of the metal chairs were padded with tennis balls to reduce noise, and the recess and P.E. teachers used flags to provide visual cues for transitions. The [REDACTED] also installed or moved acoustic tiles in some classrooms. (Tr. 398-400) The [REDACTED] was intentional about where the Student's classes were located; she was not learning in classrooms with large HVAC systems nearby. (Tr. 483)
60. The Student reported to her mother that she [REDACTED], stating: "It's going well. I [REDACTED] everybody." (Tr. 312)
61. The Student experimented with using a [REDACTED] ([REDACTED])²⁷ device at the [REDACTED], but she does not use it consistently. (Tr. 310) It is available to her if she chooses to use it for an assembly or other large gathering. (Tr. 483)

²⁵ Since the [REDACTED] was not used, I have omitted [REDACTED] recommendations for its effective use.

²⁶ Club is the word the [REDACTED] uses for its humanities/social studies course.

²⁷ An [REDACTED] device processes [REDACTED] through [REDACTED] rather than [REDACTED]. (Tr. 827)

62. The Student would benefit from “ [REDACTED]²⁸ in noisy environments to optimize [REDACTED] ability at [REDACTED].” (MCPS 38, p. 4; see *also* Tr. 661) The use of [REDACTED] would help the Student overcome the effects of distance, noise, and reverberation (*Id.*), and it can potentially lessen the fatigue that the Student may experience in a large classroom. (Tr. 672-673)
63. The Student’s [REDACTED] testing showed that her access to [REDACTED] moved from 57% to 99% when the noise-to-sound ratios adjusted by 5 – similar to the effect that would occur if a [REDACTED] were used. (MCPS 38, p. 2; Tr. 839)
64. *The Student has made progress at the [REDACTED].* (Stipulation) Growth areas included phonological awareness, phonographic screening, decoding, sight word reading, writing and oral reading fluency. (Tr. 465-472, 479; P. 19) More progress is needed for the Student to be on grade level in reading, math, and spelling. (Tr. 474)
65. Since enrolling at the [REDACTED], there has been an “enormous improvement” in the Student’s [REDACTED] behaviors at home and in her willingness and ability to read and write. (Tr. 312, 482)
66. The [REDACTED] uses Orton-Gilligham (OG) reading instruction for the Student’s reading intervention. (Tr. 313, 453). OG is an evidence-based reading methodology that is multisensory, direct, explicit, and systematic. (Tr. 453) The [REDACTED] delivers it with fidelity.
67. The Student has benefited from the low student-to-teacher ratio at the [REDACTED]. She engages with her peers in small group learning; she advocates for herself if she [REDACTED] and receives instruction tailored for her. (Tr. 481, 484)
68. The MSDE recognizes the [REDACTED] as an acceptable non-public placement, and there are students at the [REDACTED] who have been placed there by MCPS. (Tr. 438-439)
69. *All students enrolled at [REDACTED] have learning differences.* (Stipulation) It primarily serves students with language-based learning disabilities. (Tr. 437) Other students at the [REDACTED] have [REDACTED], and there are also students who have [REDACTED]. (Tr. 396, 412)
70. A student, whose only prior experience is a small class can develop fewer social skills and they “typically end up staying in those self-contained settings throughout school due to the difference and the gap that continues to widen between them and their typical peers.” (Tr. 810) That gap can impact whether a student should be put in a larger classroom. (*Id.*)
71. The Student would benefit from interacting with non-disabled peers in a diverse population. (Tr. 778)

²⁸ [REDACTED]

DISCUSSION

Legal Framework

The IDEA requires the states to provide a FAPE²⁹ to all children who qualify for special education services.³⁰ 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.”³¹ In order to qualify to receive special education services, the child must be identified under one of the enumerated educational disabilities³² and “by reason thereof, [need] special education and related services.”³³

LEAs meet the federal requirement to provide a FAPE to eligible students through development and implementation of IEPs.³⁴ 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 parents.³⁵ An IEP must be drafted in compliance with a detailed set of procedures.³⁶ It also must contain, among other things, “a statement of the child’s present levels of academic

²⁹ 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 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).

³⁰ 20 U.S.C.A. § 1412.

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

³² 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).

³³ 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).

³⁴ *See M.S. ex rel Simchick v. Fairfax Cty. 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.

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

³⁶ 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.”³⁷

“The IDEA cannot and does not promise ‘any particular [educational] outcome.’”³⁸ But, to ensure that an eligible child receives FAPE, an IEP must be reasonably calculated to yield meaningful educational benefit to the student.³⁹ 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,⁴⁰ 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.⁴¹ 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. §§ 1414(d)(1)(A)(i)(I)-(IV), (d)(3)(A)(i)-(iv).”⁴²

Further, “meaningful benefit” cannot be de minimis or slight.⁴³ Rather, a student’s progress must be “appropriately ambitious in light of [the child’s] circumstances.”⁴⁴ Grade-to-grade advancement may be “appropriately ambitious” for students capable of grade-level work

³⁷ 20 U.S.C.A. § 1414(d)(1)(A)(i).

³⁸ *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 398 (2017).

³⁹ *Bd. of Educ. v. Rowley*, 458 U.S. 176, 187-204 (1982).

⁴⁰ *See 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).”). In this case, part one of *Rowley*’s two-part test is not implicated as there were no procedural challenges to the IEP’s development or implementation and no assertion that the school system failed to comply with the procedural safeguards in the IDEA.

⁴¹ “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.” *Endrew F.*, 580 U.S. at 399.

⁴² *Id.* at 399, 400 (citations in original).

⁴³ *Id.* at 402.

⁴⁴ *Id.*

who are fully integrated in a regular classroom, but that is not the case for all students.⁴⁵ 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.⁴⁶

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 least restrictive environment (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.⁴⁷ 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.”⁴⁸

Parents who believe that an LEA is not offering a FAPE to their child may unilaterally place them in a private/non-public school and thereafter seek reimbursement.⁴⁹ In order to receive reimbursement for tuition resulting from the unilateral private school placement, an Administrative Law Judge (ALJ) must find that: 1) that the school district has denied a FAPE to the student or committed another substantive violation of IDEA; 2) that the parents' private school placement is appropriate; and 3) that the equitable factors in the particular case do not

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ 34 C.F.R. § 300.115.

⁴⁸ 34 C.F.R. § 300.114(a)(2).

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

preclude the relief.⁵⁰ A private placement need not satisfy all of the procedural and substantive requirements of the IDEA.⁵¹ The standard is whether the parental placement was reasonably calculated to provide the child with educational benefit.⁵²

Burden of Proof

The Parent bears the burden of showing that MCPS denied the Student a FAPE, that the Student's unilateral placement at the [REDACTED] is appropriate, and that she is entitled to tuition reimbursement and any other relief sought under the IDEA.⁵³ The standard of proof in this case is a preponderance of the evidence.⁵⁴ 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.⁵⁵

⁵⁰ *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 Act.' 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).

⁵¹ 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). *See also, M.S. ex rel. Simchick*, 553 F.3d at 369-370 ("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.").

⁵² *Carter*, 510 U.S. at 365.

⁵³ *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005); 34 C.F.R. § 300.502(b)(2)(i).

⁵⁴ State Gov't § 10-217; COMAR 28.02.01.21K(1).

