

██████████,

STUDENT<sup>1</sup>

v.

BALTIMORE CITY

PUBLIC SCHOOLS SYSTEM

BEFORE TRACEE N. HACKETT,

ADMINISTRATIVE LAW JUDGE

THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-CITY-OT-24-16656

## **DECISION**

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ORDER

### **STATEMENT OF THE CASE**

██████████ (Student) was previously identified in Maryland as a child with a disability under the Individuals with Disabilities Education Act (IDEA),<sup>2</sup> who needs specially designed instruction through an Individualized Education Program (IEP). On June 21, 2024, ██████████, the Student's Parent (Parent), filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to show that the Baltimore City Public Schools System (BCPSS) denied the Student a free appropriate public education (FAPE) because the IEP developed by the BCPSS is not appropriate to meet the Student's unique educational needs in light of his circumstances and that the IEP developed by the BCPSS was not implemented as written.

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<sup>1</sup> As noted below, this matter was filed by ██████████, the Parent, on the Student's behalf. This matter is captioned consistent with the Register of Actions. The Student did not participate in the hearing. Accordingly, for readability, I shall refer to the relevant party as "the Parent."

<sup>2</sup> 20 United States Code Annotated (U.S.C.A.) § 1415(f)(1)(A) (2017). All citations to the U.S.C.A. are to the 2017 volume.

On August 1, 2024, I conducted a pre-hearing conference (Conference) in the above-captioned matter, remotely, via the Webex videoconferencing platform (Webex).<sup>3</sup> Thurman Zollicoffer, Jr., Esquire, participated on behalf of the Student and his Parent. Manisha Kavadi, Esquire, participated on behalf of the BCPSS. At the Conference, the parties and I discussed the timeframe for issuing this decision.

Under the applicable law, a decision in this case normally would be due forty-five days after the end of the resolution period, which ended on July 21, 2024.<sup>4</sup> On August 1, 2024, the parties participated in a mediation session after the thirty-day resolution period, which did not resolve the dispute. Therefore, the forty-five days began to run on July 22, 2024.<sup>5</sup> Accordingly, the timeframe for conducting the hearing and issuing a decision in this matter would ordinarily expire forty-five days later, on September 4, 2024.<sup>6</sup> However, based on my schedule, and the parties' schedules,<sup>7</sup> the BCPSS requested that I extend the timeline<sup>8</sup> to allow the case to be heard on the selected dates and to allow sufficient time for me to consider the evidence, evaluate legal arguments, and draft a decision. The Parent did not object to that request. Accordingly, based on the noted scheduling conflicts, I found good cause to extend the regulatory timeframe as

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<sup>3</sup> Code of Maryland Regulations (COMAR) 28.02.01.17; COMAR 28.02.01.20B(1)(b).

<sup>4</sup> 34 Code of Federal Regulations (C.F.R.) § 300.515(a) (2022); Md. Code Ann., Educ. § 8-413(h) (2022); COMAR 13A.05.01.15C(14). Unless otherwise indicated, all references to the C.F.R. will be to the 2023 volume and all references to the Education Article of the Maryland Annotated Code will be to the 2022 volume.

<sup>5</sup> 34 C.F.R. § 300.515.

<sup>6</sup> *Id.* § 300.515(a).

<sup>7</sup> Mr. Zollicoffer was unavailable on the following days due to previously scheduled hearings, settlement conferences, and depositions: August 19, 20, 23, 27, 29, 2024. Mr. Zollicoffer explained that even though he may not have been available for certain dates in September and October 2024, another attorney from his firm would have been made available. Ms. Kavadi had limited availability due to multiple previously scheduled due process hearings, IEP team meetings, witnesses' preparation, and the need to hold dates for pre-hearing conferences that were held prior to this Conference; therefore, other than the dates selected below, Ms. Kavadi was not available. Additionally, [REDACTED] began the evening of October 2, 2024 and concluded the evening of October 4, 2024, and Ms. Kavadi was not sure if schools were closed on October 3, 2024; therefore, we did not use that date for the hearing even though both attorneys were available. Other than specially assigned dockets on August 22, September 26, October 7, and October 8, 2024; and State holidays on September 2 and October 14, 2024, I would have otherwise been available to conduct this hearing.

<sup>8</sup> I may grant specific extensions of time at the request of either party. 34 C.F.R. § 300.515(c); *see also* Md. Code. Ann., Educ. §8-413(h).

requested by the BCPSS and agreed to issue a decision within thirty days after the conclusion of the hearing.

I held the hearing on October 2, 21, 23, 29 and 30, 2024,<sup>9</sup> by video using Webex.<sup>10</sup> Mr. Zollicoffer represented the Parent, who was present. Ms. Kavadi represented the BCPSS and was accompanied by Reha Shackelford, Esquire, BCPSS,<sup>11</sup> and [REDACTED], Coordinator for Due Process and Parent Response, who appeared as the representative for the BCPSS.

At the close of the Parent's case, the BCPSS made a motion for judgment based on the record. I deferred ruling on the motion for judgment until the close of all evidence, and the BCPSS proceeded with its case-in-chief.<sup>12</sup>

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.<sup>13</sup>

### **ISSUES**

1. Did the BCPSS deny the Student a FAPE by taking the following actions:

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<sup>9</sup> The special education due process hearing in the above-referenced matter was scheduled to begin on September 16, 2024, and continue October 2, 21, 23, and 29, 2024. On September 16, 2024, both counsel and their respective clients appeared, and pursuant to my Conference Report and Order, I permitted the parties to engage in a pre-hearing discussion regarding stipulations for thirty minutes. At the conclusion of the thirty-minute period, the parties indicated that there was a "new settlement demand" made late on Friday, September 13, 2024, which required investigation. Further, both parties indicated that while they were prepared to proceed with the hearing, they wished to delay the start of the hearing to further explore this new settlement option. I considered this information as a Joint Motion to Postpone (Motion), and I granted the Motion on the record. COMAR 28.02.01.16C; see also COMAR 28.02.01.12B(5). I further offered the possibility of submitting written closing arguments in lieu of revising the existing hearing schedule, and both attorneys stated their preference for oral closing arguments given the additional time needed to research and draft written closing arguments. As such, I granted the parties' request for the hearing schedule to be revised, with the mutually agreeable date of October 30, 2024, being added as the fifth hearing date.

<sup>10</sup> COMAR 28.02.01.20B.

<sup>11</sup> Although Ms. Shackelford is an attorney for the BCPSS she did not participate in the hearing.

<sup>12</sup> I found the volume of evidence required further analysis; therefore, I deferred ruling on the Motion for Judgment. COMAR 28.02.01.12E. Because of the complex nature of the issues before me, I have addressed this as a decision on the merits of the hearing rather than issuing a ruling on the Motion for Judgment. As explained in detail below, the Parent has failed to meet her burden for all of the reasons in this Decision; and therefore, the BCPSS is entitled to judgement on the merits of this hearing.

<sup>13</sup> Educ. § 8-413(e)(1); Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2024); COMAR 13A.05.01.15C; COMAR 28.02.01.

- a. Failing to provide comparable services from the prior in-state transfer IEP for the 2022-2023, 2023-2024, and 2024-2025<sup>14</sup> school years until the development of a new appropriate IEP;
  - b. Removing speech and language services from the Student's IEP since November 3, 2022;
  - c. Failing to develop an appropriate IEP that was reasonably calculated and appropriately ambitious to enable the Student to make progress in light of his unique circumstances for the 2022-2023, 2023-2024 and 2024-2025 school years including:
    - i. Appropriate accommodations, modifications, and supplementary aids and services necessary to confer a meaningful educational benefit for the Student;
    - ii. A self-contained program with functional and academic learning support for the Student to receive a FAPE; and
    - iii. Recommendations from the private [REDACTED] report completed by the [REDACTED] ([REDACTED]) on May 16, 2024?
2. If the BCPSS denied the Student a FAPE, what remedies are appropriate?

### **SUMMARY OF THE EVIDENCE**

I have attached a complete Exhibit List as an Appendix.

#### **Testimony**

The Parent testified and presented the following witnesses:<sup>15</sup>

- [REDACTED], [REDACTED], [REDACTED], who was qualified and accepted as an expert in

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<sup>14</sup> The Student's current IEP expires on December 5, 2024.

<sup>15</sup> The Parent also listed [REDACTED], [REDACTED], [REDACTED], as a witness, but he did not appear for the hearing and was therefore not called as a witness. The Parent also supplemented her witness list and exhibit list on October 15, 2024, to include the Student and an additional exhibit; however, on October 21, 2024, she withdrew the Student as a witness and did not offer the supplemental exhibit.

pediatric neuropsychology;

- [REDACTED], who is the Student's "stepfather";<sup>16</sup> and
- [REDACTED], IEP Chairperson, [REDACTED], BCPSS.

The BCPSS presented the following witnesses:<sup>17</sup>

- [REDACTED], IEP Chairperson, [REDACTED], BCPSS, who was qualified and accepted as an expert in special education;<sup>18</sup>
- [REDACTED], Transition Specialist, BCPSS, who was qualified and accepted as an expert in special education as it relates to transition, vocational skills, community-based instruction and activities of daily living and transition services;
- [REDACTED], Speech Language Therapist, BCPSS, who was qualified and accepted as an expert in speech and language therapy, assessment, and pathology; and
- [REDACTED], Coordinator for Due Process and Parent Response, BCPSS,<sup>19</sup> who was qualified and accepted as an expert in special education.

### **STIPULATED FACTS**

The parties stipulated to the following facts:

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<sup>16</sup> [REDACTED] is the Parent's partner. Even though he and the Parent are not married, he acts as a parent to the Student and referred to himself as his stepfather.

<sup>17</sup> The BCPSS listed [REDACTED], School Psychologist, BCPSS, as a witness. She appeared on the first day of the hearing, but then did not appear on subsequent hearing dates and was therefore not called as a witness.

<sup>18</sup> Although the Parent called [REDACTED] in her case-in-chief, he was not qualified as an expert until he testified in the BCPSS' case-in-chief.

<sup>19</sup> On October 11, 2024, the BCPSS supplemented its witness list and exhibit list to add [REDACTED] and to provide supplemental exhibits. The Parent objected. I permitted [REDACTED] to testify and the BCPSS to offer its supplemental exhibits after finding that the Parent was not prejudiced, as she had received notice of the supplements at least five business days before the second hearing day and was still presenting her case-in-chief. To further protect her hearing rights, I also ruled that she would be permitted to call any witness necessary during rebuttal (regardless of whether the testimony could have been anticipated) to address [REDACTED] testimony.

1. The Student's date of birth is [in] [REDACTED] [REDACTED].<sup>20</sup>
2. The Student attended [REDACTED]) from Kindergarten to June 2022.
3. The Student moved to Baltimore City in June 2022.
4. The Student was found eligible for [REDACTED] [(REDACTED)]<sup>21</sup> curriculum and standards by [REDACTED] in April 2022.
5. The Student was found eligible for [REDACTED] curriculum and standards by [REDACTED] on November 3, 2022.
6. The Student was found eligible for [REDACTED] curriculum and standards by [REDACTED] on December 6, 2023.

### **FINDINGS OF FACT<sup>22</sup>**

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<sup>20</sup> The parties stipulated to the Student's full date of birth; however, for confidentiality purposes, I have redacted it from the Decision.

<sup>21</sup> When a student is identified to receive "instruction for the alternative education assessment aligned with the State's alternative curriculum," that student is no longer eligible to receive credits towards a high school diploma. Md. Code Ann., Educ. § 8-405(g)(1); COMAR 13A.03.02.09E(4). Instead, the student will receive a certificate of completion when he or she graduates from high school. COMAR 13A.03.02.09E. The identification of a student with a disability for [REDACTED] curriculum and alternative assessments requires parental consent in Maryland. Md. Code Ann., Educ. § 8-405(g)(1); *see also* 34 C.F.R. § 300.300(d)(2).

<sup>22</sup> My findings, analysis, and legal conclusions are based upon consideration of all of the parties' arguments and the credible evidence of record. All testimonial and documentary evidence was considered and given the weight it was due, regardless of whether it has been recited, cited, referenced, or expressly set forth in the Decision. *See, e.g., Walker v. Sec'y of Health & Human Servs.*, 884 F.2d 241, 245 (6th Cir. 1989) (an administrative law judge need not address every piece of evidence in the record); *Mid-Atl. Power Supply Ass'n v. Md. Pub. Serv. Comm'n*, 143 Md. App. 419, 442 (2002) (emphasizing that "[t]he Commission was free to accept or reject any witness's testimony" and "the mere failure of the Commission to mention a witness's testimony" does not mean that the Commission "did not consider that witness's testimony"); *see also Kornecky v. Comm'r of Soc. Sec.*, 167 Fed. App'x 496, 508 (6th Cir. 2006) ("[A]n ALJ can consider all the evidence without directly addressing in his written decision every piece of evidence submitted by a party. Nor must an ALJ make explicit credibility findings as to each bit of conflicting testimony, so long as his factual findings as a whole show that he implicitly resolved such conflicts.") (internal citations omitted).

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

### **Background**

1. The Student was born [REDACTED], at [REDACTED]. He has the following diagnoses: [REDACTED], [REDACTED], [REDACTED], [REDACTED] ([REDACTED]), and [REDACTED].<sup>23</sup>
2. Individuals, like the Student, who are born [REDACTED], are more likely to have cognitive differences in their brain, “simply because their brain did not have enough time to develop that volume size in utero.”<sup>24</sup>
3. Because of his [REDACTED], the Student’s other [REDACTED]. He remained in the hospital for [REDACTED] after his birth. When the Student returned home, he had a [REDACTED], a [REDACTED], a [REDACTED], and [REDACTED]. The Student had to maintain the [REDACTED] for the first ten years of his life. He also required ongoing therapy to learn how to [REDACTED] and [REDACTED] to [REDACTED] [REDACTED].<sup>25</sup>
4. [REDACTED] refers to a [REDACTED], generally identified though an MRI,<sup>26</sup> which is in the c [REDACTED], [REDACTED], and [REDACTED] of the [REDACTED]. These portions of the [REDACTED] “are located in the [REDACTED] regions of the [REDACTED] and are involved with cognitive functioning such as coordination of the body, but also things like executive functioning skills and complex language skills.”<sup>27</sup> Individuals, like the Student, with [REDACTED] may experience weaknesses in complex language skills, attention, executive functioning, and emotional regulation.<sup>28</sup>

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<sup>23</sup> The parties did not further elaborate on this disorder.

<sup>24</sup> Testimony (Test.) [REDACTED], Transcript (Tr.), p. 51.

<sup>25</sup> See Test. Parent, generally.

<sup>26</sup> Magnetic resonance imaging.

<sup>27</sup> Test. [REDACTED], Tr., p. 51.

<sup>28</sup> See Test. [REDACTED], Tr., p. 52.

5. [REDACTED] refers to an “overall decrease [REDACTED]” that may result in “some degree of [REDACTED] or [REDACTED].”<sup>29</sup>
6. The Student’s [REDACTED] impairs his ability in the areas of “reading, writing, math, communication, social interactions,<sup>30</sup> and fine motor skills” and he “has difficulty processing information, retaining information, expressing his wants and needs, attention and focus.”<sup>31</sup>
7. The Student’s has had [REDACTED] throughout his life, including [REDACTED] [REDACTED]y when he was three months old, due to his [REDACTED]; [REDACTED],<sup>32</sup> due to his [REDACTED] not fully developing while in utero; and an a [REDACTED] to address his previous diagnoses of [REDACTED].<sup>33</sup>
8. The Student takes [REDACTED] for his [REDACTED] and wears prescribed glasses for his [REDACTED] ([REDACTED]).<sup>34</sup>
9. The Student has been receiving special education services since age one, initially through the Infants and Toddlers program, and then through the [REDACTED] when he turned age three.<sup>35</sup>

### **2021-2022 School Year**

10. In the 2021-2022 school year, the Student attended the [REDACTED] [REDACTED] t ([REDACTED]) program at [REDACTED] for eighth grade.

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<sup>29</sup> Test. [REDACTED], Tr., p. 51.

<sup>30</sup> As explained in the Analysis of this Decision, the educational impact regarding social interactions is not clearly defined.

<sup>31</sup> Parent Ex. 5, p. 107. All of the Parent’s exhibits were Bates stamped with the Student’s initials and “000” in front of the page number; for efficiency, I have just used the page number without the Student’s initials or the preceding zeros for all citations throughout this Decision.

<sup>32</sup> See Test. Parent, generally. The Parent did not provide the timeframe of the Student’s [REDACTED] in her testimony.

<sup>33</sup> See Test. [REDACTED], Tr., p. 60. There are no current concerns with [REDACTED].

<sup>34</sup> Parent Ex. 3, p. 62.

<sup>35</sup> See Test. Parent, Tr., p. 259.



11. The [REDACTED] program is a self-contained special education program for students with disabilities specifically offered in the [REDACTED]
12. The [REDACTED] program is housed in various comprehensive public schools in the [REDACTED] and combines classroom-based instruction with community-based instruction, life skills, self-management, and social skills training for students.<sup>36</sup>
13. During eighth grade, the Student was instructed in a structured, self-contained classroom with two teachers and approximately twenty children with disabilities in the [REDACTED] program.<sup>37</sup>
14. The self-contained classroom was large; half of the classroom was simulated to look like a home with a stackable refrigerator, a bed, and a table, so that students could practice activities of daily living (ADLs).<sup>38</sup>
15. The Student received specially designed instruction and general curriculum instruction, and assessments based upon [REDACTED] standards.
16. Instruction in all of the Student's academic content areas was provided in a self-contained classroom, including world culture/history, science, language arts, reading, and math.
17. The Student participated in the general education classroom with nondisabled peers for physical education, health (one semester), and art.
18. The Student also participated in a laundry day when the students would wash and dry their gym clothes that they purchased from the school.<sup>39</sup>

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<sup>36</sup> See Parent Ex. 5, p. 93.

<sup>37</sup> See Test Parent, generally.

<sup>38</sup> Except for [REDACTED], the witnesses for both parties often used the terms "ADLs," "life skills," and "transition activities" interchangeably. Transition activities could include activities related to ADLs and/or activities related to life skills. [REDACTED] provided a broad definition of ADLs during his testimony. For ease of writing this Decision, I rely upon the definition of ADLs from the Maryland Department of Health as it encompasses the examples that both [REDACTED] and the Parent used during their respective testimony. COMAR 10.09.84.02B(1) defines ADLs, in relevant part, as "tasks or activities that include, but are not limited to . . . bathing and completing personal hygiene routines . . . dressing and changing clothes . . . eating . . . toileting including bladder and bowel requirements, routines associated with the achievement or maintenance of continence and incontinence care."

<sup>39</sup> See Test. Parent, generally.

19. The Student's community-based instruction included going to the fire department and police station to learn about the workforce and going to the grocery store, the Dollar Store, and Sam's Club to learn about how to use money and purchase items at a store.<sup>40</sup>
20. On June 6, 2022, the [REDACTED] met to develop the Student's IEP for ninth grade, during which he would attend [REDACTED] (June 2022 [REDACTED] IEP). The IEP team, including the Parent, determined that the Student would receive:
- twenty-five hours of special education services per week outside of the general education environment (five, five-hour sessions), to be delivered "in a self-contained classroom environment with life skills support;"<sup>41</sup>
  - ninety minutes of special education services per week inside the general education environment (two forty-five-minute sessions), for physical education with adapted support<sup>42</sup> and for specials;<sup>43</sup>
  - thirty minutes of speech and language therapy (four sessions per month), which were to be delivered inside of the special education setting once a week for thirty minutes; and
  - extended school year services (ESY) for fifteen hours of special education services per week (five, three-hour sessions) outside of the general education environment for four weeks.<sup>44</sup>
21. The following accessibility features and instructional and testing accommodations were noted on the June 2022 [REDACTED] IEP:
- Instructional Accessibility Features which were identified in advance<sup>45</sup>
    - 1s: Human Reader or Human Signer for the Mathematics, Science, and Government Assessments (entire text or selected sections)
    - 2f: Frequent breaks

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<sup>40</sup> *Id.*

<sup>41</sup> Parent Ex. 5, p. 123.