⁵⁵ *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

Analysis⁵⁶

*Credibility of the witnesses*⁵⁷

School officials should be afforded deference based on their expertise, and the IDEA “vests these officials with responsibility for decisions of critical importance to the life of a disabled child.”⁵⁸ And, although MCPS does not bear the burden of proof, those same officials “may fairly [be] expect[ed]...to be able to offer a cogent and responsive explanation for their decisions.”⁵⁹ Yet, this respect and deference is not limitless.⁶⁰ Therefore, “the fact-finder is not required to conclude that an IEP is appropriate simply because a teacher or other professional testifies that the IEP is appropriate.”⁶¹ “Indeed, if the views of school personnel regarding an appropriate educational placement for a disabled child were conclusive, then administrative

⁵⁶ My findings, analysis, and legal conclusions are based upon consideration of the parties’ arguments, my assessment of the credibility of the witnesses, and the documentary evidence. I considered all testimonial and documentary evidence and gave it the weight it was due, regardless of whether I have recited, cited, referenced, or expressly set forth each piece of evidence in this Decision. *See, e.g., Mid-Atl. Power Supply Ass’n v. Md. Pub. Serv. Comm’n*, 143 Md. App. 419, 442 (2002) (emphasizing that “[t]he Commission was free to accept or reject any witness’s testimony” and “the mere failure of the Commission to mention a witness’s testimony” does not mean that the Commission “did not consider that witness’s testimony”); *Bouabid v. Charlotte-Mecklenburg Schools*, 62 F. 4th 851, 859 (4th Cir. 2023) (“the ALJ in an IDEA case need not ‘explain in detail its reasons for accepting the testimony of one witness over that of another.’”) (citation omitted).

⁵⁷ I include this section to address global credibility assessments that apply to all the remaining sections. Credibility determinations relevant to only one section will be addressed in that section.

⁵⁸ *Andrew F.* 580 U.S. at 404; *see also Lessard v. Wilton-Lyndeborough Coop. Sch. Dist. (Lessard II)*, 592 F.3d 267, 270 (1st Cir. 2010) (“The standard of review is thus deferential to the educational authorities, who have ‘primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child’s needs.’”); *Tice v. Botetourt Cty. Sch. Bd.*, 908 F.2d 1200, 1207 (4th Cir. 1990) (a judge “should be reluctant . . . to second-guess the judgment of education professionals.”)

⁵⁹ *Andrew F.*, 580 U.S. at 404.

⁶⁰ *See Cnty. Sch. Bd. of Henrico Cnty. v. Z.P.*, 399 F.3d 298, 307 (4th Cir. 2005) (“Nor does the required deference to the opinions of the professional educators somehow relieve the [judge] of the obligation to determine as a factual matter whether a given IEP is appropriate.”).

⁶¹ *Id.*; *see also Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1476 (9th Cir. 1993).

hearings conducted by an impartial decisionmaker would be unnecessary”⁶² and “would render meaningless the entire process of administrative review.”⁶³

I found the testimony of the Parent’s witnesses, particularly [REDACTED], more persuasive than the testimony of MCPS witnesses for several reasons. As MCPS acknowledged during closing argument, the IEP team accepted all the reports, recommendations, and recommendations of the Parent’s witnesses with one exception – the Student’s need for small classrooms for specialized academic instruction. (Tr. 998) Also, MCPS’ witnesses developed and defended an IEP that considered the Student’s unique disabilities but did not consider her unique circumstances.

On the first point, there was no dispute that the MCPS team did not evaluate the Student. That fact is not dispositive because the IDEA contemplates that a school will “review existing evaluation data,”⁶⁴ and may determine that no more data is needed to create an adequate educational program tailored to the student’s needs.⁶⁵ “When ‘existing ... evaluations and information provided by the parents’ and ‘observations by teachers’ and other professionals provide the IEP Team with a reasonable picture of the student’s skills and needs, the school may finalize an IEP without any further testing.”⁶⁶ Yet, when the IEP team builds a comprehensive and detailed IEP based on the data presented by the Parent’s experts and a single

⁶² *Id.*

⁶³ *Sch. Bd. of Prince William Cty., Va. v. Malone*, 762 F.2d 1210, 1217 (4th Cir. 1985) (citation omitted).

⁶⁴ 20 U.S.C.A. §§ 1414(a)(1)(A), (c)(1)(A)

⁶⁵ *Id.* § 1414(c)(4)

⁶⁶ *Z.B. v. Dist. Of Columbia*, 888 F.3d 515, 523 (D.C. Cir. 2018), *citing* 20 U.S.C.A. §141(c)(1)(A)-(B), (c)(4).

recommendation is rejected, the school witnesses must provide a cogent explanation for why this lone recommendation was rejected.

MCPS' witnesses addressed that question when asked. Each testified that the small classrooms for specialized academic instruction were rejected because it was not the LRE. Each explained the general benefit to any student of a larger group of peers so that the student would be exposed to diverse ideas and learning opportunities. MCPS' witnesses did not explain why this particular Student should have larger classrooms for her academic subjects despite the experts', upon whose reports MCPS relied upon to draft the IEP, recommendations to the contrary.

For example, [REDACTED], MCPS' psychologist, who had significant expertise and a sincere and admirable commitment to having every [REDACTED] student thrive in school, testified that "there was "no" evidence/data shown at the meeting that she required small group instruction in order to access the curriculum." (Tr. 779 "evidence", 781 "data") Yet, [REDACTED] evaluation, the reports from the [REDACTED] and [REDACTED], the parental input, and the Student's [REDACTED] reports all contained statements, data, and evidence that the Student did not [REDACTED] in large group settings and was losing ground academically. I could not reconcile that conclusory testimony from [REDACTED] with the evidence in the record and the *data* that MCPS relied on when drafting the IEP.

I found the testimony of [REDACTED], MCPS' educational [REDACTED], unpersuasive for an additional reason. The nature and tone of [REDACTED] testimony convinced me that she was not neutral when she applied her expertise to this Student's situation. [REDACTED] had strong opinions that the Parent was "overly involved" (Tr. 867), that the Parent was inappropriately playing the role of a [REDACTED] teacher at the [REDACTED], and that the Student should be embracing the use of

assistive technology across all settings. (Tr. 878) She also stated, despite never meeting the Student, that she was better able to opine on the Student's needs for assistive technology than [REDACTED], the pediatric and educational [REDACTED] t who worked with the Student for years. (Tr. 879) [REDACTED] based this assessment on her belief that [REDACTED] was not an educational [REDACTED].

(*Id.*)

On the second point, while the MCPS' witnesses knowledgeably explained that they can and do successfully serve students with similar profiles to the Student in the home school setting, I find that they did not individualize the assessment of the LRE to this Student's unique circumstances. Each MCPS witness emphasized the Student's disabilities and learning profile. They agreed that the Student has "a complex and unique learning profile." (P. 27, p. 4) The IEP's present levels of performance and goals reflected that complexity and addressed her needs based on her disabilities. As will be addressed below, it was there that the individualization ended. MCPS witnesses did not testify that they considered her unique circumstances, in addition to her unique disabilities. Those circumstances include the following: (1) the Student had never received academic instruction in a classroom larger than 12 students, and (2) the Student had no experience with the assistive technology relied on in the IEP.

Because the MCPS witnesses generally testified about other students with similar disabilities ability to access the curriculum and did not address how this Student's unique circumstances impacted the LRE analysis, I find that they did not offer a "cogent and responsive explanation for their decision" on LRE and I do not defer to their conclusion that, because the

IEP reflected a LRE for other students with similar learning profiles, it was also the LRE for this Student.

As is reflected in the findings of facts, I placed greater weight on the testimony from [REDACTED]. She conducted extensive testing of the Student and applied her expertise neutrally. I do not believe that her testimony was biased because the Parent paid her to complete the evaluation. MCPS relied on her comprehensive testing and review of records to inform the present levels of performance, the need for special education services to address a specific learning disability, [REDACTED], and [REDACTED], and to inform appropriate goals for the Student. Her opinions were supported by ample data in her testing and the information she reviewed from multiple sources. She readily acknowledged that it was not her place to recommend a particular school. Still, she was unequivocal in her assessment that the Student needed a “full-time specialized special education setting.” (Tr. 111) Based on the Student’s learning profile and previous educational experiences, she cogently explained why the Student could not access good language models in a large classroom. (Tr. 318-319)

The December 13, 2023 IEP’s provision of FAPE

The issue on the December 13, 2023 IEP is a narrow one. The parties entered into the following stipulation: *“The only disagreements regarding the IEP were the lack of inclusion of a goal related to [REDACTED], the amount of special education called for in the IEP, and the recommendation that the Student have any of her special education services provided in the general education classroom.”*

The dispute concerning a goal related to [REDACTED] was not raised in the Due Process Complaint, and the Parent did not include it in the list of issues agreed upon at the prehearing conference. Nevertheless, given the stipulation, I will address it briefly. The IEP

team did not include an [REDACTED] goal because the data showed that the Student's [REDACTED] did not manifest at school. (Tr. 560) The team did include support for [REDACTED] in the services section of the proposed IEP. (P. 27, p. 33) It provided daily social/behavioral support from the Student's teachers in the form of strategies for coping with [REDACTED]. (Tr. 216; P. 27, p. 33) These supports acknowledged the need for the Student's teachers to be aware of her [REDACTED]. The decision not to include a goal for [REDACTED] was supported by ample data that the Student's [REDACTED] did not interfere with her functioning at school. The lack of an IEP goal for [REDACTED] did not result in an IEP that was not reasonably calculated to enable the child to make meaningful educational benefit in light of the child's unique individual circumstances.

The remaining disputes,⁶⁷ the amount of special education called for in the IEP, and the recommendation that the Student has any of her special education services provided in the general education classroom are related and another way of framing the issues agreed to by the parties at the prehearing conference and set out in the Issue section above. I will address them together and determine that the Parent has met her burden of proof that the December 13, 2023 IEP did not provide a FAPE.

The December 13, 2023 IEP places the Student in the general education setting for 88.83% of the school day. (Tr. 664, 941; P. 27, p. 49) For approximately half of that time, or 44.4% of the school day, the Student is in the general education setting without special education

⁶⁷ The Parent also raised the question during the [REDACTED] whether MCPS would have complied with the IEP goal of delivering reading instruction (decoding and phonemic processing) that was multi-sensory, evidence-based, and delivered with fidelity. (P. 27, p. 47; Tr. 170) This was not raised in the Due Process Complaint, and I agree with MCPS that this is a "red herring." Even so, the evidence established the facts determined in finding fact number 43 above.

support. During that period, MCPS contemplates that she will use assistive technology, specifically a [REDACTED]. (*Id.*) The Student will spend the remaining 11.17 % of her school day in small group reading or [REDACTED] interventions outside of the general education classroom. (*Id.*) As the Student would have been the only student at [REDACTED] receiving [REDACTED] services, I assume she would have received these services one-on-one. (*See* Tr. 857) The small group reading intervention typically has between one and five students (Tr. 618) A typical general education classroom at [REDACTED] has twenty-four students. (Tr. 178, 596)

The data the IEP team considered supported a determination that a more restrictive setting, with more intensive services, was needed in order for the Student to access the curriculum. The reports from the [REDACTED], where the Student attended since infancy, established that she was falling behind her peers in the general education environment despite the extensive [REDACTED] and speech-language services, (Tr. 148; P. 17), and work with a tutor for reading and math. (Tr. 291-293). The Parent then engaged the services of an academic therapist, [REDACTED] who delivered a one-on-one pull-out intervention focused on a program of phonics targeting phonological processing and phonemic awareness. (Tr. 43, 67) Despite the intervention, consisting of over fifty pull-out sessions with [REDACTED], the Student only made incremental progress. (Tr. 42; P. 17, p. 3)

[REDACTED] reviewed this information, and it contributed to her recommendations for the Student. In addition, [REDACTED] performed an extensive assessment of the Student. She administered the following assessments: Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V), Test of Variables of Attention, Visual Continuous Performance Test (TOVA-8), Delis Kaplan Executive Functioning System (DKEFS), Receptive, Expressive and Social Communication Scales (RESCA-E), Test of [REDACTED] Processing (TAPS-4), Wide Range

Assessment of Memory and Learning, 3rd Edition (WRAML-3), Rey Complex Figure Test (RCFT), Memory Validity Profile (MVP), Wechsler Individual Achievement Test, Fourth Edition (WIAT-4), Test of Orthographic Competency (TOC), Gray Oral Reading Test, Fifth Edition, Form B (GORT-5), and Conners Comprehensive Behavior Rating Scale, Fourth Edition (CCBRS). She also reviewed teacher input from the [REDACTED], conducted a clinical interview with the Parent, and [REDACTED], the Student's father, a clinical interview with the Student, and reviewed records, including a Comprehensive Speech-Language-Literacy Evaluation, [REDACTED] (P. 8) and an Academic Therapy Report prepared by [REDACTED]. (P. 11)

[REDACTED] convincingly explained in her report and during the hearing how the data she reviewed provided the basis for her recommendations. For example, when assessing the Student's receptive language, [REDACTED] compared the Student's performance on the [REDACTED] figure-ground subtest from the TAPS-4 with the RESCA. The subtest is designed to measure how well the Student could "[REDACTED] by answering comprehension questions (e.g., "Dad said to let the dog out before eight o'clock. When should you let the dog out?")." (P. 18, p. 8) [REDACTED] [REDACTED]. (Id.) This data supported [REDACTED] [REDACTED] conclusion that "[REDACTED], [the Student] may have difficulty [REDACTED] [REDACTED]" and that classroom accommodations were recommended to "ensure that subtle [REDACTED] difficulties are mitigated." (Id.)

Similarly, [REDACTED] considered the Student's [REDACTED] and verbal memory using the WRAML3 and compared it to her recall of verbal information from the WISC. (P. 17, p.10) She concluded that "[i]n a *quiet, non-distracting environment*, her ability to encode and recall

information is average.” (*Id.*) (emphasis added) As documented in her report, at the time of [REDACTED]’s testing in June 2023, the Student’s basic reading skills were below average, her decoding skills were significantly below average, and her orthographic fluency and writing fluency were low. (Tr. 57; P. 17, p. 32-33) Based on her review, [REDACTED] concluded:

Current test data indicate that [the Student] requires more than small classes, individualized attention, and therapy outside of school hours. Test data indicate that her needs cannot be met in a less restrictive educational setting. This delayed neural “rewiring” can be successfully treated with intensive phonics instruction designed for students with reading difficulties, however, some students require a specialized program to make an adequate level or rate of progress. [The Student’s] [REDACTED] and [REDACTED] cannot be successfully remediated at this time without a more intensive setting.