<sup>42</sup> There was no evidence that the Student received adaptive physical education services. See 34 C.F.R. §§ 300.39(b)(2)(ii), 300.108(a). As such, it is unclear what type of adapted support he received in physical education.

<sup>43</sup> In elementary school, "specials" refer to art, music, physical education, and media. In high school, "specials" are referred to as "electives" and can include any classes which are not in the core academic areas (English, mathematics, science, and social studies).

<sup>44</sup> Parent Ex. 5, p. 123. The start date and end date for ESY services were incorrect; the dates were the same as the school year as opposed to dates in the summer of 2022.

<sup>45</sup> As noted in the IEP "ACCESSIBILITY FEATURES FOR ALL STUDENTS (Must be identified in advance and documented in the student's Student Registration/Personal Needs Profile [SR/PNP]) Accessibility features MUST be used in instruction to provide adequate time and fairness for the student to be familiar with the tools/devices." Parent Ex. 5, p. 109.

- 2g: Reduce distractions to self
- Presentation Accommodations
  - 3i: Text to Speech for the ELA/Literacy Assessments, including items, response options, and passages.
- Response Accommodations
  - 4d: Calculation device and mathematics tools (on Calculation Sections of the Mathematics Assessments)
  - 4e: Calculation device and mathematics tools (on NON Calculation Sections of the Mathematics Assessments)
  - 4g: ELA/Literacy Selected Response Human Scribe
  - 4k: Mathematics, Science, Government Response Human Scribe
  - 4o: ELA/L Response Human Scribe
  - 4r: Monitor Test Response
- Timing Accommodations
  - 5a: Extended Time – 2.0X<sup>46</sup>

22. According to the June 2022 [REDACTED] IEP, the Student was entitled to receive the following supplementary aids, services, program modifications and supports with the following frequencies:

- Instructional supports:
  - Allow use of organizational aids – weekly
- Program Modifications:
  - Break down assignments into smaller units - periodically
  - Altered/modified assignments - weekly
- Social/Behavioral Supports:
  - Strategies to initiate and sustain attention – weekly
  - Self-care support – periodically
- Physical/Environmental Supports:
  - Preferential seating – weekly<sup>47</sup>

23. The IEP team clarified that the topic(s), participant(s), location, and manner for the Student's two social/behavioral supports are as follows:

Strategies should be used to help [the Student] initiate and sustain attention including, but not limited to, the ability to manipulate small objects during tasks that require sustained listening, as long as the object

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<sup>46</sup> Parent Ex. 5, pp. 109-111.

<sup>47</sup> Parent Ex. 5, p. 112.

does not become more of a distracter; providing [the Student] with assignment/activities in smaller sections, allowing [the Student] to take a short break or engage in a preferred activity after completing a task, use of a behavior chart and use of positive reinforcers to contribute to positive work habits and attention.<sup>48</sup>

24. The Student's June 2022 [REDACTED] IEP also contained five goals in the areas of Math (solving word problems involving integers), Reading Comprehension (identifying central idea of the text), Writing (identifying characters and their traits), Expressive and Receptive Language (combined), and On-Task Behavior.

25. The Student had the following communication goal and objectives on his June 2022 [REDACTED] IEP:

Goal: By June 2023, while in a small group setting, [the Student] will demonstrate knowledge of increased vocabulary and answer a variety of questions related to current classroom curriculum and/or therapist created activities, with 80% accuracy, with no more than 1 [...] <sup>49</sup> sentences using proper grammar and will begin to initiate various conversations with both peers/adults without cues/prompts, over three consecutive data collecting sessions.

Objective 1: By September 2022, while in a small group setting, [the Student] will demonstrate knowledge of increased vocabulary and answer a variety of questions related to current classroom curriculum and/or therapist created activities, with 80% accuracy, given 3 cues per opportunity, while speaking complete sentences using proper grammar, over three consecutive data collecting sessions.

Objective 2: By February 2023, while in a small group setting, [the Student] will demonstrate [...] <sup>50</sup> variety of questions related to current classroom curriculum and/or ther[ ] <sup>51</sup> cues per opportunity, while speaking in complete sentences using proper [ ] <sup>52</sup> sessions. <sup>53</sup>

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<sup>48</sup> *Id.*

<sup>49</sup> The text is cut off here.

<sup>50</sup> The text is cut off here.

<sup>51</sup> The text is cut off here.

<sup>52</sup> The test is cut of here.

<sup>53</sup> Parent Ex. 5, p. 120.

26. Progress on the Student's June 2022 [REDACTED] IEP communication goal was to be measured with informal procedures as data collection method of measurement and the criterion for mastery was with 80% accuracy. The first objective was to be measured by informal procedures with 70% accuracy, and the second objective was to be measured by informal procedures with 75% accuracy.<sup>54</sup>
27. The [REDACTED] IEP team did not identify the communication goal as an ESY goal.<sup>55</sup>
28. The communication goal was based upon the following present level of academic achievement and functional performance (present level):
- Data supports,<sup>56</sup> when given a modified literary text and a prompt to identify the central message, [the Student] can demonstrate knowledge of using sentence starters to state the central message of the text with 2 supporting details of the central message with 75% accuracy given a picture cue. The SLP<sup>57</sup> will say to [the Student], "Look at this picture, give me a good sentence using the details you see" and he can do this now with 75% accuracy (at times he will just say a phrase<sup>58</sup> but with additional cue, he corrects it). Other data collected indicate that he continues to struggle with common vocabulary (60%). [The Student] has already made some tremendous gains this year. It's a pleasure to work with him and he's always focused and engaged in an activity at hand.<sup>59</sup>
29. In 2021-2022 school year, the Student was "beginning to seek assistance for himself when he needs it and he [was] typically determined to complete his work to the best of his abilities."<sup>60</sup>
30. The postsecondary transition goals on the June 2022 [REDACTED] IEP included:

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<sup>54</sup> See *id.*

<sup>55</sup> See *id.*

<sup>56</sup> According to the present level the data sources are data collection and teacher input.

<sup>57</sup> Speech Language Pathologist.

<sup>58</sup> The frequency with which the Student only responded with phrases was not listed in this present level, so it is unclear what his baseline (starting point) would have been in terms of the percentage of accuracy with which he responded in complete sentences to questions posed by the SLP versus his responses in simple phrases.

<sup>59</sup> Parent Ex. 5, p. 106.

<sup>60</sup> Parent Ex. 5, p. 114.

Employment (required): After receiving a Maryland High School Certificate of Program Completion, [the Student] will work as a [REDACTED] with adult supports; and  
Training: After receiving a Maryland High School Certificate of Program Completion, [the Student] will participate in training to learn the skills to be a [REDACTED] with adult supports.<sup>61</sup>

31. The Student did not have any postsecondary transition goals for education or independent living.
32. To support the “academic” and “employment training” postsecondary transition goals, the June 2022 [REDACTED] IEP team selected “Job Sampling and Employment Training” and “Activities of Daily Living” as the “Functional and Skill Development Activities”<sup>62</sup> that the Student would participate in for the 2022-2023 school year.<sup>63</sup>
33. As the basis for its determination regarding functional and skill development activities, the IEP team noted:

[The Student] needs a course of study that will support his post-secondary goal of working in supported employment, in an environment that interests him. Proposed course will include functional and adaptive coursework including community-based instruction focusin[g on] daily living skills and employability skills.<sup>64</sup>
34. The “daily living skills” were not further delineated in the June 2022 [REDACTED] IEP.
35. The June 2022 [REDACTED] IEP contained the following transition activities:
  - Academic – practice strategies to initiate and sustain attention for task completion; and
  - Employment training –complete a student interest sheet for the 2022/2023 school year identifying preferences and interests, and complete a transition assessment for 2022/2023 school year.<sup>65</sup>

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<sup>61</sup> *Id.*

<sup>62</sup> These are also referred to as transition activities. The transition activities are provided in furtherance of the identified postsecondary goals.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> See Parent Ex. 5, pp. 115-116.

36. The [REDACTED] IEP team determined that the Student would receive special education and related services in the Least Restrictive Environment (LRE)-C setting, which means that he would be inside general education settings less than 40% of the school day. As the basis for its determination, the team documented the following discussions on the LRE page of the [REDACTED] IEP, in relevant part:

Team considered the following placement options for the student: Participation in an LRE A environment (general education)<sup>66</sup> with and without support, participation in an LRE B<sup>67</sup> (self-contained for Math, Language Arts and[/] or reading) environment with and without support except specials environment with life skills support. Based on record review and team discussion, the team determined that based on assessment[, ] placement option will be determined.

Services will be provided in the home school.

....

The team determined [the Student] needs a self contained program with functional and academic learning supports; he will be in LRE C (with life skill support). He is a student who requires a program that is designed to meet the complex learning and social/emotion (cut off) assessments (MSAA).

....

His primary disability continues to be [REDACTED]. The team has recommended a different setting for [the Student]. Due to the [sic] his [REDACTED]. [The Student] would benefit from explicit instruction, modeling and frequent practice in daily living skills such (cut off) and organizing his belongings. He would also benefit from a behavior management system that provides him with a positive reinforcement for displaying appropriate behaviors.

....

After a review of [the Student's] records/assessment, the Team determined there are no potentially harmful effects on the student in the selected LRE environment. [The Student's] educational needs can be met in the self-contained special education environment with life skills (cut off).

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<sup>66</sup> LRE A = Inside General Education Settings 80% or more.

<sup>67</sup> LRE B = Inside General Education Settings 40 – 79%.

....

The team discussed transportation and determined that [the Student] requires transportation as a related service in order to access special education services. Due to the nature of [his] disability, problem solving and adaptive/self-help behavior, his safety is a [REDACTED] (cut off) community independently. [The Student] has difficulty recognizing ill intentions of non-disabled peers. He is not able to independently utilize transportation provided for his non-disabled peers safely; therefore[,] special transportation is necessary. [The Student] will need to b (cut off) disability. An assigned bus aide will provide supervision.<sup>68</sup>

37. As of June 8, 2022, the Student demonstrated knowledge of increased vocabulary with 65% accuracy in answering a variety of questions over three consecutive data collecting session with complete sentences using proper grammar while working with [REDACTED] [REDACTED] in the [REDACTED]. This progress was captured in a progress report for the Student's speech and language goal written by [REDACTED] ([REDACTED] SLP) on June 8, 2022.<sup>69</sup>
38. As of June 16, 2022, the Student made partial progress on his academic transition activity and his two employment training transition activities had not yet been initiated.<sup>70</sup>
39. The Student received the following grades at the end of the 2021-2022 school year: As in Health, Physical Education, Art, Science, Language Arts, and Reading and Bs in Word Culture/History and Math.<sup>71</sup>
40. In July 2022, the Student attended ESY in the [REDACTED].<sup>72</sup>

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<sup>68</sup> Parent Ex. 5, p. 125. Portions of text on this page are cut off on the right-hand side, which holds true for the entire IEP. Neither party provided a complete copy of the IEP where the text is not cut off. I have noted the portions that are unable to be read with the notation "(cut off)."

<sup>69</sup> Parent Ex. 5, p. 120.

<sup>70</sup> See BCPSS Ex. 1.17. BCPSS Ex. 1 and Parent Ex. 5 are both copies of the June 2022 [REDACTED] IEP. Parent Ex. 5 does not reflect the above-referenced transition activity progress notes. The parties did not explain why these two documents differ.

<sup>71</sup> There are notations on the report card where the Student received numbers for conduct, work completion, working with adults and working with students. He received all "3s" for working with students and all "2s" and "3s" for working with adults and conduct. There is no key or explanation on the report card to identify what the number system means.

<sup>72</sup> See Test. Parent, generally. The parties did not provide any ESY progress notes for July 2022.



41. In the summer of 2022, the Parent and the Student moved from the [REDACTED] to a home within the BCPSS district.
42. The Parent was given a “withdrawal package” from the IEP Chairperson at [REDACTED] [REDACTED], which contained some of the Student’s educational records.<sup>73</sup>
43. As a result of the Parent’s move, the [REDACTED] did not have the opportunity to implement any of the accommodations, supplementary aids, supports, and services (SAS), program modifications, special education and related services, and transition activities on the June 2022 [REDACTED] IEP for the Student’s ninth grade year.

#### **2022 Summer Transfer from the [REDACTED] to the BCPSS**

44. At the middle school level and the high school level, students enrolled in the BCPSS are able to engage in the “choice process,” which means that students are able to select five school options that the family feels are a good fit.<sup>74</sup>
45. The BCPSS Enrollment Choice and Transfer Office generates a school assignment letter, taking into consideration the family’s preferences, as well as any school-specific enrollment criteria, through the middle school and high school choice process.
46. When a student transfers to the BCPSS from another school district, the family member contacts the Enrollment Choice and Transfer Office to complete an enrollment packet, either in-person or online.

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<sup>73</sup> See Parent Ex. 1.

<sup>74</sup> Test. [REDACTED], Tr., p. 684.

47. If the student has an existing IEP, their enrollment is “flagged” by the Enrollment Choice and Transfer Office, which contacts the BCPSS Office of Special Education for a review of the most current IEP.<sup>75</sup>
48. A dedicated specialist within the Office of Special Education assists the parent or guardian with obtaining the most current version of the IEP, when necessary, and that specialist reviews the most current IEP for the purposes of placement.
49. For students with disabilities requiring a regional placement,<sup>76</sup> the school assignment is generated by the Office of Special Education, based upon the availability of seats and the location with respect to the parent’s residence.
50. When a placement is determined, a school assignment letter is issued to the family and the assigned school.
51. Upon receipt of the school assignment letter, the assigned school is responsible for scheduling an expedited IEP team meeting with the parent(s)/guardian(s) to determine the comparable services from the existing IEP which will be provided in the BCPSS assigned school.
52. In July 2022, the Parent contacted the BCPSS central administrative office<sup>77</sup> to enroll the Student in the BCPSS for the 2022-2023 school year and provided them with the “withdrawal package” from the [REDACTED], which contained:
- the Maryland Student Exit Record;
  - the Student’s birth certificate;
  - report cards for the Student’s sixth, seventh, and eighth grade school years;
  - a list of the Student’s Measures of Academic Progress (MAP)-Math (MAP-M) and MAP-Reading (MAP-R) scores;
  - the June 8, 2022 Alternative Appendix A: Participation Criteria and Checklist (June 2022 Appendix A);<sup>78</sup>

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<sup>75</sup> See Test. [REDACTED], Tr., p. 683.

<sup>76</sup> A regional placement means that the particular program is not offered at every school within the BCPSS but is only provided at a few designated schools within the district (or region) of the BCPSS, which may or may not be a student’s zone (home) school.

<sup>77</sup> The witnesses referred to the BCPSS central or administrative offices as “North Avenue” throughout the hearing.

<sup>78</sup> Appendix A is a document developed by the MSDE and used by IEP teams to determine if the Student requires [REDACTED] curriculum and/or alternative assessments based upon specified criteria.

- the June 2022 [REDACTED] IEP; and
- the [REDACTED] private [REDACTED] report from 2015.<sup>79</sup>

53. On July 2, 2022, [REDACTED], Office of Special Education, BCPSS, informed the Parent via a “Special Education City Wide School Location” letter that after a review of the Student’s June 2022 [REDACTED] IEP, the Student required educational services beyond his zoned high school and therefore was assigned to the “[REDACTED]”<sup>80</sup> beginning on August 29, 2022. [REDACTED] further advised the Parent that the school would contact her regarding finalization of the enrollment process and upon completion of enrollment, if appropriate, the school would hold an IEP team meeting.<sup>81</sup>
54. Based upon the Parent’s address, the Student’s zoned school within the BCPSS is [REDACTED].
55. [REDACTED] does not have a self-contained LRE-C program with life skills for students with disabilities.
56. The closest school to the Parent’s home within the BCPSS which has a self-contained LRE-C program with life skills is [REDACTED].
57. The second closest school is [REDACTED], which is a vocational high school.
58. [REDACTED] is a public charter within the BCPSS which services students with and without disabilities.

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<sup>79</sup> See Parent Ex. 1.

<sup>80</sup> [REDACTED] provided the correct spelling of the “[REDACTED]” but did not indicate on the record that the “X” was capitalized. As such, I did not capitalize it throughout this Decision, even though I believe the capitalized “X” may be the proper spelling.

<sup>81</sup> BCPSS Ex. 3.1.

59. Public charter schools within the BCPSS must be approved by the Baltimore City Board of School Commissioners and are subject to a School Effectiveness Review Process for renewal.
60. Public charter schools within the BCPSS function similarly to comprehensive public schools, but each one is governed by its own charter organization.
61. Some of the public charter schools within the BCPSS are lottery-based wherein enrollment is open to all BCPSS students (with and without disabilities).
62. ████████ is an open enrollment public charter school, which means any BCPSS student can apply through the choice process with one exception. If a student with a disability requires placement based on the services in their IEP, the location of the school to the parent's residence, and seat availability, the BCPSS may place the student at ████████. In limited circumstances, the family may request other options to be explored by the Office of Special Education should they disagree with placement at ████████.
63. The BCPSS has LRE-C self-contained programs with life skills referred to as the "██████ program" at several, but not all of its schools across the district.
64. The ████████ program, currently referred to as the "██████████ program," and formerly referred to as the "life skills program" typically serves students with low cognitive functioning who are eligible for special education services as students designated with an intellectual disability and/or autism with low cognition.<sup>82</sup>
65. The ████████ program at ████████ is a regional-based, LRE-C program that is focused on functional academics with life skill supports embedded into the curriculum, which serves diploma track and certificate track students and provides additional opportunities

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<sup>82</sup> Test. ████████, Tr., p. 686.

for students to work on their individualized transition activities and postsecondary goals as outlined in their respective IEPs.

66. Students enrolled in the [REDACTED] program at [REDACTED] receive the majority of their instruction in a self-contained classroom with other students with disabilities for their core academic content, but they also have opportunities to interact with and learn from non-disabled peers during lunch, transitions, and electives. During those transitions and opportunities in the general education setting, the students in the [REDACTED] program are accompanied by a paraeducator so that they have support.
67. The self-contained classroom has approximately ten to twelve students with a special educator and a paraeducator.
68. The curriculum in the [REDACTED] program is derived from the common core and “underneath that [the students] learn from the essential elements.”<sup>83</sup>
69. The [REDACTED] program offers embedded functional, life, and vocational skills instruction, which are taught during a ninety-minute session which occurs during the third period in the school schedule and include the following:
  - Lessons on postsecondary opportunities were geared toward postsecondary education and/or employment training and included but were not limited to topics like education and career interest, government employment forms, job applications and resumes, job interview skills, job pay and benefits, on-the-job behaviors, telephone skills, computer skills and technology. The objectives of these lessons were for students “to gain educational and career awareness and self-understanding regarding post-secondary opportunities.”<sup>84</sup>
  - Lessons on independent living included but were not limited to topics such as grocery shopping, preparing food, clothes shopping, taking care of clothes, maintaining housing, understanding money, budgeting, banking, understanding hygiene, taking medication, and recognizing personal health decisions. The objectives of these lessons were for students to “understand how to live as independently as possible focusing on the aspects of self-sufficiency needed for the successful transition to post-secondary life.”<sup>85</sup>

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<sup>83</sup> Test. [REDACTED] Tr., p. 696.

<sup>84</sup> BCPSS Ex. 47.1.