(P. 17, p. 17) Based on the data, the coherent analysis, and [REDACTED] careful explanation during the hearing about how her assessments and review of records informed her recommendations, I accept as persuasive her opinion that, for this Student, characteristics of an appropriate placement include reading ([REDACTED] remediation/comprehensive phonics) and writing ([REDACTED]) interventions in a small group, quiet setting with frequent curriculum-based measurements. (Tr. 74, 77; P. 17, p. 20) I also accepted her opinion that small group special education instruction is necessary for the Student’s academics because she has intensive, urgent language-based learning needs that did not respond to previous interventions provided by the [REDACTED] and [REDACTED]. (Tr. 78)

Additionally, [REDACTED] opinion that the Student could not access the curriculum in a large general education classroom that has reverberation and ambient noise (Tr. 75) was corroborated by the data from the Student’s speech-language assessments and [REDACTED] evaluations. The IEP team and [REDACTED] reviewed the August 1, 2022, comprehensive speech-language literacy evaluation from the [REDACTED]. (P. 8) Those evaluators administered the following assessments: Clinical Evaluation of Language

Fundamentals-5 (CELF-5), Phono-Graphix Screener: Blending, Segmenting, Manipulation and Code Knowledge, Word Identification and Spelling Test (WIST): Read Regular Words, Read Irregular Words, Spell Regular Words, Slosson Oral Reading Test-R3 (SORT-R3), Gray Oral Reading Tests-5 (GORT-5) Form A, Oral and Written Language Scales II (OWLS-II): Reading Comprehension Scale, Form A, OWLS-II: Written Expression Scale, Form B and Rapid Automatized Naming Tests (RAN). The assessors reviewed additional reports as follows: July 2022 Teacher [REDACTED] email about current reading instruction, May 2022, [REDACTED] Evaluation, [REDACTED] by [REDACTED], Pediatric and Educational [REDACTED], September 2021 Speech & Language Evaluation, [REDACTED] by [REDACTED], [REDACTED] November 2021, [REDACTED] by [REDACTED], [REDACTED], [REDACTED], and January 2021 Chattering Children Cognitive Assessment by [REDACTED], [REDACTED]. The report explained the function of each test and how the Student's results informed their conclusions. They noted that the Student "is at a critical phase in reading acquisition and will need a structured literacy speech to print, targeted word reading approach that focuses on phonemic awareness proficiency, advanced code knowledge for phoneme grapheme bonding and daily practice reading in controlled text at a frequency and intensity that delivers progress." (P. 8, p. 11) The assessors recommended small group instruction for reading.

(*Id.*)

[REDACTED] evaluation from September 2022 is attached to the [REDACTED] report and was reviewed by [REDACTED] and the IEP team. That evaluation involved the following assessments: Test of Word Finding-Second Edition (TWF-2), Goldman-Fristoe Test of Articulation, Third Edition (GFTA-3), Comprehensive Assessment of Spoken Language, Second Edition (CASL-2), Peabody Picture Vocabulary Test,

Fifth Edition (PPVT-5) - Form B, Expressive Vocabulary Test, Third Edition (EVT-3) - Form B and a classroom speech and language sample. The data from these assessments led the assessor to recommend “integration in an oral setting with a small group of developmentally matched [REDACTED] peers” and a “low student-to-teacher ratio in order to learn new information, gain confidence, and have frequent opportunities to participate.” (P. 10, p. 10)

The IEP team also reviewed the May 11, 2023, [REDACTED] evaluation from the [REDACTED]. (MCPS 35, P. 14) That report also corroborates [REDACTED] opinions based on the data collected by [REDACTED], a Pediatric and Educational [REDACTED]. [REDACTED] noted that the Student’s “thresholds and speech perception in quiet are stable,” and that her “[l]istening in noise scores indicate that she can [REDACTED] at [REDACTED] to [REDACTED] and in [REDACTED] environments.” (P. 14, p. 3) [REDACTED] recommended that the Student “utilize [REDACTED] [REDACTED] in adverse listening conditions to improve the [REDACTED] to [REDACTED] and overcome the effects of distance, [REDACTED], and [REDACTED].” (*Id.*)

Based on the above, I conclude that there was ample data and evidence presented to the IEP team that the Student needed intensive services in a small classroom with low student-to-teacher ratios for her academics. As set out above, I do not accept the opinions of MCPS experts on this point because they discounted this data, suggesting even that no such data existed. Nor did they explain in detail why they reached a different conclusion based on this data. Rather, the witnesses relied upon the fact that the MCPS has successfully educated other students with similar learning profiles using similar IEP services and supports. No witness testified that the Student’s prior or current class size and use of assistive technology was relevant or informed the construction of the IEP. I was left with the impression that the present levels of performance and

the goals were individualized to the Student, but the services and supports and placement were not.

The proposed IEP requiring the Student to remain in the large, general education environment for a large portion of her school day without services, relied on the Student's facility with assistive technology despite the unique circumstance that this Student had no experience with this device. In doing so, I conclude that the IEP team considered her unique disability but not her unique circumstances. While the IEP did include intensive services with a [REDACTED] teacher for one hour once a week, the IEP did not set out any transition for the Student from the small classrooms and [REDACTED] technology that was familiar to her to a large classroom with unfamiliar technology.

As the IEP team relied upon the same data and feedback that formed the basis for [REDACTED] [REDACTED] opinions, and because the IEP team did not consider the Student's prior educational and assistive technology experience, I find that the MCPS witnesses did not provide "a cogent and responsive explanation for their decision" to reject [REDACTED] recommendations for small group special education instruction. I find that without those services, the December 13, 2023 IEP is not reasonably calculated to enable the child to make progress appropriate in light of her circumstances.⁶⁸

I reach this conclusion despite the imperative that a disabled child be educated in the LRE to the "maximum extent appropriate."⁶⁹ Courts acknowledge that the "mainstreaming requirement of the IDEA can at times be in tension with the other requirements in the IDEA that schools provide programming designed individually to meet the specific needs of each child."⁷⁰

⁶⁸ 20 U.S.C.A. § 1400(d)(1)(A); *Andrew F.*, 580 U.S. at 388, 399, 403-404; *Z.B.*, 888 F.3d at 524; *Schaffer*, 554 F.3d at 477; *A.B.*, 354 F.3d at 327.

⁶⁹ 34 C.F.R. § 300.114(a)(2)

⁷⁰ *Los Angeles Unified School District v. A.O.*, 92 F. 4th 1159, 175 (9th Cir. 2024).

In the Fourth Circuit, the courts have acknowledged that “the IDEA does not inexorably command placement with non-disabled peers. The “loadstar” of the LRE analysis is the “*environment appropriate for the child's education.*”⁷¹ Since 1997, the Fourth Circuit has suggested a three-part test to inform the LRE analysis. “[M]ainstreaming” is not required where “(1) the disabled child would not receive an educational benefit from mainstreaming into a regular class; (2) any marginal benefit from mainstreaming would be significantly outweighed by benefits which could feasibly be obtained only in a separate instructional setting; or, (3) the disabled child is a disruptive force in a regular classroom setting.”⁷² This Student is never disruptive, so part three is not relevant. With respect to the other parts of the test, [REDACTED] data-based evaluation and opinion and consideration of the Student’s educational and assistive technology experience established that the Student, at this point in her academic career, requires a separate instructional setting in order to feasibly obtain educational benefit and that the Student would not receive an educational benefit from mainstreaming into the general education for 88.8% of her time in school.