<sup>85</sup> *Id.*

- Lessons on community participation included instruction on using community agencies, the post office, library, and recreation and community centers, and understanding the voting process. The objectives of these lessons were “to develop the necessary skills to utilize community service agencies and other community resources and to explore the concepts of citizenship, government and voting.”<sup>86</sup>

70. Community-based instruction is any instruction that will lead a student to become independent and apply knowledge or skills in the community. Community-based instruction can include vocational skills, such as life skills, functional skills or anything that will guide a student to work and be independent within the community. Community-based instruction can be provided both inside and outside of the school building.<sup>87</sup>
71. Vocational skills can generally relate to a trade, employment or career technical education (CTE) and can include culinary, carpentry skills, technical skills, and computer skills for example.<sup>88</sup>
72. Functional skills include ADLs, which can include skills related to personal hygiene, preparing a meal, telling time, community skills, personal relationship and communication skills, and interacting with and navigating within the community, or travel skills.<sup>89</sup>
73. Life skills are geared towards an individual becoming independent, and can include time management, money management, interpersonal skills, or navigating technology.<sup>90</sup>
74. The ██████ program at ██████ contains a school store which is a replica of a grocery store with check out conveyor belts, scanners, shelving, a sink, an oven, a refrigerator, a fryer, other cooking machinery, and food, which were donated by Safeway

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<sup>86</sup> BCPSS Ex. 47.2.

<sup>87</sup> See Test. ██████, generally.

<sup>88</sup> See Test. ██████, generally.

<sup>89</sup> See Test. ██████, generally.

<sup>90</sup> See Test. ██████, generally.

Grocery (a supermarket chain). [REDACTED] program students at [REDACTED] are able to work in the school store to practice various vocational and life skills.

75. On or around July 26, 2022, [REDACTED] and the Parent coordinated via email to schedule an expedited IEP team meeting to be held on August 3, 2022, and the Parent waived her right to the ten-day meeting invitation notice requirement.<sup>91</sup>
76. On August 3, 2022, at 11:30 a.m., the IEP team, including [REDACTED] as the principal designee, [REDACTED],<sup>92</sup> as the special education teacher, [REDACTED], as the general education teacher, and the Parent<sup>93</sup> met virtually to develop a comparable services IEP for the Student for the 2022-2023 school year.
77. During the August 3, 2022 IEP team meeting, the IEP team agreed that the Student would participate in the “[REDACTED] Life Skills program” at [REDACTED] and continue to receive twenty-five hours of special education services outside of the general education environment provided by a special educator and instructional assistant, and thirty minutes of speech and language services per week outside of the general education environment.<sup>94</sup>
78. During the August 3, 2022 IEP team meeting, the IEP team reviewed the 2018 formal psychological assessment (cognitive scores) and 2020 speech and language assessment completed by the [REDACTED] and determined that an updated educational assessment was necessary.
79. On August 3, 2022, the IEP team created an IEP which mirrored the June 2022 [REDACTED] IEP except for the following changes:<sup>95</sup>

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<sup>91</sup> BCPSS Ex. 30.4.

<sup>92</sup> Throughout the hearing, [REDACTED] was referred to as “[REDACTED].” I have used “[REDACTED]” and “[REDACTED]” throughout the Decision consistent with the name used in the respective document, but the two names refer to the same person.

<sup>93</sup> As further explained below, the Parent testified that she did not attend this meeting by phone or in person, and never attended any IEP team meeting by phone. I explain in the analysis why I do not find this testimony to be credible.

<sup>94</sup> See BCPSS Ex. 4.1.

<sup>95</sup> The Parent made an argument that the BCPSS “stripped away” portions of the IEP. For this reason, I have included a Finding of Fact outlining the changes which were made even though the Parent did not present any witnesses that expressly testified to how each change denied the Student a FAPE as it related to any of the issues before me at this hearing.

- The Student's disability code/category was corrected from [REDACTED] to [REDACTED]<sup>96</sup>
- The Student's annual review date was updated from June 5, 2023, to August 2, 2023, and his triennial reevaluation date was updated from January 20, 2024, to August 2, 2025.
- The Student's IEP was revised to fix the inconsistent information<sup>97</sup> on the [REDACTED] IEP to reflect that the Student would participate in alternate assessments and receive instruction using alternative learning standards.
- The Student's present levels in math, reading, writing, and communication remained the same, with the two exceptions. The first is that the trend data<sup>98</sup> from previous years were removed. The second exception is that an introductory sentence was added stating that the Student was a 15-year-old African American<sup>99</sup> student who would be attending [REDACTED] in his 9<sup>th</sup> grade year and that the present level was based upon the record review.
- Functional goals were added in each content area with the exception of behavior (the Student's IEP had two goals in each academic content area; the mathematics present level was separated into math problem solving and math calculation); the Student went from having five goals to having ten goals.
- The parent input section was updated to reflect that the Parent participated by phone and shared that the Student has difficulty with attention and takes medication for his [REDACTED].
- The special considerations – communication section was changed from yes to no.<sup>100</sup>
- Under the accessibility features subsection to the instructional and testing accommodations section, the team selected the following:
  - Instructional Accessibility Features for all Students<sup>101</sup>
    - 1g: General Administration Directions Clarified

<sup>96</sup> A reference to [REDACTED] still appeared in the accommodations section of the IEP. *See* BCPSS Ex. 5.22. In that same paragraph another Student's first name appears.

<sup>97</sup> The June 2022 [REDACTED] IEP listed the Student as receiving instruction using [REDACTED] standards but not participating in alternative assessments, despite the Parent's consent to both.

<sup>98</sup> The trend data is the Student's rate of growth over the previous two years. There was no evidence presented regarding why this data was removed. It could have been because the Student had not yet attended any school within the BCPSS as of August 3, 2022. Regardless of the rationale, neither party argued this point and because the IEP team documented that it considered the existing June 2022 [REDACTED] IEP in each present level and in the prior written notice (PWN), any argument or evidence about the absence of such data on the written IEP would not have changed the outcome of this Decision.

<sup>99</sup> It is unclear why the IEP team included the Student's race in his present levels as there is no requirement in IDEA that this information be included and his race was already included on the first page of the IEP.

<sup>100</sup> The Student still received speech and language services from the BCPSS until November 3, 2022; therefore, this section should have remained as "yes." However, this error was not identified by the Parent and is a procedural error which would not suffice to meet the Parent's burden on the issues before me.

<sup>101</sup> As outlined on this section of the IEP, Accessibility Features are "Available to ALL students, either through the online platform or externally provided." BCPSS Ex. 5.22. As I understand it, this language simply means that both students with and without disabilities can utilize these accessibility features of classroom-based tests as well as districtwide and statewide standardized assessments in electronic forms or tangible, hard copy forms.



- 1u: Graphic Organizer<sup>102</sup>
- Self-care support was removed from the SAS section.
- Use of highlighters, checks for understanding, use of manipulatives, and deleting extraneous information was added to the SAS section. For these added SAS, under the clarification subheading for each, there is a reference to their use for “functional life skills.”
- The transition activities were revised to the following:
  - Academic: participate in a draft resume writing activity in class by completing the personal information portion with prompting and modeling; and learn pre-employment vocabulary words with picture association in class.
  - Employment training: participating in employability activities in class such as “getting and keeping a job” activities and work ethics activities with support from the teacher/paraeducator; and participate in [REDACTED] training exercises.<sup>103</sup>
- The ESY decision was changed to deferred.
- The timeframes in the goals were changed from June 2023 to August 2023, and the objective timeframes were all changed to August 2023.
- The begin and end dates for the service hours were updated to coincide with the August 3, 2022 meeting date.
- References to the phrase “life skills” was removed from the discussion of the service delivery.
- Service hours inside of the general education setting were removed.
- The rationale for specialized transportation was shortened to reflect that the Student requires transportation services to and from school to ensure his safety.
- The bus aide was removed.
- The LRE page was updated to reflect the [REDACTED] program placement and the reference to the phrases “life skills,” “organizing his belongings,” and “behavioral management system,” were removed.<sup>104</sup>

80. On August 3, 2022, [REDACTED] sent a copy of the IEP, the PWN, “parental rights,”<sup>105</sup> and the Notice and Consent for Assessment form to the Parent.<sup>106</sup>

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<sup>102</sup> In the June 2022 [REDACTED] IEP all of the accessibility features were listed but not checked and the place to document the team’s discussion was left blank. The team moved the language under response accommodations to this provision to demonstrate the rationale for the graphic organizer.

<sup>103</sup> BCPSS Ex. 5.16.

<sup>104</sup> See BCPSS Ex. 5, generally.

<sup>105</sup> The actual title of this document is “Parental Rights MARYLAND PROCEDURAL SAFEGUARDS NOTICE” but [REDACTED] referred to it as the parental rights on the form letter.

<sup>106</sup> BCPSS Ex. 4.5. On the “Post Meeting Notice of Documents Provided to Parent for Review Following Meeting” form letter, the phrase “Draft IEP” is circled even though the IEP was finalized. The form letter also notes that “the

81. On August 15, 2022, the Parent signed the Notice and Consent for Assessment form to permit the BCPSS to conduct an educational assessment of the Student in the areas of reading, mathematics, and written language.<sup>107</sup> The Notice and Consent for Assessment form referred to the August 3, 2022 meeting date, and that “the evaluation results would be shared with [the Parent] within 90 days of the date of the IEP Team meeting when it was determined that additional data was needed.”<sup>108</sup>
82. The Parent also signed the Receipt of Parental Rights Document form on August 15, 2022.<sup>109</sup>

### **2022-2023 School Year**

83. The Student attended the [REDACTED] program at [REDACTED] for the 2022-2023 school year where he received functional and academic learning supports with embedded life skills instruction.
84. On August 30, 2022, [REDACTED], the Student’s English 9, Alternative Framework teacher, mistakenly reported that the Student was absent;<sup>110</sup> therefore, he did not receive speech and language services for that day.
85. On September 2, 2022, “the special educator”<sup>111</sup> administered the Transition Planning Inventory-Third Edition (TPI-3) assessment of the Student, and the Student also completed the Working Condition Inventory Worksheet with the assistance of the “special

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following checked information/documents are attached and may be discussed at the meeting,” even though the meeting has already occurred. *Id.*

<sup>107</sup> BCPSS Ex. 4.4-4.5.

<sup>108</sup> *Id.*

<sup>109</sup> *See* BCPSS Ex. 4.6.

<sup>110</sup> The Student had perfect attendance for the 2022-2023 school year. It is possible that the Student was late for school that day, but it is unclear why [REDACTED] reported the Student as absent when he was not.

<sup>111</sup> This individual’s name was not listed.

educator.”<sup>112</sup> The Student continued to identify being a construction worker as his career interest and shared that he would like to enroll in a vocational school after high school, live independently, and work full-time. Through support from the life skills teacher or the paraeducator he also noted on the TPI-3 that he needed assistance with budget and money management, and that his Mom and Dad were the most significant people in his life, especially his Mom from whom he seeks advice for major life decisions.<sup>113</sup>

86. The BCPSS conducted the following informal and formal educational assessments of the Student on or around the following dates:

- Brigance Comprehension Inventory of Basic Skills for Writing on September 2, 2022;
- Reading A-Z benchmark assessment on September 7, 2022;
- Moby Max Placement test on September 13, 2022;
- Moby Max assessment for reading on September 19, 2022;
- Key Math Screener on October 10, 2022; and
- Woodcock Johnson IV, Form A (WJ-IV) for reading, writing, and math subtests<sup>114</sup> on October 24, 2022.<sup>115</sup>

87. During the 2022-2023 school year, [REDACTED], SLP, provided the Student with group speech and language services outside of the general education environment on the following dates and times:

September 6, 2022 between 11:00 a.m. to 11:30 a.m.;  
September 13, 2022 between 10:30 a.m. and 11:00 a.m.;  
September 20, 2022 between 9:30 a.m. and 10:00 a.m.;<sup>116</sup>  
September 30, 2022 between 10:00 a.m. and 10:30 a.m.;<sup>117</sup>  
October 4, 2022 between 9:40 a.m. and 10:10 a.m.;

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<sup>112</sup> BCPSS Ex. 10.12; *see also* BCPSS Ex. 35.

<sup>113</sup> See BCPSS Ex. 10.15.

<sup>114</sup> The WJ-IV was the only formal assessment completed.

<sup>115</sup> The educational assessment report is erroneously dated November 24, 2022. It was signed by [REDACTED] on October 28, 2022, and reflects that the date of the assessments was October 24, 2022. *See* BCPSS Ex. 27.

<sup>116</sup> On September 27, 2022, [REDACTED] attempted to provide a make-up session for the August 30, 2022 missed session between 10:15 to 10:45 a.m.; however, the Student was reported absent by his teacher and therefore, no speech and language services were provided on that day.

<sup>117</sup> This was marked as a make-up session for October 11, 2022, when the clinician (SLP) would be absent. According to [REDACTED] testimony, she opined that this was an anticipatory make-up session as [REDACTED] was aware that she would be absent on October 11, 2022.

October 25, 2022 between 10:30 a.m. and 11:00 a.m.;  
October 25, 2022 between 11:00 a.m. and 11:30 a.m.;<sup>118</sup> and  
November 1, 2022 between 10:50 a.m. and 11:20 a.m.

88. On October 17, 2022, [REDACTED] sent the Parent the ten-day invitation letter for a virtual IEP team meeting to be held on November 3, 2022, for the purposes of reviewing and revising the IEP, considering reevaluation to determine the need for additional data, determining services and/or continued eligibility, considering ESY services and considering postsecondary goals and transition services.<sup>119</sup>
89. On October 25, 2022, the Parent signed the Transition Agency Linkage Consent Form, to enable the Student to receive services from third-party State agencies such as DORS,<sup>120</sup> DDA,<sup>121</sup> MDL,<sup>122</sup> and BHA.<sup>123</sup>
90. As of October 26, 2022, the Student had achieved his receptive/expressive language goal. He was able to increase his vocabulary while speaking in complete sentences using proper grammar with 80% accuracy. For example, he could say “I see a small, black bat on Halloween” and “I see a witch flying on a broomstick.”<sup>124</sup> He was also able to initiate conversations with peers and adults and make comments about himself and his daily life like “It’s my birthday soon” and “I’m getting a haircut soon.”<sup>125</sup>
91. [REDACTED] wrote a progress report dated October 26, 2022, outlining the Student’s progress, which included a summary of the eight out of nine speech and language sessions provided on the Student’s speech and language goal, interviews with three of the

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<sup>118</sup> This was marked as a make-up session for October 18, 2022, when [REDACTED] was absent and could not provide speech and language services.

<sup>119</sup> BCPSS Ex. 44.1-44.2.

<sup>120</sup> Maryland Division of Rehabilitation Services.

<sup>121</sup> Maryland Department of Health, Developmental Disabilities Administration.

<sup>122</sup> Maryland Department of Labor.

<sup>123</sup> Maryland Department of Health, Behavioral Health Administration.

<sup>124</sup> BCPSS Ex. 28.1.

<sup>125</sup> *Id.*

Student's teachers, and a record review of the Student's records, including his speech and language assessments of the formal 2017 Oral and Written Language Scales – 2<sup>nd</sup> Edition (OWLS-2), Peabody Picture Vocabulary Test – 4<sup>th</sup> Edition (PPVT-4) and Expressive Vocabulary Test- 2<sup>nd</sup> Edition (EVT-20), and the 2020 informal writing language sample, and parent questionnaire.

92. [REDACTED] was unable to contact the Parent by phone before writing her report.
93. As of October 26, 2022, in [REDACTED] science class, the Student was able to read and comprehend short texts and answer questions without choices, as well as add single digit numbers independently. He was able to express himself, and although he was soft-spoken, he could raise his volume with prompting. He was responsible, respectful, and got along well with his peers. He started his work independently without directions to do so and even though he did not raise his hand, he answered correctly when called upon.<sup>126</sup>
94. As of October 26, 2022, in [REDACTED] life skills class, the Student demonstrated “good” skills in reading, comprehension, and spelling.<sup>127</sup>
95. As of October 26, 2022, in [REDACTED] English class, the Student was quiet but would answer with one word when called upon and would use a whole sentence when provided with a picture. The Student required modeling for complete sentences, but otherwise did well with vocabulary, answering questions, and responding well with the supports of repetition and modeling.<sup>128</sup>
96. On October 31, 2022, [REDACTED] sent the Parent an email with electronic copies of the WJ-IV educational assessment and the progress notes to be discussed at the November 3, 2022 IEP team meeting; and inquired which telephone number to use at the meeting. The

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<sup>126</sup> See Parent Ex. 2, p. 58.

<sup>127</sup> See *id.*

<sup>128</sup> See *id.*

Parent replied to the email on the same date with her cell phone number to use for the meeting.<sup>129</sup>

97. On November 1, 2022, [REDACTED] spoke with the Parent to explain her progress report and the Parent had no questions or concerns.<sup>130</sup>
98. On November 3, 2022, the Parent, [REDACTED], [REDACTED], [REDACTED], and [REDACTED] met virtually for an IEP team meeting. The Parent participated by phone.<sup>131</sup>
99. During the November 3, 2022 IEP team meeting, the team reviewed the progress reports and assessments, updated each present level with the formal and informal assessment data, and revised the transition activities. The team found that the Student qualified to received ESY services, updated the Appendix A,<sup>132</sup> and agreed that the Student no longer qualified for speech and language services.<sup>133</sup>
100. [REDACTED] recommended dismissal of the Student from direct speech and language services because he demonstrated “functional communication and adequate receptive and expressive language skills in the classroom,” was able to “access the curriculum [in] his supported classes and [was] doing well with regards to understanding and expressing himself.”<sup>134</sup>

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<sup>129</sup> BCPSS Ex. 45.1.

<sup>130</sup> The Parent expressly denied that this conversation occurred and testified that she did not receive any calls, voicemails, emails or texts from [REDACTED]; and did not know her name until the February 2024 IEP team meeting. For the reasons stated herein, I did not find that testimony to be credible.

<sup>131</sup> As further explained below, the Parent testified that she did not attend this meeting by phone or in person, and never attended any IEP team meeting by phone. I explain in the analysis why I do not find this testimony to be credible.

<sup>132</sup> The updated educational assessment data was not reflected on the revised Appendix A.

<sup>133</sup> See BCPSS Ex. 8.1.

<sup>134</sup> BCPSS Ex. 28.2; *see also* BCPSS Ex. 8.

101. On November 3, 2022, following the IEP team meeting, [REDACTED] sent the Parent a copy of the IEP, the PWN, Appendix A,<sup>135</sup> and the “Written Consent” for [REDACTED] form.<sup>136</sup>
102. On November 10, 2022, the Parent signed the “Model Parental Consent Form” indicating her consent to the Student being instructed within the [REDACTED] framework and taking alternative assessments. On the “Model Parental Consent Form,” the parent response deadline was noted as November 20, 2022 and described that the November 20, 2022 deadline started from the date of the IEP team meeting at which the action was proposed and ended on November 20, 2022.<sup>137</sup>
103. As part of her duties as an SLP, [REDACTED] continued to provide supports to the Student’s classroom and visited the [REDACTED] [REDACTED] program three times a week.
104. During the entire 2022-2023 school year, the Parent did not express any concerns about the differences between the [REDACTED] program and the [REDACTED] program, any regression in life skills, the lack of homework being sent home, or any failures in communication between herself and the Student’s teachers because she did not want to be perceived as a “disgruntled”<sup>138</sup> parent and wanted to wait to see how the transition to the BCPSS would progress.
105. The Student made progress on all of his IEP goals for the 2022-2023 school year, as noted in the progress reports.<sup>139</sup>

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<sup>135</sup> There is a signature on this form dated November 10, 2022. *See* BCPSS Ex. 8.4. However, the Parent testified that it was not her signature. It does look different from the other forms that the Parent admitted that she signed; almost as if it is an electronic signature. Because of the inconsistency, I do not include as a Finding of Fact that the Parent signed this form.

<sup>136</sup> BCPSS Ex. 8.5. Again, on the “Post Meeting Notice of Documents Provided to Parent for Review Following Meeting” form letter, the phrase “Draft IEP” is circled even though the IEP was finalized. The form letter also notes that “the following checked information/documents are attached and may be discussed at the meeting,” even though the meeting had already occurred. *Id.*

<sup>137</sup> BCPSS Ex. 8.3.

<sup>138</sup> Test. Parent, Tr., p. 273.

<sup>139</sup> *See* BCPSS Ex. 17. The parties did not provide any progress notes for the transition activities for the 2022-2023 school year.

106. At the end of the 2022-2023 school year, the Student earned the following grades: Bs in Fundamentals of Art, English, United States (U.S.) History, and B minuses in Math and Science. The Student did not receive a separate grade for the “Indv. Voc. Skills”<sup>140</sup> which was part of his U.S. History class period where he received life skills instruction.
107. Between July 5 and July 28, 2023, the Student attended ESY at [REDACTED] where he received five sessions of special education services with four hours per session (total of twenty hours).<sup>141</sup>

### **2023-2024 School Year**

108. The Student attended the [REDACTED] program at [REDACTED] for the 2023-2024 school year where he received functional and academic learning supports with embedded life skills instruction.
109. During the 2023-2024 school year, the Student worked in the [REDACTED] three times a week for thirty minutes each shift. He completed tasks such as [REDACTED] and [REDACTED] the [REDACTED].<sup>142</sup>
110. In September 2023, the Parent received numerous text messages and emails from the BCPSS informing her that students should not come to school the next day<sup>143</sup> because it

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<sup>140</sup> BCPSS Ex. 34.1. I infer that this refers to Individual Vocational Skills based upon the description provided by [REDACTED] during his testimony about the [REDACTED] program at [REDACTED]; even though neither party expressly defined the acronym.

<sup>141</sup> The ESY progress notes were not provided during the hearing by either party.

<sup>142</sup> See BCPSS Ex. 31.

<sup>143</sup> The Parent could not recall the specific date this occurred.



was an asynchronous day,<sup>144</sup> and that each student needed to log into their school-provided laptop to do their schoolwork. *Id.*

111. On September 10, 2023, [REDACTED] emailed the Student's teachers noting that the Parent had requested that weekly work packets be sent home for the Student to work on at home as well as information about what he was working on in class.<sup>145</sup>
112. On an unidentified date, the Parent contacted one of the Student's teachers about the Student not having a laptop for the asynchronous day. The teacher informed the Parent that the students with disabilities in her classroom were not assigned laptops but were given homework packets for the asynchronous day and apologized when the Parent informed her that the Student had not received a homework packet either.
113. There were only three asynchronous days in BCPSS during the 2023-2024 school year.<sup>146</sup>
114. On October 10, 2023, the Student participated in a student interview and with the assistance of the special educator, completed the TPI-3 and the Working Conditions Inventory Worksheet. On the TPI-3 assessment, the Student expressed an interest in becoming a [REDACTED] at [REDACTED].
115. Also on October 10, 2023, the Parent met with the Assistant Principal and teacher<sup>147</sup> regarding her concerns about the laptop. The Parent explained what supports and instruction the Student received while enrolled in the [REDACTED] program in the [REDACTED], and

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<sup>144</sup> Asynchronous, as its name suggests, simply means that the instruction by the teacher is not happening at the same time (live or in synch) as when the student is accessing the materials. It can mean that students are watching pre-recorded lecture videos or lessons, viewing video demonstrations, completing reading and writing assignments or research projects independently, or any other methodology selected by the teacher.

<sup>145</sup> See Parent Ex. 23.

<sup>146</sup> The record is unclear the exact dates on which the three asynchronous days occurred.

<sup>147</sup> The name of the teacher was not provided.

expressed concerns that the Student was not receiving the same level of supports and instruction at [REDACTED].<sup>148</sup>

116. Immediately following the October 10, 2023 meeting, the Parent went to [REDACTED] office and requested an IEP team meeting.
117. An annual IEP team meeting was scheduled for October 31, 2023.
118. On October 31, 2023, the Parent attended the meeting accompanied by her attorney. The meeting was rescheduled because the BCPSS was unaware that the Parent was bringing an attorney, and its attorney was not available for the meeting.<sup>149</sup>
119. On December 6, 2023, the IEP team met to review/revise the IEP and to discuss the Parent's concerns. During this meeting, the Parent requested that the Student be removed from [REDACTED], and the IEP team denied the request.
120. The IEP team included [REDACTED], Principal; [REDACTED], a BCPSS representative; [REDACTED], as the special education teacher; the Parent; [REDACTED], the Parent's attorney; [REDACTED]; Samara Scott, the BCPSS' attorney; [REDACTED], a BCPSS representative; and [REDACTED], as the general education teacher.
121. During the December 6, 2023 IEP team meeting, the IEP team:
- revised the current goals and objectives based on informal assessments, progress reports, teacher consults, and the team discussion;
  - confirmed that the Student continued to meet the eligibility criteria for [REDACTED] standards curriculum and assessments in accordance with Appendix A;
  - determined that the Student does not need the use of assistive technology at that time;
  - determined that the student would qualify for ESY services;
  - added the following SAS section of the IEP: use of word bank to reinforce vocabulary when extended writing is required, chunking of text, use pictures

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<sup>148</sup> The Parent testified that the Assistant Principal told her that [REDACTED] does not have a life skills program. She did not call the BCPSS staff present at this meeting to corroborate her account. Even if this statement were true, as explained below, I find that the [REDACTED] program provides life skills instruction to its enrolled students with disabilities.

<sup>149</sup> See Parent Ex. 9.

to support reading passages whenever possible, repetition of directions, and limit the amount of required reading;

- removed the SAS of “delete extraneous information when possible” because it was no longer necessary;<sup>150</sup> and
- confirmed that the remaining instructional and assessment accommodations and modifications continued to be appropriate for the student and therefore made no changes.<sup>151</sup>

122. During the December 6, 2023 IEP team meeting, the IEP team also determined that the Student “is able to functionally communicate his wants and needs in the classroom setting, participate meaningfully in class discussion, and communicate with his peers and staff.”<sup>152</sup>

123. The December 6, 2023 IEP contained present levels in the areas of reading comprehension, math calculation, math problem solving, and written language expression. Each present level included the subheadings for data sources, the Student’s capabilities at the start of the IEP, the Student’s current capabilities, the factors that impede the Student’s learning, the Student’s use of accommodations and SAS, the general education grade level expectations, and the continued areas of need.

124. The December 6, 2023 IEP also contained the following transition activities:

- Employment training: participation in a self-advocacy disability awareness skills workshop in school and sharing what he learned in class; and participation in the on-the-job skills and behavior activities in class and sharing these skills in a role-play in class;
- Academic: research training requirements and wages relating to retail associate jobs; completion of a job interview practice questionnaire and participation in a mock interview in class;
- Independent Living: participation in school-based training, such as purchasing appropriate items for personal use and participation in an activity requiring him to buy things from a store for personal use; and participation in a travel training exercise to learn about the different bus routes and times and the various public transportation available in Baltimore.<sup>153</sup>

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<sup>150</sup> BCPSS Ex. 11.2.

<sup>151</sup> See BCPSS Ex. 11.

<sup>152</sup> BCPSS Ex. 11.1.

<sup>153</sup> See BCPSS Ex. 14.17-14.22.

125. The December 6, 2023 IEP had two goals in math problem solving (perimeters; and word problems involving money); two goals in written language expression (writing simple sentences and typing personal information); two goals in reading comprehension (main character and setting and meaning of words and phrases in text); and two goals in math calculation (addition/subtraction with and without grouping and graphs).
126. In response to the Parent's request to remove the Student from [REDACTED], the school-based members of the IEP team determined that the Student's needs continued to be met at [REDACTED], and that the Student would participate in the [REDACTED] program with twenty-five hours of special education services outside of the general education environment provided by a special educator and instructional assistant for all classes except for art and electives. To address the Parent's specific concerns about the Student receiving life skills instruction in the community,<sup>154</sup> the IEP team offered a trial of the [REDACTED] ([REDACTED]) program.
127. The [REDACTED] program is an age-appropriate transition program offered by the BCPSS for students ages 18 and 19, who have completed high school with a high school diploma or a certificate of completion. Students enrolled in the [REDACTED] program spend part of their day working on functional academics and then they go out into the community for other parts of the day.<sup>155</sup>
128. The particular [REDACTED] program offered to the Parent was in partnership with [REDACTED].
129. The IEP team discussed that [REDACTED] would be following up with her supervisor to seek an admissions exception for the Student and inquire about the Student auditing the

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<sup>154</sup> The Parent testified that she also expressed concerns about the life skills instruction being implemented within the [REDACTED] program at [REDACTED].

<sup>155</sup> See Test. [REDACTED], generally; see also Test. Chong-Qui, generally.

- █████ program. The exception was for the Student's age and the fact that he was still enrolled in high school. The IEP team agreed to await more information from ██████████ and opted to reconvene the meeting after the end of January 2024.
130. If ██████████ was successful in obtaining an exception for the Student's enrollment in the ██████ program, ██████████ would have continued to be the Student's home school and would be responsible for maintaining his student records, holding IEP team meetings, and monitoring his progress. The Student would have been transported from ██████████ and attended the ██████ program by himself, without the other students with disabilities who attended ██████████.
131. As of the December 6, 2023 IEP team meeting, the Student was able to independently "fill out a mock job application form with his full name and birthday," and with a model, complete the address and zip code.<sup>156</sup> The Student was characterized as a "quiet worker" who sometimes "does his work hurriedly to gain access to computer time."<sup>157</sup> The IEP team also noted that as a ██████████ in the ██████████, the Student works well and was "learning fast with the assistance of [the ██████████] student ██████████."<sup>158</sup>
132. On December 11, 2023, ██████████ emailed the Parent copies of the December 6, 2023 IEP, PWN, Appendix A, and Transition Agency Linkage Consent form.<sup>159</sup>
133. On an unidentified date, when the Parent told the Student about the possibility for a different educational placement at the ██████ program, the Student became upset, called himself stupid, and said that he wanted to die.

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<sup>156</sup> BCPSS Ex. 14.12.

<sup>157</sup> *Id.*

<sup>158</sup> BCPSS Ex. 14.17.

<sup>159</sup> *See* Parent Ex. 27.

134. After numerous requests by the Parent, [REDACTED] gave the Student a laptop on January 29, 2024.<sup>160</sup>
135. On February 23, 2024, the IEP team convened at the Parent's request to review/revise the IEP. The Parent attended the meeting with her attorney, [REDACTED], Esquire.
136. [REDACTED] noted during the February 23, 2024 IEP team meeting that services were improperly removed from the IEP, specifically as it related to life skills, and requested that the Student be removed from [REDACTED].
137. During the February 23, 2024 IEP team meeting, the Parent expressed her concerns including that the Student was not getting the same programming that he received in the [REDACTED] program and that she had seen regression with his life skills; specifically, his hygiene, logging into the computer, and going to the grocery store.
138. The Parent explained to the IEP team how the [REDACTED] program classroom was structured and how the Student had opportunities to practice life skills, including ADLs, in the classroom and independence skills in the community at various locations.
139. The Parent pointed out to the team that the Student had life skills in the June 2022 [REDACTED] IEP, including among other things, needing "explicit instruction, modeling and frequent practice with daily life skills such as organizing his belongings."<sup>161</sup>
140. The team discussed the [REDACTED] program and agreed that the Student would participate in a two-week trial at the program beginning after Spring Break, and that the Parent would visit the [REDACTED] site at [REDACTED] in advance of the trial.
141. The team further agreed to reconvene after the [REDACTED] trial on April 16, 2024, at 9:15 a.m.

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<sup>160</sup> Parent Ex. 27, p. 529.

<sup>161</sup> BCPSS Ex. 15.

142. On April 9, 2024, [REDACTED] emailed the Parent copies of the documents to be discussed during the April 16, 2024, including the draft IEP, special education and general education progress reports, data trackers, and timecards from the Student's work in the [REDACTED].<sup>162</sup>
143. On April 12, 2024, the Parent emailed [REDACTED] regarding her disagreement with the validity of the Student's grades in his most recent report card because she had never received a copy of any work that he had done in school. The Parent also informed [REDACTED] that the Student is unable to log into the laptop, does not know his username, password, or the website used for the school work. Therefore, she believed that the Student has not been provided with access to technology. The Parent requested to "see all paperwork, including but not limited to class assignments, grading, testing, and any documentation that will support these grades on his report card."<sup>163</sup>
144. On April 15, 2024, after receiving a folder of work samples, the Parent emailed [REDACTED], informing him that there was "nothing but garbage in these folders," that there was no substantive work, and that the folders contained work samples from other students.<sup>164</sup>
145. The IEP team reconvened virtually on April 16, 2024, and the Parent attended along with her attorney, [REDACTED], and her educational advocate, [REDACTED] of [REDACTED].
146. The IEP team considered the Parent's concerns, including that the [REDACTED] program was not appropriate for the Student because students currently enrolled in the [REDACTED] program had already completed four years of high school, and the program did not have a curriculum.

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<sup>162</sup> See Parent Ex. 39.

<sup>163</sup> Parent Ex. 42, p. 563.

<sup>164</sup> Parent Ex. 44.

The team discussed the [REDACTED] program requirements and curriculum, the age exemption necessary for the Student to attend, and that during the observation the Parent shared that the Student would miss his friends at [REDACTED] and that he wanted opportunities to participate in traditional high school activities such as sports, prom, etc. The IEP team agreed that the Student would not be placed at the [REDACTED] program.

147. The Parent also shared with the IEP team that she continued to be concerned that the Student “lost basic life skills” and the Student had told her that [REDACTED] was “fun,” math is “easy,” reading is “hard,” and he wanted more help “reading the words.”<sup>165</sup> She also shared that [REDACTED], the Student’s stepfather, observed the Student in class doing nothing, but she could not provide the exact date of the observation.
148. The IEP team discussed the Student’s progress in Band, where he plays percussion instruments. During the meeting, [REDACTED], the Band teacher, told the IEP team that the Student recently used bad language in class but responded well to redirection.
149. The IEP team proposed a self-care goal, which was not included in the draft IEP sent to the Parent due to the need to develop a coinciding present level regarding this goal.<sup>166</sup> The team also agreed to the creation of task forms to gather data in order to write that present level. During the meeting, the team reviewed the proposed self-care goal and revised it to include toothbrushing, showering, and personal grooming. The team discussed a phone safety goal and agreed to include it as a Transition Activity instead of as a self-care goal.
150. The team agreed to reconvene on May 7, 2024, to continue the IEP team meeting.

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<sup>165</sup> BCPSS Ex. 15.1.

<sup>166</sup> In advance of this IEP team meeting, the school-based members of the IEP team could not identify how to collect data for the present level of self-care tasks typically done at home, like showering, and, therefore, they waited for the meeting to determine how to collect this data in discussion with the Parent.



151. On April 29, 2024, the Parent sent an email canceling the May 7, 2024 scheduled IEP team meeting.
152. On May 6, 2024, the special educator conducted an observation of the Student to assess his knowledge of skills for toothbrushing. The purpose of this observation was to collect data for the self-care present level. The Student was required to arrange the task cards that outlined the steps for toothbrushing in proper sequence (order), and then brush his teeth independently. While he got two of the steps out of order, he was able to perform each of the steps from the task cards in order independently, without prompting.<sup>167</sup>
153. On an unknown date, [REDACTED], developmental [REDACTED], [REDACTED], referred the Student for a follow-up [REDACTED] “in order to assess his current neurobehavioral status and assist with clinical management and treatment planning” and to address “concerns includ[ing] learning and memory, processing speed, and adaptive functioning.”<sup>168</sup>
154. On May 16, 2024, [REDACTED] conducted a [REDACTED] of the Student during a single six-hour outpatient visit at [REDACTED],<sup>169</sup> which included a review of relevant medical records, a review of past evaluations,<sup>170</sup> a parent interview for a developmental history questionnaire and standardized rating forms, and an observation of the Student’s behaviors and performance on the following standardized normative formal assessments:
- Adaptive Behavior Assessment System, 3rd Edition, Parent Form (ABAS-3);
  - Beery-Buktenica Developmental Test of Visual-Motor Integration, 6th Edition (Beery VMI-6), Visual-Motor Integration Test and Visual Perception subtests;
  - Child and Adolescent Memory Profile (ChAMP) Instructions and Lists;

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<sup>167</sup> BCPSS Ex. 16.13.

<sup>168</sup> Parent Ex. 3.

<sup>169</sup> [REDACTED] Test, Tr., p. 64.

<sup>170</sup> This review included neuropsychological evaluations conducted through [REDACTED] in 2015 and 2018 and a psychological report completed by the [REDACTED] during the 2017-2018 school year. Copies of these reports were not provided as evidence by either party.

- Clinical Evaluation of Language Fundamentals, 5th Edition (CELF-5), Core Language Index only;
- Delis Kaplan Executive Function System (D-KEFS), Tower Test;
- Gray Oral Reading Test, 5th Edition (GORT-5);
- Lafayette Grooved Pegboard;
- Texas Functional Living Scale (TFLS);
- Wechsler Adult Intelligence Scale, 4th Edition (WAIS-IV); and
- Wechsler Individual Achievement Test, 4th Edition (WIAT-IV), Math Fluency, Math Problem Solving, Numerical Operations, Sentence Writing Fluency, Spelling, Word Reading subtests.<sup>171</sup>

155. [REDACTED] made the following recommendations with respect to educational programming for the Student:

- Continue to receive special education services under the multiple disabilities code ([REDACTED] and [REDACTED]).
- Placement in a special education “level 5 school,” with self-contained/small group classroom for his primary academic courses, a heavy emphasis on functional life skills, such as the [REDACTED] ([REDACTED]) program, and continuation of special education services through age 21.
- Provision of a 1:1 aide or nursing support for self-care skills (e.g., [REDACTED]).
- ESY services to help minimize learning loss given his deficits in memory.
- Goals and support in all areas of transition planning, which include instruction, community experiences, development of employment and other post school adult living objectives, as well as daily living skills and a functional vocational evaluation.
- Integrated, explicitly taught daily living skills and community experiences, which the Student could also practice these skills in the community (e.g., grocery shopping, visiting a bank to deposit/withdrawing money, completing job application, etc.).
- Academic skills and the acquisition of adaptive life skills programming with opportunities for building skills for social relationships/interactions (i.e., social skills groups or training), helping him develop an understanding [of] what is and is not safe in terms of both physical actions and interpersonal interactions (e.g., personal boundaries), and encouraging use of other practical requirements for getting around the world (e.g., use of money, public transportation).
- Employment/post school adult living objectives to include a functional vocational evaluation in the context of what is realistic for [the Student] given his cognitive abilities, which may involve exposing him to the process of searching for a job, completing application materials, interviewing, and learning skills of that job in a supportive environment and eligibility for the Division of Rehabilitation Services (DORS).
- Speech/Language Therapy to address ongoing concerns with receptive and expressive language.

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<sup>171</sup> Parent Ex. 3, pp. 60, 64.

156. [REDACTED] also recommended the following accommodations and supports:

- Break new and more complicated tasks into smaller pieces and build new material on already mastered skills.
- Offer individualized reinforcement and repetition as needed.
- Errorless learning approach.<sup>172</sup>
- Keep all oral directions clear and concise. Complex, multi-step directions should be presented one at a time. Information will need to be repeated or simplified.
- Provide verbal and nonverbal cues for redirection as needed.
- Provide meaningful context to newly presented information.
- Use a multi-modal or multi-sensory format, with use of manipulatives; this is particularly important for math instruction.
- Check in with him to ensure that he comprehends task instructions/expectations.
- Cues and/or prompts to assist with word finding and expressive language. Examples multiple choice, forced choice (“Is this a handle or a hammock?”), phonemic cues (i.e., provide the initial sound of the target word), semantic cues (e.g., describe features of the object), and/or fill-in-the-blank.

157. As part of the [REDACTED], [REDACTED] did not review the Student’s educational records, conduct an observation of the Student in the educational environment, obtain ABAS-3 rating scales from the Student’s teachers or any other input from the Student’s teachers, and did not properly score the CELF-5 subtests.