The MCPS articulated compelling reasons why an inclusive, general education setting promotes learning and socialization for most children. These benefits are not discounted by this decision, and the evidence established that the Student would benefit from interacting with non-disabled peers in a diverse population. (Tr. 778). I anticipate, as did [REDACTED], that a specialized setting for academic instruction “will not be the LRE for her forever.” (Tr. 409). I find that while the Student could receive educational benefits by interacting with non-disabled

⁷¹ *Loudon County v. Bunkua*, 2024 WL 22744992 (E.D. Va., 2024), quoting, *R.F. v. Cecil Cnty. Pub. Sch.*, 919 F.3d 237, 247 (4th Cir. 2019) (emphasis in original)

⁷² *Hartman by Hartman v. Loudon Cnty. Bd. of Educ.*, 118 F.3d 996, 1001 (4th Cir. 1997)

peers in the non-academic portions of her day, this benefit is “significantly outweighed” by the benefits feasibly obtained in a separate instructional setting.⁷³

In addition, the MCPS presented uncontested evidence that it has a continuum of placements, including the center-based program at [REDACTED], which could address the Student’s need for small-group, specialized instruction, while affording her the opportunity to interact with non-disabled peers. Therefore, while I find that the Parent had met her burden with respect to the IEP and placement proposed, I find that the Parent has not established that “declining to place the Student at the [REDACTED]”⁷⁴ resulted in a denial of FAPE.⁷⁵

Appropriateness of the [REDACTED]

The parties stipulated that the “*Student has made progress at the [REDACTED]*” and that “[a]ll students enrolled at [REDACTED] have learning differences.” The question of whether the [REDACTED] is appropriate for the Student’s needs is a fact-driven one. Based on the findings of facts set out above, I find that the [REDACTED] was not appropriate in the first semester of the Student’s third-grade year but was appropriate in the second semester.

I agree with the MCPS witnesses, particularly [REDACTED], that the [REDACTED] did not initially provide an appropriate learning environment to meet the Student’s [REDACTED]. This opinion was corroborated by documentary evidence and the testimony of [REDACTED] and [REDACTED], showing extensive interventions, conversations, and consultations to address the Student’s [REDACTED] needs. [REDACTED] personally observed the poor acoustics, noting that the Student received instruction with the door open to the noisy hallway. During and before the

⁷³ MCPS presented evidence that its [REDACTED] H program at [REDACTED] is exceptional and would have provided the opportunity for the Student to interact with non-disabled peers in a more restrictive setting. [REDACTED] explained that it has small classroom academic instruction for [REDACTED] students and provides intensive small group sessions for students with [REDACTED] and [REDACTED]. Students in the [REDACTED] center at [REDACTED] interact with [REDACTED] in specials, lunch, recess, and other non-academic periods throughout the day.

⁷⁴ See part 2 of Issue II set out above.

⁷⁵ My reasoning for this finding is set out in the equitable considerations section below.

December 13, 2023 IEP meeting, [REDACTED], the [REDACTED] speech-language pathologist, advised [REDACTED] that the [REDACTED] was engaged in the process of trial and error. [REDACTED] also acknowledged that during the fall semester, the [REDACTED] experimented with different strategies to support the Student's [REDACTED] needs.

The evidence established that the Student was [REDACTED] the instruction in some of her classes because of background [REDACTED]. (P. 20, p.4; MCPS 20 & 21; Tr. 151, 364, 483-484, 651-652) [REDACTED], the Student's pediatric and educational [REDACTED] with the [REDACTED], observed the Student at the [REDACTED] on November 2, 2023. She assessed the acoustics of the Student's classrooms, determined that they were "sub-optimal," and made recommendations including: a sound field system for the Student's larger classrooms – especially Science and Club, padding for the bottom of metal chairs to [REDACTED], ideal placement of [REDACTED] ([REDACTED]), the use of an [REDACTED], teachers repeating/summarizing any student's comments/questions and closed captioning with videos and/or streaming with the [REDACTED]. (MCPS 22, p. 2; Tr. 154, 366, 308, 660-661)

In response to these concerns, staff at the [REDACTED] worked closely with the Student's providers and split the Student's social studies class into two smaller groups but did not change the size of the science class. (Tr. 153) [REDACTED] were installed in the Student's science class and homeroom. The metal chairs were padded with tennis balls to reduce noise, and the recess and P.E. teachers used flags to provide visual cues for transitions. [REDACTED] also installed or moved acoustic tiles in some classrooms. (Tr. 398-400) [REDACTED] was intentional about where the Student's classes were located, and once these changes were implemented, she was not learning in classrooms with large HVAC systems nearby. (Tr. 483)

Although the Student does not use the assistive technology recommended by [REDACTED], she reported to her mother that she c[REDACTED] hear, stating: “It’s going well. [REDACTED].” (Tr. 312) Once these changes were made, the [REDACTED] became an appropriate placement for the Student and the Student made significant progress. Growth areas for the Student at the [REDACTED] [REDACTED] included phonological awareness, phonographic screening, decoding, sight word reading, writing, and oral reading fluency. (Tr. 465-472, 479; P. 19) Since enrolling at the [REDACTED], there has been an “enormous improvement” in her [REDACTED] at home and in her willingness and ability to read and write. (Tr. 312, 482) In addition, the Student has benefited from the low student-to-teacher ratio at the [REDACTED]. She engages with her peers in small group learning; she advocates for herself if she cannot [REDACTED] instruction tailored for her. (Tr. 481, 484)

Like an IEP, a parental placement is appropriate if it is “reasonably calculated to enable the child to receive educational benefits.”⁷⁶ While progress in a particular academic setting is not dispositive of the question of appropriateness, the Fourth Circuit has concluded that, in some situations, evidence of *actual progress* may be relevant when determining the appropriateness of the placement.⁷⁷ In addition to the parties' stipulation, the data and reports from the [REDACTED] show that she has progressed on her goals and [REDACTED] is now a setting that will and has allowed the Student to receive educational benefit. (P. 32, 33, 34, 34A)

While a parent is not required to prove that the private education services are being provided in the LRE, I may consider the restrictive nature of a placement in determining whether the placement was appropriate.⁷⁸ [REDACTED] is a restrictive setting, and it does not allow

⁷⁶ *M.S. ex rel. Simchick*, 553 F.3d at 319.

⁷⁷ *Cf. M.S. ex rel. Simchick*, 553 F.3d at 327, citing, *M.M. ex rel. D.M. v. Sch. Dist. of Greenville Cty.*, 303 F.3d 523, 532 (4th Cir. 2002) (actual progress is one factor relevant to a determination of whether an IEP is appropriate).

⁷⁸ *Id.* at 369-370.

the Student the opportunity to interact with non-disabled peers. The Student would benefit from such interaction. (Tr. 778) Yet, upon completion of the IEP in December of 2023, no other placement was available that would allow the Student to receive academic instruction in a small group *and* afford her the opportunity to interact with non-disabled peers. Therefore, I conclude that the credible testimony and exhibits establish that the [REDACTED], beginning in January of 2024, is an appropriate placement that meets the Student's educational and [REDACTED] needs and allows her to make educational progress.

Equitable Considerations

The Parents requested reimbursement for the [REDACTED] for the 2023-2024 school year and prospective placement at the [REDACTED]. Based on the evidence presented, I find that the Parent has not met the burden of proof for reimbursement for the fall semester at the [REDACTED] or for prospective placement at the [REDACTED]. I also find that the Parent has met her burden of proof for reimbursement for the spring semester at the [REDACTED].