158. On May 30, 2024, [REDACTED] emailed the Parent with copies of the documents to be discussed at the next IEP team meeting on June 6, 2024, including the draft IEP, the special education and general education progress reports, and the task analysis sheets.<sup>173</sup>

159. On May 31, 2024, at 4:36 p.m., the Parent provided the IEP team with a copy of [REDACTED] [REDACTED] May 16, 2024 [REDACTED] report.

160. On June 6, 2024, the IEP team convened to review the May 16, 2024 [REDACTED] report and to review/revise the Student’s IEP.

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<sup>172</sup> [REDACTED] described this as “using prompting and direct assistance to ensure that the behavior is done correctly when it is first introduced and frequent rehearsal of the proper technique, prompting and assistance can be gradually be [sic] faded over time.” Parent Ex. 3, p. 69.

<sup>173</sup> Parent Ex. 47.

161. During the June 6, 2024 IEP team meeting, the IEP team discussed the following regarding items with respect to the Student's IEP:

- Addition of a self-care goal to address toothbrushing, showering, and personal grooming.
- Addition of an objective to the Student's instructional level Written Expression goal regarding composing a formal email to an employer.
- Revision of the second ADL transition activity to include an enumeration of the tasks that the Student would complete (██████████, ██████████, ██████████, ██████████, and ██████████).
- Continuation of the existing Instructional and Assessment Accommodations and Modifications which were determined to be appropriate.
- Addition of SAS for "errorless learning" and "extended response time ("wait time" to process information when delivering verbal responses)" to further support the Student in the classroom.
- Continuation of specialized transportation of the Student to and from school to ensure his safety.
- Refusal to incorporate all of the recommended goals from the Parent's advocate in the draft IEP, because the Student had eight academic goals, one self-care goal, and eleven transition activities and the team was hesitant to include more than what was reasonable to expect the Student to achieve within the annual life of the current IEP.
- Agreement to revisit the recommended goals from the Parent's advocate at the Student's annual review in December 2024.
- Discussion of the additional proposed ADL transition activities and independent living transition activities in the school setting that incorporated the suggestions from the Parent's advocate being added to the IEP. This option was rejected by the Parent and her attorney who requested that these transition activities be provided in the community.
- Discussion of how the school brings in employers from the community during the monthly "Speaker Series" in which community partners and businesses present to students and discuss employment skills with the students.
- Discussion of how next year, the BCPSS will also trial a program in which citywide students will participate in community events and opportunities modeled on those from the ██████████ program.
- Discussion and rejection of ██████████ assessment report's recommendations including one-on-one aide for ██████████, ESY, speech and language therapy, and a more restrictive environment.
- Discussion of the Student's progress in the general education setting.<sup>174</sup>

162. During the June 6, 2024 IEP team meeting, the IEP team also considered the Parent and her attorney's request for a more restrictive setting with additional service hours. The

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<sup>174</sup> See BCPSS Ex. 15.

IEP team determined that the Student would continue to receive 25 hours of specialized instruction outside of the general education classroom provided by the special educator and/or instructional assistant in the [REDACTED] program, and general education art/electives classes. The IEP team determined that the Student's current number of service hours outside of the general education classroom continued to remain appropriate based on current progress reports and teacher reports. The IEP team also determined that the Student's IEP could be serviced in his then-current placement at [REDACTED] and that he currently did not require additional service hours. The IEP team noted the Parent's disagreement,<sup>175</sup> and the Parent received a copy of June 6, 2024 PWN.<sup>176</sup>

163. The Student made progress on all of his IEP goals for the 2023-2024 school year, as noted in the progress reports.
164. The Student made progress on all of his transition activities for the 2023-2024 school year, as noted in the progress reports.
165. At the end of the 2023-2024 school year, the Student earned the following grades: an A in U.S. History, a B plus in English, a C plus in Math, and a C in Science. The Student did not receive a separate grade for the Indv. Voc. Skills which was part of his U.S. History class period or a grade for Band.
166. The Student made progress on all of his IEP goals for the ESY in 2024 as noted in the progress reports.

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<sup>175</sup> See *id*; see also BCPSS Ex. 16.16-16.17.

<sup>176</sup> Test. Parent, Tr., p. 371.

167. On June 18 and August 13, 2024, [REDACTED]<sup>177</sup>, [REDACTED]<sup>178</sup> and [REDACTED]<sup>179</sup>, [REDACTED], conducted a Career Assessment of the Student as part of the DORS referral.

### **2024-2025 School Year**

168. As of the date of the hearing, the Student attended the [REDACTED] program at [REDACTED] for the 2024-2025 school year where he received functional and academic learning supports with embedded life skills instruction.
169. On September 3, 2024, [REDACTED] issued a Career Assessment Report to the Parent.
170. The Parent disclosed the September 3, 2024 Career Assessment Report to the BCPSS as part of the five-business days disclosure for this due process hearing.
171. As of the date of the hearing, the IEP team had not reviewed the September 3, 2024 Career Assessment Report.

## **DISCUSSION**

### **I. LEGAL FRAMEWORK**

The identification, evaluation, and placement of students in special education are governed by the IDEA.<sup>180</sup> The IDEA requires the states to provide a FAPE<sup>181</sup> to all children who

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<sup>177</sup> [REDACTED].

<sup>178</sup> [REDACTED].

<sup>179</sup> [REDACTED].

<sup>180</sup> 20 U.S.C.A. §§ 1400-1482; 34 C.F.R. pt. 300; Educ. §§ 8-401 through 8-417; COMAR 13A.05.01.

<sup>181</sup> 34 C.F.R. § 300.17. (“*Free appropriate public education* or *FAPE* means special education and related services that—(a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the [State Education Agency], 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

qualify for special education services.<sup>182</sup> To meet this obligation, local educational agencies (LEAs or school district) 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.”<sup>183</sup> In order to qualify to receive special education services, the child must be identified under one of the enumerated educational disabilities<sup>184</sup> and “by reason thereof, [need] special education and related services.”<sup>185</sup>

LEAs meet the federal requirement to provide a FAPE to eligible students through development and implementation of IEPs.<sup>186</sup> An IEP is a comprehensive program prepared by a child’s IEP Team, which includes mandatory members from the LEA as well as the child’s parent(s).<sup>187</sup> An IEP must be drafted in compliance with a detailed set of procedures.<sup>188</sup> It also must contain, among other things, “a statement of the child’s present levels of academic achievement and functional performance,”<sup>189</sup> “a statement of measurable annual goals,” and “a statement of the special education and related services to be provided to the child.”<sup>190</sup>

In addition to determining the frequency and methodology by which goals will be measured,<sup>191</sup> an IEP team must also address within the IEP whether the student requires

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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).

<sup>182</sup> 20 U.S.C.A. § 1412.

<sup>183</sup> 20 U.S.C.A. § 1400(d)(1)(A); *see also* Educ. § 8-403.

<sup>184</sup> There are thirteen designated educational disabilities under the IDEA. 34 C.F.R. § 300.8(a)(1), (b). Maryland recognizes these thirteen educational disabilities as: 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 up to age seven rather than age nine as set out in the IDEA).

<sup>185</sup> 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).

<sup>186</sup> *See* 20 U.S.C.A. § 1414(d); 34 C.F.R. §§ 300.320-300.324. *See also M.S. ex rel Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009) (“An IEP is the “primary vehicle” through which a public agency provides a student with a FAPE.”).

<sup>187</sup> 20 U.S.C.A. § 1414(d)(1)(B)-(d)(1)(D); 34 C.F.R. § 300.321; COMAR 13A.05.01.07.

<sup>188</sup> 20 U.S.C.A. § 1414(d)(1)-(4).

<sup>189</sup> As noted above, I refer to this term as “present level(s).”

<sup>190</sup> 20 U.S.C.A. § 1414(d)(1)(A)(i).

<sup>191</sup> 20 U.S.C.A. § 1414(d)(1)(A)(i)(III).

supplementary aids,<sup>192</sup> program modifications, supports, and accommodations, along with special education and related services, in order to advance towards goal attainment, participate in the general education curriculum, and/or participate in activities with nondisabled peers.<sup>193</sup> When developing the IEP, the IEP team must take into account the student's strengths, parent concerns, any evaluation results, and the student's academic, developmental, and functional needs.<sup>194</sup> Based upon the student's unique circumstances, the IEP may need to include specialized supports and/or services to address impeding behavior, communication needs, assistive technology,<sup>195</sup> postsecondary transition,<sup>196</sup> or ESY services.<sup>197</sup>

Prior to the initial provision of special education and related services to a student with a disability, the LEA must obtain parental consent.<sup>198</sup> Furthermore, in Maryland, "[a]fter the initiation of special education and related services, parental consent is not required to implement the student's IEP."<sup>199</sup>

However, Maryland law does require parental consent for every IEP in which the IEP team proposes to:

- (i) Enroll the child in an alternative education program that does not issue or provide credits toward a Maryland high school diploma;
- (ii) Identify the child for the alternative education assessment aligned with the State's alternative curriculum; or
- (iii) Include restraint or seclusion in the individualized education program to address the child's behavior as described in COMAR 13A.08.04.05.<sup>200</sup>

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<sup>192</sup> As noted above, I refer to this term as "SAS" which encompasses the terms plurality.

<sup>193</sup> 20 U.S.C.A. § 1414(d)(1)(A)(i)(II), (IV), (VI).

<sup>194</sup> 20 U.S.C.A. § 1414(d)(3)(A).

<sup>195</sup> 20 U.S.C.A. § 1414(d)(3)(B)(i)-(iv).

<sup>196</sup> 20 U.S.C.A. § 1414(d)(1)(A)(i)(VIII). In Maryland, transition services begin "not later than the first IEP to be in effect when a student turns 14 years old." COMAR 13A.05.01.09A(3).

<sup>197</sup> Educ. § 8-405(c).

<sup>198</sup> "A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child." 34 C.F.R. § 300.300(b)(1); *see also* COMAR 13A.05.01.13B(1).

<sup>199</sup> COMAR 13A.05.01.13B(6).

<sup>200</sup> Md. Code Ann., Educ. § 8-405(g)(1); *see also* 34 C.F.R. § 300.300(d)(2) ("In addition to the parental consent requirements described in paragraphs (a), (b), and (c) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.").



The parent’s consent to the initial provision of special education and related services remains in effect unless revoked by the parent, which includes when the student transfers to another jurisdiction within the state or outside of the state.<sup>201</sup>

“The IDEA cannot and does not promise ‘any particular [educational] outcome.’”<sup>202</sup> To ensure that an eligible child receives a FAPE, an IEP must be reasonably calculated to yield a meaningful educational benefit to the student.<sup>203</sup> The United States Supreme Court set out a two-part inquiry to analyze whether an LEA satisfied its FAPE obligation: first, whether there has been compliance with the procedures set forth in the IDEA; and second, whether the IEP, as developed through the required procedures, is reasonably calculated to enable the child to receive some educational benefit.<sup>204</sup> “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.”<sup>205</sup> 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. 20 U.S.C.A. § 1414(d)(1)(A)(i)(I)-(IV), (d)(3)(A)(i)-(iv).”<sup>206</sup>

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<sup>201</sup> “If the parent previously provided consent for the initial provision of services and the child never exited special education, there is no need for the new public agency to obtain consent for the provision of special education services.” United States Department of Education, Office of Special Education and Rehabilitation Services, Letter to Champagne (November 17, 2008) <https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/letters/2008-4/champagne111708consent4q2008.pdf> (last visited November 20, 2024); *see also* MSDE Technical Assistance Bulletin #23-01, Students Transferring Between Maryland Local Education Agencies and Into Maryland Schools from Out of State, dated April 2023, [https://marylandpublicschools.org/programs/Documents/Special-Ed/TAB/23-01\\_TAB\\_IEP\\_Transfers\\_2023\\_508\\_RWS-BR\\_051923.pdf](https://marylandpublicschools.org/programs/Documents/Special-Ed/TAB/23-01_TAB_IEP_Transfers_2023_508_RWS-BR_051923.pdf) (last visited November 20, 2024).

<sup>202</sup> *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 398 (2017).

<sup>203</sup> *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 187-204 (1982); *see also Endrew F.* at 399.

<sup>204</sup> *Rowley* at 206-07; *Endrew F.* at 391, 399.

<sup>205</sup> *Endrew F.*, at 399.

<sup>206</sup> *Id.* at 399, 400 (2017) (citations in original).

Further, “meaningful benefit” cannot be de minimis or slight.<sup>207</sup> Rather, a student’s appropriate progress, must be “appropriately ambitious in light of [the child’s] circumstances.”<sup>208</sup> Grade-to-grade advancement may be “appropriately ambitious” for students capable of grade-level work who are fully integrated in a regular classroom, but that is not the case for all students.<sup>209</sup> When grade-to-grade advancement is not reasonable for the student in light of their unique circumstances, they should be afforded the opportunity to meet challenging objectives.<sup>210</sup> An IEP “cannot be judged exclusively in hindsight.”<sup>211</sup> However, evidence of actual progress during the period of an IEP may also be a factor in determining whether a challenged IEP was reasonably calculated to confer educational benefit.<sup>212</sup>

A major component of determining whether an LEA has complied with its FAPE obligations is whether the special education and related services in the Student’s IEP are provided in the LRE to meet the student’s unique educational needs. The IEP team must consider the continuum of alternative placements, which spans 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.<sup>213</sup> 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.”<sup>214</sup>

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<sup>207</sup> *Id.* at 402.

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> *See K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 818 (8th Cir. 2011); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990).

<sup>212</sup> *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 327 (4th Cir. 2009); *see also M.M. v. Sch. Dist. of Greenville Cty.*, 303 F.3d 523, 532 (4th Cir. 2002).

<sup>213</sup> 34 C.F.R. § 300.115.

<sup>214</sup> 34 C.F.R. § 300.114(a)(2).

Under the IDEA, an administrative law judge may only find that a student with a disability did not receive a FAPE based upon a procedural violation if the procedural inadequacies:

- (I) Impeded the child's right to a FAPE;
- (II) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
- (III) Caused a deprivation of educational benefit.<sup>215</sup>

An administrative law judge may order an LEA to comply with procedural requirements under the IDEA if there is an ongoing procedural inadequacy.<sup>216</sup>

When a school system has failed its obligation to a student under the IDEA, that student is entitled to be made whole with nothing less than a “complete” remedy including compensatory services.<sup>217</sup> Further “[w]hen a FAPE is not provided to a disabled student, the student's parents may seek an award of compensatory education. These educational services are ordered by the court to be provided prospectively to compensate for a past deficient program, i.e., the school system's failure to provide the student with a FAPE.”<sup>218</sup> A presiding administrative law judge who presides over a special education due process hearing has the broad discretion to grant equitable relief to the Student when they are the prevailing party,<sup>219</sup> which can include tuition reimbursement<sup>220</sup> and/or placement at a nonpublic school as a form of compensatory education.

## **II. BURDEN OF PROOF**<sup>221</sup>

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<sup>215</sup> 20 U.S.C.A. § 1415(f)(3)(E).

<sup>216</sup> 20 U.S.C.A. § 1415(f)(3)(E).

<sup>217</sup> *G.I. v. Ligonier Valley Sch. Distr. Auth.*, 802 F.3d 601, 625 (3d Cir. 2015) (citing *Forest Grove Sch. I Dist. v. T.A.*, 557 U.S. 230, 244 (2009)).

<sup>218</sup> *Y.B. v. Bd. of Educ. of Prince George's Cnty.*, 895 F. Supp. 2d 689, 693-94 (D. Md. 2012) (internal citation and quotation marks omitted); see also *Reid ex rel. Reid v. D.C.*, 401 F.3d 516, 518 (D.C. Cir. 2005) (compensatory education should “aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA”) and *G. v. Fort Bragg Dependent Schools*, 343 F.3d 295, 309 (4th Cir. 2003).

<sup>219</sup> 20 U.S.C.A. § 1415(i)(2)(C)(iii); “Equitable considerations are relevant in fashioning relief,’ and the court enjoys ‘broad discretion’ in so doing.” *Florence Cnty. Sch. Dist. Four v. Carter By & Through Carter*, 510 U.S. 7, 16 (1993) (internal citations omitted) superseded by statute on other grounds, citing *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359 (1985).

<sup>220</sup> See *id.*; see also *Forest Grove School District v. T.A.*, 557 U.S. 230 (2009).

<sup>221</sup> “Compensatory education, like retroactive reimbursement, is necessary to preserve a handicapped child's right to a free education. Without it, the child's right would depend upon his or her parent's ability to fund the education

The Parent bears the burden of showing that the BCPSS denied the Student a FAPE because the IEP was not developed to enable the Student to make progress in light of his unique circumstances and that the BCPSS did not implement the Student's IEPs as written, in conjunction with the specific issues outlined above.<sup>222</sup> The standard of proof in this case is a preponderance of the evidence.<sup>223</sup> To prove an assertion or a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered.<sup>224</sup>

For the reasons stated below, I find that the Parent has not met her burden.

### **III. ANALYSIS**

#### **A. Comparable Services**

The Parent argued that the BCPSS failed to provide the Student with comparable services to those he received in the [REDACTED] because in developing the August 2022 IEP, the BCPSS "stripped away" portions of the June 2022 [REDACTED] IEP, including the placement/least restrictive environment, explicit life skills supports, behavioral therapy, and speech and language services.

Additionally, the Parent argued that the BCPSS failed to implement any life skills instruction for the Student for the 2022-2023, 2023-2024, and 2024-2025 school years, whether within or outside of the school building. It was the Parent's position that the IEP was significantly changed in the course of the Student's transfer between jurisdictions, and that the Parent was not given the opportunity to meaningfully participate in the IEP team meetings where such changes occurred.

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during the years of administrative proceedings and federal court litigation." *Jefferson Cnty. Bd. of Educ. v. Breen*, 853 F.2d 853, 857–58 (11th Cir. 1988).

<sup>222</sup> *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005); 34 C.F.R. § 300.502(b)(2)(i).

<sup>223</sup> State Gov't § 10-217 (2021); COMAR 28.02.01.21K(1).

<sup>224</sup> *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

The BCPSS contended that it developed an IEP with comparable services because it contained the same special education and related service hours outside of the general education setting, the same mainstreamed instruction for electives, goals in the same content areas, as well as comparable accommodations, and SAS. Additionally, the BCPSS argued that it fixed errors with the June 2022 [REDACTED] IEP, added functional goals in each content area in accordance with MSDE standards/guidance, added new accommodations and SAS, and requested parental consent for an updated educational assessment to align the Appendix A ([REDACTED] assessments and curriculum) with MSDE requirements.

I will address the issue of the development of the IEP first, and then its implementation.

The crux of this issue is whether I accept the Parent's interpretation of comparable services, which is that such services must be exact or identical to those in the June 2022 [REDACTED] IEP, versus the BCPSS' position that the services are similar. For the reasons outlined below, I find that comparable services are those services that are similar or equivalent, and that the BCPSS developed an IEP with comparable services on August 3, 2022.

Pursuant to the IDEA, where a student receiving special education services transfers or moves intrastate (within the state), the new LEA must provide the student with a FAPE, including comparable services to those provided in the original IEP from the other Maryland LEA.<sup>225</sup> Specifically, section 1414(d)(2)(C)(i)(I) provides as follows:

(I) Transfer within the same State

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<sup>225</sup> 20 U.S.C.A. § 1414(d)(2)(C)(i)(I).

In the case of a child with a disability who transfers school districts within the same academic year,<sup>226</sup> who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.<sup>227</sup>

The accompanying federal regulation contains similar language:

***IEPs for children who transfer public agencies in the same State.*** If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child’s IEP from the previous public agency), until the new public agency either—

- (1) Adopts the child’s IEP from the previous public agency; or
- (2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§ 300.320 through 300.324.<sup>228</sup>

Thus, when a student with an IEP moves within the state, no initial evaluation is required; rather, the LEA has the discretion to reevaluate the student.<sup>229</sup>

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<sup>226</sup> An argument could have been made that because the Student transferred to the BCPSS in the summer of 2022, it was not within the same academic year. However, neither party argued this point. The BCPSS posited that its August 3, 2022 was the comparable IEP until its development of a new IEP in November 2022. As such, I decline to address this potential argument *sua sponte*. See *Maynard v. District of Columbia*, 701 F. Supp. 2d 116 (2010) (finding that District of Columbia Public Schools (DCPS) could not satisfy its obligation under IDEA to provide a disabled student with a FAPE by offering services comparable to those described in student’s IEP from the private school; because, the student’s IEP could not be transferred to DCPS, the private school was not a “public agency” within meaning of the education regulation governing IEP transfers, and the student transferred schools during the summer, not within the same school year.)