Fall Semester

Two considerations inform this analysis. First, as set out above, the [REDACTED] was not an appropriate placement for the Student in the fall semester. Second, the Parent referred the Student to MCPS on August 21, 2023.⁷⁹ The MCPS IEP team moved promptly to convene a Child Find/Initial Eligibility IEP meeting. That meeting was adjourned by agreement and MCPS offered to schedule the IEP drafting meeting within the required timeline,⁸⁰ but [REDACTED] was not available. The Parent agreed to extend the timeline to December 13, 2023. The Parent requested funding for the [REDACTED] at the December 13, 2023 meeting.⁸¹ The Parent applied to

⁷⁹ See 20 U.S.C.A. § 1414(a)(1)(B); 34 C.F.R. §300.301(b); COMAR 13A.05.01.04(A)(2)(a).

⁸⁰ COMAR 13A.05.01.06A(1).

⁸¹ Because the Student was not being removed from public school, the notice requirements found in 34 C.F.R. Section 300.148(d) do not apply.

the [REDACTED] in January of 2023 and the Student was accepted and enrolled for the 2023-2024 school year. While the Parent was not considering a public school option when the Student enrolled at the [REDACTED], the Parent could have referred the Student to the MCPS earlier. Before August 21, 2023, MCPS was not required to develop an IEP for the Student. Based on the timeline and the extension afforded to the Parent so that [REDACTED] could attend the December 13, 2023 meeting, MCPS was compliant with its obligation to develop an IEP. It would not be equitable to require the MCPS to reimburse the Parent for the fall semester, given this timeline.

Spring Semester

Once a Parent meets the burden on the first two requirements of a reimbursement claim, the Supreme Court’s language in *Forest Grove v. T.A.* suggests a presumption of a full reimbursement award while allowing that a court retains discretion to “reduce the amount of a reimbursement award if the equities so warrant.”⁸² Equitable considerations are, by their nature, a case-specific inquiry.⁸³ However, some guidance is available, including the regulation that the cost of reimbursement of a unilateral private school placement may be reduced or denied “[u]pon a judicial finding of unreasonableness with respect to actions taken by the parents.”⁸⁴ Other courts have used the language of good faith or bad faith on the part of the Parent to guide a

⁸² 557 U.S. at 247.

⁸³ *Lopez–Young v. Dist. of Columbia*, 211 F. Supp. 3d 42, 57 (D.D.C. 2016) (citations omitted) (An administrative adjudicator “has broad discretion to fashion a remedy where he finds that a school district has denied a child a FAPE. Sitting in equity, [an administrative adjudicator’s] authority is flexible and case specific).

⁸⁴ 34 C.F.R. § 300.148(d).

equitable determination.⁸⁵ MCPS argues that the Parent “must have seriously considered the placement recommendation”⁸⁶ in order to demonstrate good faith. The Parent asserts that cooperating with the IEP process is required but that seeking funding for a preferred private placement is not bad faith. The federal district courts have conflicting opinions on the extent to which a Parent’s advocacy for their preferred placement during the IEP process demonstrates a lack of good faith. I agree with the reasoning set out by Judge Messitte in *Kitchelt*:⁸⁷

At oral argument, counsel for MCPS referred to the Kitchelts' attempt to “play the system,” suggesting that they were committed to send Joey to Ivymount come what may and as a result should at most receive only limited reimbursement.

The Court has had occasion to express its antipathy to this argument in the past. Parents are taxpayers. Their children are entitled to a FAPE. They may honestly believe from the beginning (and may ultimately be able to demonstrate) that the best education the public school system can give is not good enough, *i.e.* is not "appropriate" within the meaning of FAPE.

The fact that the parents may hold this view cannot *ipso facto* amount to an automatic disqualification, so long as they continue in good faith (*e.g.* no intentional delays, no obstructions) to participate in the development of an IEP and placement in the public school system. As always, the parents run the risk of being proved wrong about the school system's ability to provide a FAPE, in which case they will be denied reimbursement for a unilateral placement.

⁸⁵ See *M.M. ex rel. D.M.*, 303 F.3d at 535 (affirming that “it would be improper to hold [the] School District liable for the *procedural violation* of failing to have the IEP completed and signed, when that failure was the result of [the parents’] lack of cooperation” and further noting that, “It is significant that there is no evidence that [student’s] parents would have accepted any FAPE offered by the District that did not include reimbursement for the [current private] program.”) (emphasis added); *Leggett v. District of Columbia*, 793 F.3d 59 (D.C. Cir. 2015). (“Leggett’s actions imposed no impediments to DCPS fulfilling its statutory responsibilities.”); *M.C. v. Starr*, No. DKC 13-3617, 2014 WL 7404576, at *12 (D. Md. Dec. 29, 2014) (affirming ALJ holding that parents participated in the IEP process in bad faith where they did not seriously consider any placement other than the present residential placement); *I.O. v. Smith*, PWG-16-3866, 2018 WL 4599673, at *10 (Sept. 25, 2018, D. Md.) (affirming the ALJ’s denial of reimbursement where, among other findings, the ALJ “found that “[i]t was [the Parents’] strong preference for Ivymount that drove the Parents’ actions in this case.”); *Kitchelt ex rel. Kitchelt v. Weast*, 341 F. Supp.2d 553, 557 (D. Md. 2004) (The mere fact that parents may enroll their child in a private school while the IEP process is underway -- typically in the spring or summer for the fall term -- is not by itself proof of bad faith on their part.”); *Justin G. v. Board of Education of Montgomery County*, 148 F. Supp. 2d 576, 584-6 (D. Md. 2001) (clarifying that when parents take “an adversarial or uncooperative stance in advocating for their child’s right to a FAPE” that does not constitute bad faith or prohibit them from relief.); *Sarah M. v. Weast*, 111 F. Supp. 2d 695 (D. Md. 2000) (finding that parents cannot be “faulted” for seeking a private placement, as long as they are “engaging in developing an IEP.”).

⁸⁶ MCPS Memorandum of Authorities.

⁸⁷ *Kitchelt*, 341 F.Supp.2d at 558, fn. 1.

A further observation is in order. The mere fact that parents may enroll their child in a private school while the IEP process is underway -- typically in the spring or summer for the fall term -- is not by itself proof of bad faith on their part. In the great run of cases, the parents will simply be bowing to reality. Enrollments in special education facilities may fill up quickly. They may not always be available in late summer when the IEP is finally ready. As before, the key consideration is that the parents pursue in good faith the development of the IEP and the possibility of public school placement.

In a case such as this one, when the Parent is referring a Student who has never before been in public school, requiring the Parent to prove that she seriously considered the placement recommendation whether or not she agreed or disagreed with the placement recommendation, puts the Parent in a difficult position. They must cooperate with the process while simultaneously advocating for the placement they believe is appropriate. They must walk a tightrope between advocating for the placement they believe is appropriate and being open to the options presented by the IEP team. The Parent, in this case, did just that. I credit [REDACTED] testimony that she was not considering a public school option for the Student at the time she applied to the [REDACTED]. Likewise, the evidence showed that she cooperated fully with the IEP process by providing ample documentation to the MCPS team. She visited [REDACTED] and was impressed by the services offered to [REDACTED] students by MCPS. The Parent was interested in considering the options available at MCPS, and this interest is not automatically negated by her decision to enroll the Student in the [REDACTED]. Nor is there persuasive evidence in this record that the Parent would have automatically rejected any placement that was not the [REDACTED], especially since, at the time of the IEP meeting, the [REDACTED] was still struggling to accommodate the Student's [REDACTED]. There was no evidence of obstruction or delay by the Parent. This is not a situation where equity requires reimbursement to be denied or reduced based on the Parent's lack of engagement or sincerity.