<sup>227</sup> *Id.*

<sup>228</sup> 34 C.F.R. §300.323(e).

<sup>229</sup> See *id.*; see also *R.F. by Frankel v. Delano Union Sch. Dist.*, 224 F. Supp. 3d 979, 985 (E.D. Cal. 2016).

The IDEA’s comparable services provision applies to the most recent IEP in effect prior to the student’s transfer. In other words, the most recent IEP must have been implemented by the previous jurisdiction in order for the comparable services obligation to apply.<sup>230</sup>

Referring to the comparable services language in the IDEA, the United States Court of Appeals for the Third Circuit (Third Circuit) has reasoned that the IDEA’s IEP transfer provision is mandatory and interpreted that, “[t]he term “*previously held* IEP,” combined with the intrastate-transfer provision’s title, “Program for children who transfer school districts,” further confirms that the *previously held* IEP is no longer the mandatory standard used to determine the child’s placement.”<sup>231</sup> The Third Circuit further opined that,

Moreover, the IDEA’s accompanying regulations provide more generally that a “child’s placement ... [i]s based on the child’s IEP,” not that the placement must be identical to the placement in the previously held IEP. Although the regulations state that “[t]he placement decision ... [i]s made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options,” the intrastate-transfer provision requires the new school district to provide comparable services “in consultation with parents,” not to give the parents a veto power. Indeed, it is ultimately the school district that makes a placement decision. “Parental dissatisfaction is channeled through administrative and (if necessary) judicial proceedings.”<sup>232</sup>

The concept that intrastate transfers require identical services in the new jurisdiction is not supported by the courts’ interpretation or agency interpretation. To determine whether services are “similar” or “equivalent,” courts compare the services and objectives as articulated

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<sup>230</sup> See *A.M. ex rel. Marshall v. Monrovia Unified Sch. Dist.*, 627 F.3d 773, 779 (9th Cir. 2010) (concluding that a California statute, which was equivalent to the IDEA’s language, required provision of services in accordance with the previously implemented IEP, and thereby effectuates the statute’s purpose of minimizing disruption to the student while the parents and the receiving school resolve disagreements about the proper placement).

<sup>231</sup> *Y.B. on behalf of S.B. v. Howell Twp. Bd. of Educ.*, 4 F.4th 196, 202-203 (3d Cir. 2021) (internal citations omitted) (determining that the stay-put provision yields to the mandatory intrastate transfer provisions when a parent files for due process in the midst of the school district’s initial implementation of comparable services).

<sup>232</sup> *Y.B. on behalf of S.B. v. Howell Twp. Bd. of Educ.*, 4 F.4th 196, 202-203 (3d Cir. 2021).

on a student's IEP as well as within the school context as a whole.<sup>233</sup> Furthermore, the United States Department of Education has not interpreted its own regulations regarding comparable services in such a way to require identical services to a prior intrastate IEP.<sup>234</sup>

I will address each of the Parent's arguments regarding what was "stripped away" from the June 2022 [REDACTED] IEP in the comparable services analysis.

**i. Comparable Placement/LRE**

A student with a disability's educational placement is often used synonymously with the LRE. The United States Court of Appeals for the Fourth Circuit (Fourth Circuit), has held that "the term "educational placement" is not the location to which the student is assigned but rather the environment in which educational services are provided."<sup>235</sup> In so holding, the Fourth Circuit reasoned that, "the IDEA's concern with location thus focuses on the degree to which any particular assignment segregates a disabled student from non-disabled students, rather than on the precise location of the assignment itself."<sup>236</sup> Along those lines, the Fourth Circuit further noted that

The LRE requirement reflects the IDEA's preference that "[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled." However, this preference for "mainstreaming" disabled students is not absolute; § 1412(a)(5) permits the delivery of educational services to disabled students in less integrated settings as necessitated by the student's disability.<sup>237</sup>

In determining whether the Student's placement (i.e., educational setting) was the same, I considered factors such as the class size, student-teacher ratio, and student population. While the

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<sup>233</sup> See *Sterling A. ex rel. Andrews v. Washoe Cnty. Sch. Dist.*, No. 3:07-cv-245, 2008 WL 4865570, at \*5-6 (D. Nev. Nov. 10, 2008) (finding services "comparable" where the only difference was the location of the services being offered); *West Orange Bd. of Educ. v. B.R. o/b/o B.R.*, No. 21-cv-13849, 2022 WL 2903341, at \*5 (D. N.J. July 22, 2022) (finding services were not "comparable" where there was "significant differences in class size, school size, student-teacher ratio, and the proportion of classified students per class").

<sup>234</sup> See 71 Fed. Reg. 46540, 46681 (Aug. 14, 2006), ("The Department interprets 'comparable' to have the plain meaning of the word, which is 'similar' or 'equivalent.'").

<sup>235</sup> *AW ex rel. Wilson v. Fairfax Cnty. Sch. Bd.*, 372 F.3d 674, 682 (4th Cir. 2004).

<sup>236</sup> *Id.* at 681.

<sup>237</sup> *Id.* (internal citations omitted).



Parent's testimony regarding the "LRE-C" program was confusing at times, in her due process complaint she was clear that the Student's "high school would have been [REDACTED] within the [REDACTED] program." Complaint, p. 1. As such, I relied heavily upon the Parent's description of the [REDACTED] program from middle school (assuming it is the same as high school) as well as [REDACTED] description of the [REDACTED] [REDACTED] program and [REDACTED] comparison between the [REDACTED] program and the [REDACTED] program at [REDACTED] for this analysis.

In the [REDACTED] the Student received instruction in a structured, self-contained classroom with two teachers and approximately twenty children in the [REDACTED] program within a comprehensive public school setting. His services included twenty-five hours of special education services per week outside of the general education environment (five, five-hour sessions), to be delivered in a self-contained classroom environment with life skills support. He also received ninety minutes of special education services per week inside of the general education environment (two forty-five-minute sessions), for physical education with adapted support and for specials; and thirty minutes of speech and language therapy for four sessions per month, which were to be delivered inside of the special education setting once a week for thirty minutes.

The BCPSS' August 3, 2022 IEP also included twenty-five hours of special education services in a self-contained environment for all academic content areas and functional life skills classroom-based instruction with approximately ten to twelve children, a special education teacher, and at least one paraeducator. The BCPSS also provided the Student with instruction in the general education environment for his electives, where he was mainstreamed with his nondisabled peers; and thirty minutes of speech and language services per week inside of the

special education environment. The August 3, 2022 IEP team deferred the ESY decision as it did not have enough data at that time. Otherwise, both IEPs offered the same amount of special education and related services hours in a public-school setting. Even though the class size at [REDACTED] is smaller, the student population, i.e., students with disabilities, and the student-to-teacher ratio are no different.

Additionally, the Student had the same opportunity to be educated with nondisabled peers in the general education setting. If the Student had attended high school in the [REDACTED], his IEP required ninety minutes per week of special education services in physical education and specials/electives in the general education setting. The August 3, 2022 IEP did not include special education services hours in the general education setting at [REDACTED], but the Student was not enrolled in physical education. However, he was still mainstreamed for his elective (Art in the 2022-2023 school year, and Band for the two school years thereafter). While those service hours in the general education setting were removed, the Parent set forth no evidence (or even an argument) to show why specially designed instruction<sup>238</sup> was required for the Student to access the Art curriculum in 2022-2023 school year (or for Band thereafter in the 2023-2024 and 2024-2025 school years). Nor did the Parent establish a nexus between the removal of these hours and a denial of FAPE. These services were simply never mentioned during the hearing.

For all of these reasons, I find that the educational placement set forth in the August 3, 2022 IEP developed by the BCPSS provided a comparable educational setting for the Student for the 2022-2023 school year. Next, I will address the Parent's argument about whether the educational placement on the August 3, 2022 IEP was the LRE for the Student.

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<sup>238</sup> "Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction— (i) To address the unique needs of the child that result from the child's disability; and (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children." 34 C.F.R. § 300.39(b)(3).

The Parent's main contention is that the Student was not placed in an "LRE-C"<sup>239</sup> self-contained program with life supports. Although she testified that the [REDACTED] IEP team was moving the Student into a different program for high school and that he would receive community-based instruction, she did not specify how the high school program differs from what he received in middle school. She described the [REDACTED] program at [REDACTED] in detail. Unfortunately, every copy of the June 2022 [REDACTED] IEP has words cut off on the right-hand side margin making it difficult to know the full scope of the [REDACTED] IEP team's discussion. There was no corresponding PWN which could have clarified the program change.

From the Parent's testimony, it appeared that the Student would still be in the [REDACTED] program, still be offered inclusion in electives, as well as receive life and social skills supports and community-based instruction in high school, as he did in middle school. The LRE page of the June 2022 [REDACTED] IEP read as if the Student was going to be fully self-contained without any instruction within the general education setting but that is inconsistent with the service hours provided in the June 2022 [REDACTED] IEP, which reflect hours within the general education setting.

There was no separate services line to show the distinction between the remaining service hours in middle school for the 2021-2022 school year and the new service hours in high school for the 2022-2023 school year.

Therefore, based upon the evidence, I can reach no other conclusion than the LRE in which the Student would have received special education services if he had remained in the [REDACTED] would not have changed between the middle school IEP and the proposed high school IEP. As noted in the Parent's Due Process Complaint, the Student was going to be in the [REDACTED]

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<sup>239</sup> The Parent kept referring to the change as the "LRE-C program," but LRE-C is just a designation to identify the percentage of time a student is in the general education setting, as explained during [REDACTED] testimony. In other words, the program is the "[REDACTED]" program with an LRE-C designation based upon the percentage of time students spend in the general education setting, i.e., less than forty percent.

program in high school. She and her attorneys expressed their concerns at multiple IEP team meetings that the Student was not in the [REDACTED] program.

[REDACTED], Coordinator for Due Process and Parent Response, BCPSS, who was qualified as an expert in special education, testified regarding the transfer process for students with disabilities as well as the nature of the [REDACTED] program. I found her testimony to be informative as she supervises the staff who conduct record reviews for the transfer process, performs such reviews herself, and has worked in various educational programs within the BCPSS, including a [REDACTED] program. She testified that she is familiar with the [REDACTED] [REDACTED] program as well, and even though the June 2022 [REDACTED] IEP did not contain any explicit reference to the [REDACTED] program, the services and supports were consistent with the [REDACTED] [REDACTED] program.

[REDACTED] opined that the [REDACTED] program focuses on academics and life skills support and opportunities to work on individualized transition activities and provides explicit instruction in daily living skills, behavior management, and positive reinforcement.<sup>240</sup> To that end, she offered the following position:

The [REDACTED] Program, just like our [REDACTED] Program, it's a Least Restrictive Environment C, so less than 40 percent. But it is held within a comprehensive school, with General Education students. And although the students do receive the majority of their education with disabled peers, they do have opportunities -- such as lunch, transitions, and Specials -- to interact and to learn with non-disabled peers. The students in our [REDACTED] Programs do typically transition to all of those options, of lunch, transitions -- you know, more school-wide programs, such as assemblies and/or Specials, with an instructional assistant. So they do have additional support, while they're having those inclusive time[s]. And that is also similar to the model that [the [REDACTED]] uses in the [REDACTED] Program. Which is why, on this IEP,<sup>241</sup> you see in multiple places that an instructional assistant is also identified on the services page, and for some of the supplementary aids. We have a similar structure.<sup>242</sup>

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<sup>240</sup> Test. [REDACTED] n, Tr., pp. 691-692.

<sup>241</sup> [REDACTED] was referring to the August 3, 2022 IEP.

<sup>242</sup> Test. [REDACTED], Tr., pp. 694-695.

Although involving an analysis regarding a change of placement, I found the factors considered by the United States District Court for the District of Maryland (Maryland U.S. District Court) in *Cavanagh v. Grasmick*, 75 F. Supp. 2d 446, 468 (D. Md. 1999) to be instructive regarding comparable services. The Maryland U.S. District Court reasoned that:

In determining whether a proposed change will substantially or materially alter [the] child's educational program, OSEP<sup>243</sup> advises courts to consider: (a) whether the educational program set out in the child's IEP has been revised; (b) whether the child will be able to be educated with non-disabled children to the same extent; (c) whether the child will have the same opportunities to participate in non-academic and extracurricular services; and (d) whether the new placement option is the same option on the continuum of alternative placements.<sup>244</sup>

Here, the revisions to the IEP made it more robust than the June 6, 2022 [REDACTED] IEP, including twice as many goals, additional SAS, and transition activities that were more specifically tailored to the Student's postsecondary goals. Even where items were removed, the Student had the same opportunity to be educated with nondisabled peers under the August 3, 2022 IEP to the same extent as afforded by the June 6, 2022 [REDACTED] IEP.

Additionally, the Parent set forth no evidence showing that the Student did not have the same nonacademic or extracurricular opportunities under the August 3, 2022 IEP developed by the BCPSS as he did under the [REDACTED] June 6, 2022 IEP. There is also no doubt that the [REDACTED] [REDACTED] program is an LRE-C self-contained program with mainstreaming in nonacademic settings such as lunch, and transitions in the hallways and class instruction (in electives) with other students without disabilities.

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<sup>243</sup> United States Department of Education, Office of Special Education Programs.

<sup>244</sup> *Cavanagh v. Grasmick*, 75 F. Supp. 2d 446, 468 (D. Md. 1999) (internal citations omitted).

The BCPSS sufficiently refuted the Parent's contention that the Student was placed in a different LRE. I acknowledge that the Student was receiving special education and related services in his home or zoned school within the [REDACTED], and that the Student would have attended [REDACTED], as his home or zoned school within the BCPSS. A determination was made by the BCPSS that the programming required by the June 2022 [REDACTED] IEP could not be provided within his home school, and the Student was then placed at [REDACTED]. While [REDACTED] is a public charter school, [REDACTED] testimony was clear that the [REDACTED] board's oversight does not influence the provision of special education services for the students attending that school, and thus, [REDACTED] operates the same as any other traditional comprehensive public school.

[REDACTED] was one of the two closest schools to the Student's home that offered the services required by the June 2022 [REDACTED] IEP. The IEP team met on August 3, 2022, including the Parent, who participated by phone and documented its LRE discussion on the IEP that it ruled out the Student's participation in the general education setting for 80% of the time and for 40-79% of the time in favor of his participation for less than 40% of the time. Thus, while [REDACTED] [REDACTED] (from the BCPSS central office) made the initial placement determination, the IEP team ultimately determined that the Student's needs could be met at [REDACTED] and provided the Parent with a PWN which reflected this decision.

For all of these reasons, I find that the placement/LRE set forth on the August 3, 2022 IEP complied with the IDEA's requirements to provide comparable services. As such, the BCPSS did not fail to provide a comparable placement/LRE from the prior in-state transfer IEP for the 2022-2023, school year until the development of a new appropriate IEP.<sup>245</sup>

## **ii. Comparable Life Skills**

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<sup>245</sup> 20 U.S.C.A. § 1414(d)(2)(C)(i)(I); 34 C.F.R. §300.323(e).

The Parent testified that she did not believe that the Student received any instruction in life skills during any of the school years with the BCPSS because she never received any of the Student's work, and when she asked for it, she was given other students' work samples. She argued that the important components of the LRE page were removed, and that such removal denied the Student a FAPE.

The removal of the phrase "with life skills support" from the LRE page on the newly developed IEP dated August 3, 2022, does not mean that the BCPSS did not provide comparable services. ██████ testified that life skills instruction is embedded into the ██████ program at ██████ and that explicit instruction is provided during the third period block in the schedule and includes employment training, independent living, and community participation lessons.<sup>246</sup> The embedded instruction includes activities and lessons on functional life skills that the Student would need for independent living such as filling out job applications, interview skills, telephone skills, grocery shopping, meal preparation, understanding finances, personal health and hygiene, and accessing resources in the community.<sup>247</sup> These activities and lessons are done through role plays, scripts, and activities in the Social Studies/functional life skills class in the Student's schedule versus in the community.

In addition to the life skills training that all students receive in the ██████ program at ██████, the Student continued to have specific SAS, transition activities, and functional academic goals geared towards life skills. On August 3, 2022, the BCPSS IEP team added four SAS (use of highlighters, checks for understanding, modified content, and deletion of extraneous information), which, among other things, were noted to assist the Student with "functional life skills" or "functional academics."<sup>248</sup> While all of the Student's SAS on the August 3, 2022 IEP

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<sup>246</sup> See BCPSS Ex. 47.2.

<sup>247</sup> *Id.*

<sup>248</sup> BCPSS Ex. 5.

were to be provided in all content areas, the team explicitly identified these new areas as necessary for the Student to access the life skills curriculum at [REDACTED].

Further, the BCPSS IEP team added new transition activities to the August 3, 2022 IEP. These new transition activities included but were not limited to resume writing, preemployment vocabulary with picture association, “getting and keeping a job” activities, lessons on work ethics, and completing [REDACTED] exercises.<sup>249</sup>

Additionally, the life skills teacher or paraeducator assisted the Student with completing the TPI-3 and Working Condition Inventory Worksheet on September 2, 2022. The Student continued to identify being a [REDACTED] as his career interest and shared that he would like to enroll in a vocational school after high school, live independently, and work full-time. Through support from the life skills teacher or the paraeducator he also noted on the TPI-3 that he needed assistance with budget and money management, and that his Mom and Dad were the most significant people in his life, especially his Mom from whom he seeks advice for major life decisions.<sup>250</sup>

The BCPSS IEP team also initiated the agency linkage process for the Student to begin working with State agencies charged with supporting adults with disabilities in their respective communities throughout Maryland, including DORS, DDA, BHA and MDL. The Parent signed the consent form for agency linkages on October 25, 2022.<sup>251</sup>

Based upon the Student’s cognitive and complex educational needs, including the need for [REDACTED] instruction and assessments, the BCPSS IEP team also added functional goals in each academic content area. [REDACTED] testified that these goals were added to align to the MSDE’s

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<sup>249</sup> BCPSS Ex. 5.15-5.18.

<sup>250</sup> See BCPSS Ex. 5.15.

<sup>251</sup> BCPSS Ex. 7.1.



guidance for students with cognitive disabilities. As such, these core academic functional learning skills are prerequisites to the Student being able to participate in any transition activities, which would prepare him for independence in his career, education, and living after high school. The Student also had a math calculation goal in counting money, which was added and was not reflected on the previous June 2022 [REDACTED] IEP. The parties did not dispute that counting money is a necessary life skill for the Student.

In reviewing the June 2022 [REDACTED] IEP, the identified needs for life skills instruction or independent living transition activities in the academic setting was unclear. The phrase “life skills” only appears in three sections of the June 2022 [REDACTED] IEP: (1) on the ESY page; (2) on the transition activities and services page; and (3) on the LRE page.

With respect to the ESY page, the term of art “critical life skills” is used for determining eligibility for ESY. While life skills such as counting money, grooming/hygiene, or self-care could be included in critical life skills, they are not synonymous. Academics such as reading, writing, math and communication can also qualify as critical life skills. The [REDACTED] IEP team documented the basis for its ESY determination as follows:

The team considered the criteria and determined that [the Student’s] educational programming should include ESY services. [His] speech, language, and academic skills are significantly below age level expectations. Due to his disability[,] [the Student] is unable to recoup skills lost over breaks from school in a reasonable period of time. His level of performance and degree of progress in learning critical life skills is significantly delayed relative to chronological age and grade level expectations. **The IEP includes annual goals related to critical life skills.** [The Student] also has behaviors that interfere with academic growth. He needs constant and consistent structure and routine in order to maintain behavior needed to facilitate constructive participation in functional academic and critical life skills learning activities. Regression and failure to recoup skills [are] exhibited in his work samples; his educational program during the school year would be significantly jeopardized if ESY is not provided.<sup>252</sup>

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<sup>252</sup> BCPSS Ex. 1.15 (emphasis added).

The Student only had five IEP goals on the June 2022 [REDACTED] IEP: a reading comprehension goal, a math goal, a writing goal, an expressive/receptive language goal and an on-task behavior goal. None of these goals mentioned “life skills,” and only the reading, math, and writing goals were identified as goals to be worked on during ESY. Thus, the “critical life skills” within the annual goals on the June 2022 [REDACTED] IEP did not include anything other than functional academic skills.

The Student had postsecondary goals and transition activities on the June 2022 [REDACTED] IEP. The postsecondary goals included working as a [REDACTED] after getting his certificate of completion and training to be a [REDACTED] with adult supports. The Student did not have any postsecondary goals for education or independent living. But, to support the academic and employment training goals, the June 2022 [REDACTED] IEP team selected “Job Sampling and Employment Training” and “Activities of Daily Living” as the “Functional and Skill Development Activities” that the Student would participate in for the 2022-2023 school year.<sup>253</sup> As the basis for its determination regarding functional and skill development activities, the [REDACTED] IEP team referred to “functional and adaptive coursework including community-based instruction focusin[g on] daily living skills and employability skills.”<sup>254</sup> The “daily living skills” were not further delineated.

Lastly, the June 2022 [REDACTED] IEP included the following transition activities: Academic – practice strategies to initiate and sustain attention for task completion; Employment training – complete a student interest sheet for the 2022/2023 school year identifying preferences and interests; and complete a transition assessment for 2022/2023 school year.<sup>255</sup> As of June 16, 2022, the Student’s academic transition activity was partially completed, and the two

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<sup>253</sup> BCPSS Ex. 5, pp. 114-116.

<sup>254</sup> *Id.*

<sup>255</sup> *See id.*

employment training transition activities had not yet been initiated.<sup>256</sup> Identifying areas of career interests and providing training are transition activities and postsecondary goals which are evident on the face of the transition page, but it is unclear what specific ADLs were to be provided in the Student's proposed coursework as he matriculated to high school.

Next, while the phrase "life skills" is referenced several times on the LRE page of the June 2022 [REDACTED] IEP, there is nothing contained in that IEP that describes what specific life skills the Student needs to receive FAPE. The LRE page only mentions "organizing his belongings."<sup>257</sup> The transition present level does not delineate the specific ADLs in the coursework. Additionally, the Student did not have a "physical" present level which would have addressed his self-care needs that the Parent claims have regressed such as toothbrushing, bathing, organizing, etc. The only behavioral goal on the June 2022 [REDACTED] IEP related to on-task behaviors. None of the SAS or accommodations refer to their use specifically for life skills instruction. Additionally, the special education services do not specify what portion of the services are attributable to the life skills instruction versus other academic content areas.

Based upon the Parent's description of the [REDACTED] program, it appears that the life skills instruction is embedded into a curriculum for a portion of the school day or integrated throughout the instruction for the entire day—like the [REDACTED] program at [REDACTED].

Whether the Parent requested community-based instruction versus life skills instruction at the four IEP team meetings during the 2023-2024 school year was a point of contention. The Parent was initially asked about community-based instruction during direct examination, but she clarified during cross-examination that she is challenging the BCPSS IEPs for the 2022-2023, 2023-2024 and 2024-2025 school years because the Student did not receive functional academic

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<sup>256</sup> See BCPSS Ex. 1.17-1.18.

<sup>257</sup> Parent Ex. 5, p. 125.

life skills support regardless of whether it was provided in the community or in the classroom. Based upon her clarification, I considered both community-based instruction and classroom-based life skills instruction.

I would be remiss if I did not address that any disagreement about the comparable services stemming from the methodology will not form the basis for a denial of FAPE claim. Part of the [REDACTED] program that the Student would have attended at [REDACTED], his previous home school in the [REDACTED], would have involved community-based instruction. In the [REDACTED] program at [REDACTED], life skills instruction is provided within the classroom setting. However, the change in the setting does not mean that the Student is not receiving life skills instruction. As the U.S. Supreme Court has clearly outlined, matters of methodology are left squarely to the educational professionals.<sup>258</sup>

Furthermore, I am not charged with resolving disagreements over methodology, nor can I substitute my own notions of educational policies for those of educational professionals.<sup>259</sup>

Furthermore, I found [REDACTED] example of how methodology can change between jurisdictions to be helpful. He testified that,

Each district is able to determine the methodology of their programs. If I use [the Student's] current IEP as an example, so we have a school store where [the Student] works and practices a lot of the functional life skills. If he went to a school in [REDACTED] that had a similar program, they wouldn't have to

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<sup>258</sup> “In assuring that the requirements of the Act have been met, courts must be careful to avoid imposing their view of preferable educational methods upon the States. The 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, was left by the Act to state and local educational agencies in cooperation with the parents or guardian of the child.” *Rowley*, 458 U.S. at 207 (1982).

<sup>259</sup> “We afford great deference to the judgment of education professionals in implementing the IDEA. As long as an individualized education program provides the basic floor of opportunity for a special needs child, a court should not attempt to resolve disagreements over methodology. See *Rowley*, 458 U.S. at 208, 102 S. Ct. 3034; see also *Hartmann ex rel. Hartmann v. Loudoun Cnty. Bd. of Educ.*, 118 F.3d 996, 999 (4th Cir.1997) (“[T]he IDEA does not grant federal courts a license to substitute their own notions of sound educational policy for those of local school authorities....”); *Tice ex rel. Tice v. Botetourt Cnty. Sch. Bd.*, 908 F.2d 1200, 1207 (4th Cir.1990) (“Neither the district court nor this court should disturb an [individualized education program] simply because we disagree with its content.”).” *E.L. ex rel. Lorsson v. Chapel Hill-Carrboro Bd. of Educ.*, 773 F.3d 509, 517 (4th Cir. 2014) (citations in original).

build a school store if they didn't have it. They would develop the IEP to work on those skills that he's working on currently in, again, comparable service[s].<sup>260</sup>

I also found BCPSS Transition Specialist [REDACTED] example of how community-based instruction does not have to be provided outside of the school building to be persuasive.

[REDACTED] testified that

Say again for instance a student is in a CTE<sup>[261]</sup> program and they are learning how to build a wall in carpentry. They do that in the classroom with the expectation that those skills are transferable once they go to a work site that they can drywall or build a wall. So, the same thing would be if we focus now on our students with disabilities. If they learn a functional skill in the classroom, the expectation is that they will be able to transfer that skill whether it be counting money or shopping or buying groceries or whatever. They will transfer that skill from within the classroom to a real-life setting.<sup>262</sup>

Based upon the record before me, the BCPSS developed an IEP on August 3, 2022 with comparable services including life skills in a similar size class, with the same special education service hours in a self-contained setting with the same or similar student-teacher ratio.

The only difference was the method of service delivery. I find that the IEP developed by the BCPSS on August 3, 2022 complied with the IDEA and its accompanying regulations.<sup>263</sup> The services were not required to be identical or exact. As such, the BCPSS did not fail to provide comparable life skills supports from the prior in-state transfer IEP for the 2022-2023 school year until the development of a new appropriate IEP.<sup>264</sup>

Further, the IEP team determined that it required additional assessment data to develop a new IEP. The Parent signed consent authorizing the BCPSS to conduct an educational assessment of the Student.<sup>265</sup> The BCPSS then proceeded to conduct several formal and informal assessments in the areas of math, reading, writing, and transition. All of the present

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<sup>260</sup> Test. [REDACTED], Tr., pp. 155-156.

<sup>261</sup> Career and Technical Education.

<sup>262</sup> Test. [REDACTED], Tr., pp. 929-930.

<sup>263</sup> 20 U.S.C.A. § 1414(d)(2)(C)(i)(I); 34 C.F.R. §300.323(e).

<sup>264</sup> 20 U.S.C.A. § 1414(d)(2)(C)(i)(I); 34 C.F.R. §300.323(e).

<sup>265</sup> See BCPSS Ex. 4.3-4.4.

levels on the Student's IEP were updated to reflect the data from the updated assessments. Additional revisions included revisions to the goals, SAS, and transition activities. The Parent received the 10-day meeting notice for the November 3, 2022 meeting explaining that the purpose of the IEP team meeting was to reevaluate the Student and revise the IEP. Additionally, the Parent received the documents to be discussed at the November 3, 2022 IEP team meeting, five business days in advance of the meeting. Upon the development of a new IEP, the BCPSS' obligation to provide comparable services under the IDEA ceased.<sup>266</sup> Thus, by legal definition, comparable services did not need to be provided in 2023-2024 and 2024-2025 school years upon the development of the new IEP. However, the inquiry does not end there; once a new IEP is developed, it must still be appropriate to provide the Student with FAPE. I will address the appropriateness of the IEPs as the second issue before me.

But, before getting to that issue, I must address the implementation of the IEPs as it pertains to life skills services. The Parent's conclusion that life skills services were not provided was not supported by the evidence. She testified that she did not believe that the Student received life skills instruction because none of his work was ever sent home, and what little she did receive was for different students. The BCPSS sufficiently refuted her testimony by offering progress notes from the 2023-2024 school year showing that the Student made progress on his functional academic goals and demonstrating the curriculum and activities in the Student's vocational skills class. Speculation that an IEP will not be adhered to is insufficient to show a denial of FAPE. As an example, the United States Court of Appeals for the Second Circuit found that,

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<sup>266</sup> 20 U.S.C.A. § 1414(d)(2)(C)(i)(I) (in relevant part, "the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency . . . (2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§ 300.320 through 300.324."); *see also* 34 C.F.R. §300.323(e).

Speculation that the school district will not adequately adhere to the IEP is not an appropriate basis for unilateral placement. A suggestion that some students are underserved cannot overcome . . . [an] assessment of the plan's substantive adequacy. An IEP need only be reasonably calculated to provide likely progress, [. . .] and after reviewing the record, we conclude that the SRO<sup>267</sup> had ample evidence to find that the IEP met this standard.<sup>268</sup>

The Parent was accustomed to receiving syllabi at the start of each school year and seeing homework on a weekly basis, when the Student was being educated in the [REDACTED]. This information made the Student's progress concrete and accessible for the Parent to understand; it was tangible. It also enabled [REDACTED] to assist the Student with homework and for the Parent to reinforce hygiene routines, organization of materials, and behaviors between the home setting and school. Had there been a better home/school communication system in place between the Parent and the BCPSS, the Parent may not have perceived the IEP was not being implemented.

However, her perception is not the same as evidence, and she has simply not met her burden to show that the IEPs were not implemented as written. As such, the BCPSS did not fail to implement comparable life skills supports from the prior in-state transfer IEP for the 2022-2023 school year until the development of a new appropriate IEP.<sup>269</sup>

### **iii. Behavior Therapy**

The Parent also argued that the Student was entitled to receive behavioral therapy as required by the June 2022 [REDACTED] IEP, and argued that it was improperly removed. She further argued that despite all of the IEP team meetings that she attended where she made requests for its addition, behavior therapy has not been added back to the Student's IEP. It was the Parent's

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<sup>267</sup> SRO refers to a State Review Officer. This case involved a two-tier system where the non-prevailing party appealed the first-tier, independent hearing officer's decision to the State Educational Agency, and the SRO made a conflicting decision, which was then subsequently appealed to a constitutional court. Maryland is a one-tier system.

<sup>268</sup> *R.E. v. New York City Dep't of Educ.*, 694 F.3d 167, 195 (2d Cir. 2012) (internal citations omitted) (holding that courts must evaluate the adequacy of an IEP prospectively as of the time of the parents' placement decision and may not consider "retrospective testimony" regarding services not listed in the IEP; and rejecting a rigid "four-corners rule" that would prevent a court from considering evidence explicating the written terms of the IEP).

<sup>269</sup> 20 U.S.C.A. § 1414(d)(2)(C)(i)(I); 34 C.F.R. §300.323(e).

position that the Student has regressed; that his emotional and social behavior has changed; and he has become withdrawn and dramatically less self-sufficient.

The Parent testified that the Student was receiving behavioral therapy in the [REDACTED] “to help him to know right from wrong” because “he was easily influenced by peers,”<sup>270</sup> and would take belongings from his peers and bring them home. According to the Parent, the [REDACTED] initiated behavioral therapy for the Student because, “[t]he school thought that [the Student] was easily influenced because of his disabilities.”<sup>271</sup> The Parent reinforced these behavioral therapy concepts at home by checking his backpack daily and reminding him that he has a mind of his own and should only listen to his teachers and parents. She also testified that the Student is unable to differentiate his friends from a person whom he just met and believes that “[e]veryone that he sees or speak to or ha[s] any kind of communication with, [is] his friend.”<sup>272</sup> She characterized the Student as having “emotional challenges.”<sup>273</sup>

Specifically, “he would have fits thinking about something, you know, he’s the only one that has an issue, and he would call himself names, call himself [REDACTED], or, you know, the last reaction he had, he said he [REDACTED], because he’s [REDACTED].”<sup>274</sup> The Student had such a similar reaction and used similar language when the Parent told him about going to the [REDACTED] program where he would be by himself without his classmates.

[REDACTED] testified that he visited [REDACTED] to address behavioral issues. He described the issues as bullying. However, with the exception of one incident, where he testified that another student “jacked”<sup>275</sup> the Student up against a locker, [REDACTED] did not provide any details of the bullying.

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<sup>270</sup> Test. Parent, Tr. p. 268.

<sup>271</sup> *Id.*

<sup>272</sup> Test. Parent, Tr. p. 429.

<sup>273</sup> Test. Parent, Tr., p. 267.

<sup>274</sup> Test. Parent, Tr., p. 272.

<sup>275</sup> Test. [REDACTED], Tr., p. 123.



Furthermore, [REDACTED] noted in her report, as reported to her by the Parent and observed during her evaluation of the Student, that:

[The Student's] usual mood was described as happy. There are no concerns with emotional functioning (e.g., persistent irritability, depressed mood, anxiety). However, socially, [the Student] has become more withdrawn over the past few years. He used to enjoy playing recreational basketball, but has lost interest in this and prefers to spend most of his free time indoors, watching videos on his phone. [The Student] also enjoys spending time with his mother's partner at his place of work, but he does not have many opportunities to interact with peers outside of school. Concerns with social vulnerability were reported. For example, there was an incident when he repeatedly called a girl and inappropriate information was sent, but he did not appear to understand implications for safety and personal boundaries. During an individual interview with [the Student], his understanding of relationships appeared limited. For example, when asked about friendships, he named all of his classmates as friends and was unable to distinguish between a friend and someone he just goes to school with. He reported that he has a girlfriend, who has been his girlfriend "since [he] met her."<sup>276</sup>

However, [REDACTED] testified that she did not conduct any social/emotional testing because the Student was being seen by a [REDACTED] mental health provider; as such, she did not have an opinion regarding whether the Student required behavioral counseling.<sup>277</sup>

In situations where a student's behavior impedes their learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports and other strategies in the IEP, to address that behavior.<sup>278</sup> Such positive behavioral interventions and supports can be addressed in the IEP through specific social, emotional or behavior goals;<sup>279</sup> SAS;<sup>280</sup> through

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<sup>276</sup> Parent Ex. 3, p. 62.

<sup>277</sup> Test. [REDACTED], Tr., p. 61.

<sup>278</sup> 34 C.F.R. §§300.324(a)(2)(i) and (b)(2); and 300.320(a)(4).

<sup>279</sup> See 34 C.F.R. §300.320(a)(2).

<sup>280</sup> See 34 C.F.R. §300.320(a)(4).

related services such as counseling,<sup>281</sup> psychological<sup>282</sup> or social work services;<sup>283</sup> in a functional behavioral assessment (FBA)<sup>284</sup> or behavior intervention plan (BIP);<sup>285</sup> or any combination thereof.

Counseling services, psychological services, and school social work services are considered related services.<sup>286</sup> Counseling services means “services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.”<sup>287</sup> Psychological services include:

- (i) Administering psychological and educational tests, and other assessment procedures;
- (ii) Interpreting assessment results;
- (iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
- (iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;
- (v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and
- (vi) Assisting in developing positive behavioral intervention strategies.<sup>288</sup>

Lastly, social work services in schools include:

- (i) Preparing a social or developmental history on a child with a disability;
- (ii) Group and individual counseling with the child and family;
- (iii) Working in partnership with parents and others on those problems in a child’s living situation (home, school, and community) that affect the child’s adjustment in school;
- (iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and

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<sup>281</sup> See 34 C.F.R. §300.34(c)(2).

<sup>282</sup> See 34 C.F.R. §300.34(c)(10).

<sup>283</sup> See 34 C.F.R. §300.34(c)(14).

<sup>284</sup> An FBA “means the systematic process of gathering information to guide the development of an effective and efficient behavior intervention plan for the problem behavior” and includes “(i) Identification of the functions of the problem behavior for the student; (ii) Description of the problem behavior exhibited in the educational setting; and (iii) Identification of environmental and other factors and settings that contribute to or predict the occurrence, nonoccurrence, and maintenance of the behavior over time.” COMAR 13A.08.04.02B(5).

<sup>285</sup> A BIP “means a proactive, data-based, structured plan that is developed as a result of a functional behavioral assessment which is consistently applied by trained staff to reduce or eliminate a student’s challenging behaviors and to support the development of appropriate behaviors and responses.” COMAR 13A.08.04.02B(1).

<sup>286</sup> See 34 C.F.R. § 300.34(a).

<sup>287</sup> 34 C.F.R. § 300.34(c)(2).

<sup>288</sup> 34 C.F.R. § 300.34(c)(10).

(v) Assisting in developing positive behavioral intervention strategies.<sup>289</sup>

I find that the BCPSS had no obligation to provide behavioral therapy as a comparable service, as there is no data which supports such a need. The standard portions of the IEP which normally would address any type of behavioral needs were silent with respect to the June 2022 [REDACTED] IEP. As the Parent acknowledged during cross-examination, the Student did not have any type of behavioral therapy included in his June 2022 [REDACTED] IEP. There were no counseling, psychological, or social work services contained within the June 2022 [REDACTED] IEP. Other than off-task behavior, the June 2022 [REDACTED] IEP did not include any present level in the areas of social/emotional or behavior. The only related service that the Student had was for speech and language therapy. The only behavioral goal on the June 2022 IEP [REDACTED] IEP relates to on-task behaviors. Furthermore, there was no information on interfering behaviors listed on the special considerations section of the IEP, which would have reflected the need for an FBA or BIP. The “interfering behaviors” referenced by the [REDACTED] IEP team’s ESY determination related to focus, attention and being easily distracted, and not the social/emotional needs regarding peer interactions as described by the Parent’s testimony.

As the basis for this portion of its ESY decision, the [REDACTED] IEP team wrote: “[the Student] also has *behaviors that interfere with academic growth*. He needs constant and consistent structure and routine in order to maintain behavior needed to facilitate constructive participation in functional academic and critical life skills learning activities.”<sup>290</sup>

The Parent pointed to the language on the LRE page of the June 2022 [REDACTED] IEP as her evidence that the Student received behavioral therapy while he attended the [REDACTED] program in the [REDACTED].<sup>291</sup> Additionally, she testified that while behavioral therapy may not appear on the June

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<sup>289</sup> 34 C.F.R. § 300.34(c)(14).

<sup>290</sup> BCPSS Ex. 1.15 (emphasis added).