Finally, I find that the Judge Messitte’s reasoning is consistent with the Supreme Court decision in *Forest Grove*.⁸⁸ The Court held that the Parents did not need to consent to the receipt of special education services before placing the Student at a private school and seeking reimbursement. In *Forest Grove*, the school system argued that the 1997 amendments to the IDEA, and specifically 20 U.S.C.A. Section 1412(a)(10)(c)(ii),⁸⁹ only authorize reimbursement for private placement where the child has previously received special-education services through the public school. The Court disagreed, finding that the statutory provision, because it uses the word “may,” “is best read as elaborating on the general rule that courts may order reimbursement.”⁹⁰ The Court also relied upon the absence of any clear legislative intent to abrogate its decisions in *Burlington* and *Carter*, which established that the courts have broad authority to grant appropriate relief, including reimbursement for the cost of private special education.⁹¹ This logic is consistent with a determination that preferring a private placement, without unreasonable behavior to thwart the process, is not an equitable consideration that supports a reduction of the reimbursement amount. I find that the equities support reimbursement for the spring semester at the [REDACTED].

Prospective Placement

Prospective placement is a compensatory education remedy. Courts have held that to accomplish the IDEA’s purposes, a compensatory education award must be “reasonably calculated to provide the educational benefits that likely would have accrued from special

⁸⁸ 557 U.S. 230.

⁸⁹ “If the parents of a child with a disability, **who previously received special education and related services under the authority of a public agency**, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.” (emphasis added).

⁹⁰ *Forest Grove*, 557 U.S. at 242.

⁹¹ *Id.* at 243.

education services the school district should have supplied in the first place.”⁹² The Fourth Circuit has held: “Compensatory education involves discretionary, prospective, injunctive relief crafted by a court to remedy what might be termed an educational deficit created by an educational agency’s failure over a given period of time to provide a FAPE to a student.”⁹³

In this case, reimbursement of the [REDACTED] tuition for the spring semester corresponds to the “given period of time” that the MCPS failed to provide an IEP that afforded the Student a FAPE in the LRE. There was no delay in the IEP process.

In reaching this conclusion, I considered that the Student was not matriculating in MCPS before August of 2023, and she was enrolled in the [REDACTED] before the Parent sought an IEP from MCPS. The IEP team then quickly developed an IEP with comprehensive present levels of performance and unique and challenging goals. In addition, MCPS presented evidence that its continuum of placements and services for [REDACTED] students is exemplary. [REDACTED] testimony was persuasive that the [REDACTED] division at MCPS serves students at every stage along the continuum of placement. [REDACTED] and [REDACTED] were impressed by the programs, supports, and services that they observed at [REDACTED] and by MCPS’ [REDACTED] program generally. Therefore, the evidence supports the conclusion that the MCPS has the capacity and expertise to provide the Student a FAPE consistent with her unique disabilities and circumstances and consistent with this decision.

Finally, as discussed above, the [REDACTED] is not the LRE for the Student because she would benefit from being educated with non-disabled peers. Based on these factors, prospective placement at the [REDACTED] is not an appropriate equitable remedy.

⁹² *Reid ex rel Reid v. Dist. of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005).

⁹³ *G. ex rel R.G.*, 343 F.3d. at 309; see also *Diatta v. District of Columbia*, 319 F. Supp. 2d 57, 67 (D.D.C. 2004) (educational programming sought as a compensatory award should be “reasonably calculated to confer the remedial and contemporary educational benefits” due to the student.).

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that: (1) the December 13, 2023 IEP did not provide the Student with a FAPE in the least restrictive environment because the Student requires small group, specialized instruction for her academics;⁹⁴ (2) the Parent's placement of the Student at the [REDACTED] was appropriate;⁹⁵ (3) the Parent is entitled to reimbursement for the spring semester at the [REDACTED];⁹⁶ (4) the Parent is not entitled to reimbursement for the fall semester at the [REDACTED]; (5) the Parent is not entitled to prospective placement at the [REDACTED].⁹⁷

ORDER

I **ORDER** that:

1. The Montgomery County Public Schools shall reimburse the Parent for the costs associated with their placement of the Student at the [REDACTED] during the spring semester of the 2023-2024 school year;
2. The Parent's request for reimbursement for the costs associated with her placement of the Student at the [REDACTED] during the fall semester of the 2023-2024 school year is **DENIED**;
3. The Parent's request for prospective placement at the [REDACTED] is **DENIED**.
4. The Montgomery County Public Schools must provide proof of compliance with this Order to the Chief of the Complaint Investigation and Due Process Branch, Division of

⁹⁴ *Rowley*, 458 U.S. 176; *Endrew F.*, 580 U.S. 386.

⁹⁵ *Burlington*, 471 U.S. 359 (1985); *Carter*, 510 U.S. 7.

⁹⁶ *Id.*; *Forest Grove*, 557 U.S. 303.

⁹⁷ *Id.*

Special Education and Early Intervention Services, Maryland State Department of Education,
within thirty [30] days of the date of this decision.

August 2, 2024
Date Decision Issued

Denise O. Shaffer
Administrative Law Judge

DOS/ja
#212814

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 grounds of indigence.

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

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

Copies Mailed and Emailed To:

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

██████████, PARENT,
ON BEHALF OF,

██████████, STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE DENISE O. SHAFFER
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-MONT-OT-24-07799

EXHIBIT APPENDIX

Parent's Exhibits

- P- 1. Request for Due Process, 3-21-24;
- P- 2. ██████████ Individualized Learning Plan, September 2021;
- P- 3. ██████████ Speech/Language Evaluation, 9-30-21;
- P- 4. ██████████ Cognitive Assessment, 11-19-21;
- P- 5. ██████████ Narrative Summary Report, 1-26-22;
- P- 6. ██████████ Evaluation, 5-11-22;
- P- 7. ██████████ Narrative Summary Report, 6-1-22;
- P- 8. ██████████ Speech-Language-Literacy Evaluation, 8-1-22;
- P- 9. ██████████ Individualized Learning Plan, September 2022;
- P- 10. ██████████ Speech/Language Evaluation, 9-29-22;
- P- 11. Academic Therapy Progress Report by ██████████ 12-21-22;
- P- 12. ██████████ Admissions Assessment, 1-5-23;
- P- 13. ██████████ Narrative Summary Report, 1-25-23;
- P- 14. ██████████ Evaluation, 5-11-23;
- P- 15. Academic Therapy Progress Report by ██████████ 5-30-23;
- P- 16. ██████████ Narrative Summary Report, 5-31-23;
- P- 17. Psychoeducational Evaluation Report by ██████████, 6-1-23;

- P- 18. [REDACTED] Math, Reading, and Writing Student Work Samples, September 2023;
- P- 19. [REDACTED] Assessment Summary, September 2023;
- P- 20. Observation Report by [REDACTED], 9-29-23;
- P- 21. MCPS Prior Written Notice, Child Find Referral, Initial Eligibility Documentation, and Observation Report Summary, 10-17-24;
- P- 22. [REDACTED] and [REDACTED] Teacher Referral forms for MCPS, September and October 2023;
- P- 23. [REDACTED] Math, Reading, and Writing Student Work Samples, Fall 2023;
- P- 24. [REDACTED] Literacy and Mathematics Report, Fall 2023;
- P- 25. MCPS Documentation of Interventions Form, Fall 2023;
- P- 26. MCPS Prior Written Notice and Eligibility 4 Status Report, 12-13-23;
- P- 27. MCPS approved IEP, 12-13-23;
- P- 28. Emails between MCPS and [REDACTED] regarding final IEP, 12-23-23;
- P- 29. [REDACTED] Math, Reading, and Writing Student Work Samples, January and February 2024;
- P- 30. [REDACTED] Related Services Treatment Summary, February 2024;
- P- 31. MCPS Draft and Final IEP Feedback by [REDACTED], 12-13-23 and 3-22-24;
- P- 32. [REDACTED] MAP Score Report and Math, Reading, and Writing Student Work Samples, April 2024;
- P- 33. [REDACTED] end of year Writing Assessment, May 2024;
- P- 34. [REDACTED] end of year Assessment Summary, May 2024;
- P- 34A. [REDACTED] end of year Reading Assessment, May 2024;
- P- 35. Resume of [REDACTED];
- P- 36. Resume of [REDACTED];
- P- 37. Resume of [REDACTED];
- P- 38. Resume of [REDACTED];
- P- 39. Resume of [REDACTED]; and
- P- 40. [REDACTED] Speech Language Progress Report, June 2024.

MCPS Exhibits¹

MCPS Exhibit Number	MCPS Document Title	Parent Document	Exhibit Number
01	█ – Emails between █ and █ (July 2022)		
02	█ (08/1/2022) (█ 0248 – 0261)		█-8
03	█ – Patient Problem List Referencing Lack of Behavior Concerns (05/31/2023) (█ 0079-0084)		
04	█ – Speech & Language Evaluation (09/19-09/29/2022) (█ 0394 -0403)		█-10
05	█ – Admissions Assessment (01/03-01/05/2023) (█ 0446-0451)		█-12
06	█ – Psychology Report Summary (01/03-01/05/2023) (█ 0425)		
07	█ – █ (05/08/2023) (█ 0458)		
08	█ (05/08-05/11/2023) (█ 0459-0461)		█-14
09	█ – Narrative Summary Report Summer 2023 (█ 0464-0466)		█-16
10	█ y Academic Therapy Progress Report (12/21/2022) (█ 0177 – 0182)		█-11
11	█ – Application (01/12/2023) (█ 0183 – 0190)		
12	█ – Reservoir Psychology Group – Individual Phono/Reading Therapy (07/31/2023- 04/12/2024) (█ 0004-0024)		
13	█ – Road to Reading and Spelling July 2023 (█ 0070 – 0076)		

¹ MCPS helpfully produced this chart showing its admitted exhibits and where those exhibits overlapped with the Parent’s admitted exhibits. I used the Parent’s exhibit numbers in the record citations when the document was present in both disclosures.

14	██████████ – Beginning of the Year Literacy and Mathematics Assessment Report Fall 2023 (██████████ 0276 – 0281)	P-19 had additional comments	██████████-19-1-6; P-24
15	██████████ – Speech Language Related Treatment Services Summary 2023-2024 (██████████ 0238 – 0241)		██████████-30
16	██████████ – Related Services Treatment Summary (05/24/2024) (██████████ 0045-0047)		
17	██████████ – Assessment Summary 2023-2024 (██████████ 0048 – 0061) [Fall]	Includes Vernon comments ██████████ 0025-0026	██████████-19-7-14 ██████████-19-15-16
18	██████████ – Reading Conference Fall 2023 (██████████ 0062 – 0069)		
19	██████████ – Teacher Referral Forms to MCPS ██████████ 0191 – 0207)		██████████-22-1-17
20	██████████ – Email (09/07/2023) ██████████		
21	██████████ – Email (09/13/2023) ██████████		
22	██████████ – Email (11/5/2023) ██████████		
23	██████████ – Email (12/11/2023) ██████████		
24	MCPS – ██████████ Speech & Language Evaluation (09/17-30/2021)		██████████-3
25	MCPS – ██████████ Cognitive Assessment (11/15/2021)		██████████-4
26	MCPS – ██████████ Individual Student Learning Plan 2021-2022		██████████-2
27	WIST Word Identification & Spelling Test (01/09/2024)		██████████-29-1
28	MCPS – Narrative Summary Report from ██████████ (01/26/2022)		██████████-5
29	MCPS – Narrative Summary Report from ██████████ (06/01/2022)		██████████-7
30	MCPS – ██████████ Individual Student Learning Plan (11/18/2022)		
31	MCPS – Team Consideration of External Report (05/11/2023)		██████████-21-2
32	MCPS – ██████████ Therapy Report (05/30/2023)		██████████-15
33	MCPS – ██████████ Narrative Summary Report (05/31/2023)		

34	MCPS – [REDACTED] Psychologist Evaluation (06/01/2023)		[REDACTED]-17
35	MCPS – Team Consideration of External Report (10/17/2023)		
36	MCPS – Child Find Referral (10/17/2023)		[REDACTED]-21-4-5
37	MCPS - Team Meeting Sign In Sheet (10/18/2023)		
38	MCPS – [REDACTED] (07/03/2023)		
39	MCPS – Student Referral for Special Education Services Packet (08/21/2023)		
40	MCPS – Application to Office of Special Education & Student Services (08/21/2023)		
41	MCPS – Notice of IEP Program Meeting (09/07/2023)		
42	MCPS – Classroom Observation Form (10/05/2023)		
43	[REDACTED] - Documentation of Interventions	Missing 4 th page signed by mother	[REDACTED]-25
44	MCPS – Teacher Referrals for accommodations from [REDACTED] (09/08/2023 & 10/12/2023)		[REDACTED]-22
45	MCPS – [REDACTED] Summer Tutorial Report Summer 2023		
46	MCPS – Evaluation Report & Determination of Initial Eligibility (10/17/2023)		[REDACTED]-21-8-20
47	MCPS – Notice of No Assessment Needed (10/17/2023)		[REDACTED]-21-6-7
48	MCPS – [REDACTED] of Draft IEP (10/17/2023)	This is an expanded version with more notes	[REDACTED]-31
49	MCPS – Prior Written Notice (10/17/2023)		[REDACTED]-21-1
50	MCPS – 5-Day Disclosure Notice of Documents Provided to Parents (10/28/2023)		
51	MCPS – Notice of IEP Team Meeting (11/07/2023)		
52	MCPS – Prior Written Notice (12/13/2023)		[REDACTED]-26-1-2
53	MCPS – Eligibility 4 Status Report (12/13/2023)	Has an additional 1 st page	[REDACTED]-26-3-7
54	MCPS – IEP Team Meeting Sign In Sheet (12/13/2023)		
55	MCPS – [REDACTED] IEP 2023 (12/13/2023)		[REDACTED]-27

56	MCPS – 5-Day Disclosure Notice of Documents Provided to Parents (12/15/2023)		
57	WITHDRAWN		
58	MCPS - [REDACTED] Resume		
59	MCPS - [REDACTED] Resume		
60	MCPS - [REDACTED] Resume		
61	MCPS - [REDACTED] Resume		
62	MCPS - [REDACTED] Resume		
63	MCPS - [REDACTED] Resume		
64	MCPS – Specific Learning Disability Report (12/13/2023)		