<sup>291</sup> On the same LRE page, the team discussed transportation and determined that “[the Student] requires transportation as a related service in order to access special education services. Due to the nature of [his] disability,

2022 [REDACTED] IEP, she provided the BCPSS with the withdrawal packet that contained more information, including information about behavioral therapy. The LRE page, included the following language, in relevant part: “He would also benefit from a behavior management system that provides him with a positive reinforcement for displaying appropriate behaviors.”<sup>292</sup> The only portion of the June 2022 [REDACTED] IEP where the “behavior management system” phrase is clarified appeared in the SAS section. Under “Social/Behavioral Supports” the Student has a SAS for “strategies to initiate and sustain attention” to be provided on a weekly basis.<sup>293</sup> The IEP team clarified that the “topic(s), participant(s), location and manner” for the Student’s social/behavioral supports as the following:

Strategies should be used to help [the Student] initiate and sustain attention including, but not limited to, the ability to manipulate small objects during tasks that require sustained listening, as long as, the object does not become more of a distracter; providing [the Student] with assignment/activities in smaller sections, allowing [the Student] to take a short break or engage in a preferred activity after completing a task, **use of a behavior chart and use of positive reinforcers to contribute to positive work habits and attention.**<sup>294</sup>

Therefore, the behavior management system that the Student required was contained in the SAS.

The BCPSS transferred the SAS and its clarifying language verbatim to the August 3, 2022 IEP.

[REDACTED] also testified that the [REDACTED] program has a behavior management system at [REDACTED].

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problem solving and adaptive/self-help behavior, his safety is a conc (cut off) community independently. [The Student] has difficulty recognizing ill intentions of non-disabled peers. He is not able to independently utilize transportation provided for his non-disabled peers safely; therefore[,] special transportation is necessary. [The Student] will need to b (cut off) disability. An assigned bus aid will provide supervision.” Parent Ex. 5, p. 125. Neither party addressed this language during the hearing. While the placement portion of the LRE page refers to “social/emotional” needs, the remainder of the sentence was cut off; therefore, I do not know what those concerns entailed. Safety concerns do not appear elsewhere on the IEP. Even if the Parent had made arguments about this language, it is unclear why the IEP team only included this discussion as it relates to transportation and whether that was because the safety concerns were isolated to the school bus environment.

<sup>292</sup> Parent Ex. 5, p. 125.

<sup>293</sup> Parent Ex. 5, p. 112.

<sup>294</sup> *Id.* (emphasis added).

Because the Parent referred to the withdrawal package as containing clarity around the behavioral therapy, I reviewed it in its entirety. The withdrawal package included an Appendix A that was completed during the June 8, 2022 [REDACTED] IEP team meeting. This is the only document in the withdrawal package which even remotely addresses behavior. In relevant part, this June 8, 2022 Appendix A included the following language:

**Evidence-Based Practices:** [The Student] participates in small group instructions with positive reinforcements. Instruction is aided with the use of technology to support kinesthetic, auditory and visual learners. Self-management and social skills are also incorporated in the learning environment.

...

**Impact of adaptive behavior:** [The Student's] behavior requires support and cues from staff. To assist [the Student] with interacting more with his peers, give him the responsibility of acting as a teacher's helper, structure his environment so that he has more opportunities to interact with others, select simple nonacademic activities designed to enhance appropriate interaction for [the Student] and peer (e.g. model building or completing a puzzle together).<sup>295</sup>

A behavior management system can be school-specific,<sup>296</sup> program-specific,<sup>297</sup> or student specific.<sup>298</sup> In reviewing the June 2022 [REDACTED] IEP coupled with the June 8, 2022 Appendix A, it appeared that self-management and social skills were program-specific (within the [REDACTED])

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<sup>295</sup> Parent Ex. 1, pp. 10-11 (emphasis in original).

<sup>296</sup> See COMAR 13A.09.10.11 (regarding a school's behavior management policies and procedures for Type I programs); see also COMAR 13A.08.04.02B(15) ("Positive behavior interventions, strategies, and supports' means the school-wide and individual application of data-driven, trauma-informed actions, instruction, and assistance to promote positive social and emotional growth while preventing or reducing challenging behaviors in an effort to encourage educational and social emotional success.").

<sup>297</sup> "STRIVE, which stands for Success Through Responsibility Initiative Vision Education, is an alternative high school program that includes the necessary academic courses to meet the District's graduation requirements, with certain modifications. STRIVE employs a data-driven behavior management system whereby students earn privileges by demonstrating appropriate behavior. All students enrolled at STRIVE have some form of disability." *Mr. P v. W. Hartford Bd. of Educ.*, 885 F.3d 735, 744 (2d Cir. 2018) (finding that numerous procedural violations, including drafting an inaccurate IEP, did not constitute a denial of FAPE).

<sup>298</sup> "In addition to a self-contained classroom with a special education teacher, a therapist was assigned to Billy's home for thirty sessions to devise behavior management strategies. (ECF No. 1-1 at 10.) His classroom utilized a behavioral program. (Def. App. # 9 at 3.)" *Coventry Pub. Sch. v. Rachel J.*, 893 F. Supp. 2d 322, 325 (D.R.I. 2012) (finding that the school system failed to provide FAPE because the IEP was devoid of any behavioral supports despite documented needs in the Student's psychological, educational and IEP team's recommendations for a positive behavioral management system and prior placement by the school district in an out-of-state placement with provision of such supports).

program), and the Student had additional self-management strategies within his SAS to address his off-task behaviors. The impact statement (how the Student’s disability manifests itself and impact his learning) referred to “social interactions” but did not provide further details.<sup>299</sup> Therefore, while the June 8, 2022 Appendix A refers to practices to enhance peer interactions, there is no data within the IEP, the legally binding document from which FAPE is derived, that reflected these strategies. As the [REDACTED] IEP team did not include them within the IEP, it could have intended to use them as informal strategies which were helpful to the Student but not necessary for the provision of FAPE. However, without any testimony or further documentation from any [REDACTED] IEP team members, I cannot guess why this information was not included in the IEP itself. When considering the legal requirements for comparable services, the services must have been from an intrastate IEP which was previously implemented. Therefore, strategies or practices used but not written into the IEP are not encompassed in this legal requirement.

For all of the reasons stated above, I find that the BCPSS did not fail to provide comparable behavior therapy services because the prior in-state transfer IEP did not contain such services.<sup>300</sup>

## **B. Speech**

### **i. 2022-2023 School Year**

On November 3, 2022, the IEP team determined that the Student no longer qualified to receive speech and language services as a related service on his IEP. “Related services” are “the support services ‘required to assist a child ... to benefit from’ that instruction.”<sup>301</sup> The United States Department of Education defined “related services” further in its regulation as “such developmental, corrective, and other supportive services as are required to assist a child with a

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<sup>299</sup> Parent Ex. 5, p. 107.

<sup>300</sup> 200 U.S.C.A. § 1414(d)(2)(C)(i)(I); 34 C.F.R. § 300.323(e).

<sup>301</sup> *Endrew F.*, 580 U.S. 386, 390 (2017) (quoting 20 U.S.C.A. § 1401(29)).

disability to benefit from special education, and includes speech-language pathology . . .”<sup>302</sup>

Furthermore, speech-language pathology services includes the following:

- (i) Identification of children with speech or language impairments;
- (ii) Diagnosis and appraisal of specific speech or language impairments;
- (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
- (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
- (v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.<sup>303</sup>

The Parent claimed that the BCPSS denied the Student a FAPE by removing speech and language services from his IEP on November 3, 2022. She testified that the Student previously received thirty minutes weekly of speech therapy in the [REDACTED]. It was her understanding that the Student’s prior speech and language therapy in the [REDACTED] was “not about him speaking or understanding the language” rather it was about “him understanding what he reads or when you explain something to him.”<sup>304</sup> In other words, she testified that “his speech therapy was about understanding.”<sup>305</sup> When the Student was in the [REDACTED], his teacher told the Parent that “compound instructions” do not assist the Student and to “give him at least five to ten seconds to process what [she] told him to do before he would understand what [she] had asked of him,”<sup>306</sup> which the Parent implemented at home daily.

The Parent testified that she was unaware of the removal of speech and language therapy from the Student’s IEP until the the February 2024 IEP team meeting when her prior attorney, [REDACTED] brought up that portions of the Student’s IEP were missing.<sup>307</sup> This discussion

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<sup>302</sup> 34 C.F.R. § 300.34(a).

<sup>303</sup> 34 C.F.R. § 300.34(c)(15)(i)-(v).

<sup>304</sup> Test. Parent, Tr., p. 277.

<sup>305</sup> *Id.*

<sup>306</sup> Test. Parent, Tr., p. 278.

<sup>307</sup> In her Due Process Complaint, the Parent alleged that she was not notified that the Student was evaluated and removed from speech and language services until March 26, 2024. The Parent also included several attachments to the Due Process Complaint which were not offered into evidence but are a part of the record because they were attached to the initial pleading (i.e., the Due Process Complaint). COMAR 28.02.01.22B (“The record shall include: (1) All pleadings, motions, responses, correspondence, memoranda, including proposed findings of fact and

prompted the Parent to ask [REDACTED] for a copy of the speech and language report. She testified that she had never seen the speech and language report until after that February 2024 IEP team meeting and that she had never spoken to the SLP or even heard of or knew the SLP's name before seeing the report. Additionally, she testified that she has never attended any IEP team meetings by phone, and thus, the IEP and corresponding PWN reflecting her attendance at the November 3, 2022 IEP team meeting during which the IEP team agreed to remove speech and language therapy from the IEP were inaccurate/false. The Parent testified adamantly that she was not a part of the November 3, 2022 meeting and did not agree with the Student's removal from speech and language services. She vehemently denied being a part any of IEP team decision to remove such services from the Student's IEP. She further testified that she was never contacted by the SLP about dismissing the Student's speech services.

According to the Parent, she speaks with the Student every day about his schooling and he never mentioned receiving any speech services in fall 2022; therefore, she believes that the speech therapy logs showing the provision of six out of eight sessions were inaccurate; particularly in light of the Student's perfect attendance. Lastly, she testified that she did not think that the BCPSS provided the Student with any speech and language therapy because she did not believe that in a matter of weeks, the SLP could have assessed the Student and determined that he no longer needed speech and language therapy.

In support of her position that the Student continues to have speech and language deficits that require the provision of related services for speech and language therapy, the Parent presented the testimony and report of [REDACTED] who conducted the CELF-5 assessment of the Student on May 16, 2024. [REDACTED] was admitted as an expert in the field of pediatric

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conclusions of law, and requests filed by the parties.") One of these attachments is an email dated October 11, 2023, at 1:30 p.m., from the Parent to [REDACTED] where she referenced that the Student was not getting speech services.



neuropsychology. She is a licensed clinical psychologist who works as a [REDACTED] [REDACTED] at the [REDACTED] where she has been employed since October 2021. She received her [REDACTED] degree in 2013 from the [REDACTED] at [REDACTED] and attended graduate school at the [REDACTED] where she obtained her [REDACTED] in clinical psychology with a specialization in neuropsychology. As part of her graduate studies, she completed a [REDACTED] internship at the [REDACTED]. Following completion of her [REDACTED], she completed a [REDACTED] at the [REDACTED] [REDACTED]. As part of her practice she regularly sees patients to conduct [REDACTED] [REDACTED], mainly for children, adolescents and young adults, who have a complex congenital or genetic medical condition.

Based upon [REDACTED] administration of the CELF-5 assessment and her observations of the Student, she recommended that the Student receive direct speech and language services in the educational setting. The Student scored exceptionally low on the subtests regarding Formulating Sentences, Recalling Sentences, Understanding Spoken Paragraphs, and Semantic Relationships with a Core Language Index of 52, which was also rated as exceptionally low. [REDACTED] testified that she only administered portions of the CELF-5 assessment because she did not believe the entire battery of testing was warranted at that time. [REDACTED] has administered the CELF-5 assessment over 100 times and received training in its administration, psychometric properties, scoring, and interpretation, while in graduate school and through her postdoctoral fellowship.

In relevant part, [REDACTED] observations regarding the Student's expressive and receptive language skills were the following:

Receptive language was sensitive to length and complexity of information. He was able to understand task instructions and expectations, but he had difficulty answering "wh -" questions during the interview and during a reading comprehension test (GORT-5). Expressive language was primarily characterized

by single words and short phrases. Speech was intelligible but notable for mild articulation difficulties and low volume. [The Student's] use and appreciation of nonverbal communication were appropriate.<sup>308</sup>

██████████ opined that the Student required speech and language services because the Student's test results show that his language skills, comprehension skills, and his ability to understand spoken language were below expectations for his age. She specifically highlighted how on the subtest where the Student was asked to generate sentences after being provided with stem words and shown picture scenes, his score was equivalent to a late seven-year-old. With respect to receptive language or listening comprehension, ██████████ administered subtests on the CELF-5 assessment which involved reading paragraphs out loud to the Student, and then asking him follow-up comprehension questions. The Student's performance on that measure was well below age expectation as there was not an age equivalency<sup>309</sup> for that subtest.

██████████ report only reflects the Student's capabilities in 2024. Her May 16, 2024 report did not exist on November 2, 2022, when the Student was dismissed from speech and language services; and therefore, it was not information available to the IEP team when it made its decision. Further, ██████████ neither testified nor offered an opinion on whether the Student had regressed in his expressive or receptive language scores since his last formal and informal assessments. Additionally, she was not asked and she did not testify regarding how or why the Student's dismissal from speech and language services in the 2022-2023 school year impacted his ability to receive FAPE. Therefore, I only found her testimony and report regarding

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<sup>308</sup> Parent Ex. 3, p. 65.

<sup>309</sup> As the name suggests, age equivalency means the equivalent age at which you would expect the student to perform on a particular test or subtest. As the example stated above demonstrated, the Student's age equivalency on the subtest regarding generating sentences was that of a late seven-year-old.

speech and language services to be relevant to the 2023-2024 and 2024-2025<sup>310</sup> school years and have addressed it further in the analysis for those applicable school years.

Conversely, the BCPSS maintained that its determination to dismiss the Student from speech and language services in November 2022 was proper. It contended that the Student had mastered his goal, and there was no evidence to support the continued need for any new goals in speech and language. The BCPSS relied upon the testimony of [REDACTED] who was qualified as an expert in speech and language therapy, assessment, and pathology, for its position that while the Student may continue to have communication deficits, programming for those deficits do not warrant the unique skill set of an SLP in the educational setting.

[REDACTED] has an undergraduate degree in Communication Sciences and Disorders from [REDACTED]. She completed her [REDACTED] and a research grant in Speech-Language Pathology at [REDACTED]. In 2021, [REDACTED] completed a master's degree in educational administration and supervision at [REDACTED] and in May 2024, she completed a [REDACTED] in Speech-Language Pathology from the [REDACTED]. [REDACTED] has worked as an SLP for seventeen years, in a combination of school and medical settings, including [REDACTED] programs and hospitals where she has served individuals with speech and language needs from birth through geriatric age, with medical conditions including, but not limited to, head injuries and strokes. She teaches undergraduate college students at the [REDACTED] [REDACTED] in speech therapy and communications sciences and disorders courses. [REDACTED] has given various national and state presentations to organizations on topics

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<sup>310</sup> The Student's current June 6, 2024 IEP contains programming effective from June 7, 2024 to June 6, 2025, but his projected annual review date is December 5, 2024. As the operative IEP continued into the 2024-2025 school year, I considered it in the context of all issues relating to the 2024-2025 school year.

related to speech and language pathology, including trauma-informed strategies, leadership, and serving different populations of students with disabilities. She is a certified instructor in non-crisis intervention de-escalation techniques, and she is an [REDACTED] for the American Speech/Language Hearing Association (ASHA). She holds her license from the State of Maryland Department of Health in Speech/Language Pathology, and also holds certifications from the ASHA, an Administrator I certification from the Maryland State Department of Education, and a Certificate of Clinical Competence in Speech and Language Pathology.

[REDACTED] testified that “a related service is an additional support that’s required to help the student access their specialized instruction.”<sup>311</sup> For a student to require speech and language services for the provision of FAPE, he or she must require supports and/or services “unique to the skill set of the Speech Pathology expertise [in order] for [the student] to then access [the] instruction that is provided by the teacher.”<sup>312</sup> She opined that the Student was properly dismissed from speech and language services based upon proper consideration of the Student’s prior present level in the June 2022 [REDACTED] IEP, the June 8, 2022 speech and language progress note, his progress in speech therapy sessions, and teacher observations/input. She reasoned that the Student was at a 60 percent accuracy rate with vocabulary in his present levels in the June 2022 IEP and a 65 percent accuracy rate as of his June 8, 2022 progress note. Therefore, when the Student enrolled with the BCPSS, he was already at a 65 percent accuracy rate, and using the modified content, the Student was “routinely hitting that data point, at 80 percent accuracy. . . over more than three consecutive sessions,” which means that he mastered his goal.<sup>313</sup>

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<sup>311</sup> Test. [REDACTED], Tr., p. 544.

<sup>312</sup> *Id.*

<sup>313</sup> Test. [REDACTED], Tr., p.547.

██████████ then explained that the next step in the process before dismissing a student from speech and language services is to ascertain from the teacher whether there are any barriers to accessing the curriculum or making progress towards IEP goals that necessitate support from an SLP. She clarified that the Student's SLP, ██████████, with the input from the Student's teachers, could not identify a specific barrier to instruction or classroom participation that required direct support from an SLP. Therefore, there was no data to support a new speech and language goal. On this basis, ██████████ reported to the IEP team at the November 2022 IEP team meeting that the Student "continues to need a number of modifications to his environment, given his significant cognitive delay, but that the unique skills of the Speech Pathologist are not warranted."<sup>314</sup> ██████████ recommended that the Student be dismissed from speech and language services, and the IEP team agreed.

Most importantly, ██████████ also explained that while the Student continues to have deficits in the area of communication based upon his cognitive profile, such needs can be met with the use of SAS in the classroom, such as modified content and checks for understanding, which were added to his IEP by the BCPSS in August 2022. She opined that,

We do not anticipate that [the Student] is going to, you know, remediate. These communications issues, that are part of his global delay, these are things that will need to be accommodated throughout his educational program, and supported with communication supports in his classroom. . . ██████████ is in that room providing global communication supports as part of that curriculum on a weekly basis. . . When you have a significant cognitive impairment, it impacts every aspect of your life. It impacts how quickly you're able to generate your thoughts, it impacts the number of repetitions you need in order to learn information. It, you know, makes complex thinking difficult. It's hard to hold multiple pieces of information and compare them. You often need longer time to take in information and generate responses. You may have a harder time anticipating things that are going to happen. You might require, you know, multiple ways of information being presented to you in order to understand what the intention is of that message. And it's not just language that's impacted. Visual/spatial is impacted, memory is impacted. All of these aspects are impacted. And so, she'll provide services within the classroom, she'll provide enrichment and on-going

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<sup>314</sup> Test. ██████████, Tr., p. 548.

consultation to that classroom, and then she'll provide services to students who require them either within the classroom or within one of the shared spaces.<sup>315</sup>

I found [REDACTED] testimony to be highly persuasive. She has extensive expertise, including seventeen years of experience in her field, which includes provision of speech and language services in educational and clinical settings, administering and scoring assessments, teaching college students in her respective disciplines as well as her colleagues on various speech and language topics. I found her to be knowledgeable about the BCPSS [REDACTED] programs, as well as the Student's educational records based upon her independent review of them, discussion with [REDACTED] and the Student's teachers, and her brief observation of the Student.<sup>316</sup> [REDACTED] provided robust, detailed explanations of the evidence in the record regarding speech and language therapy to support her opinions. She also is a member of the BCPSS central IEP team where more restrictive placement decisions are made, including placements in citywide programs and nonpublic schools.

While I appreciate the Parent's testimony that she does not believe that the Student received speech and language services during the 2022-2023 school year, her belief is not sufficient to rebut the BCPSS' evidence that he did receive such services and accomplished his goal. The August 3, 2022 IEP required the BCPSS to provide the Student with thirty minutes of speech and language therapy for four sessions per month, which were to be delivered inside of the special education setting once a week for thirty minutes. The related services logs show that the Student received ten sessions of speech services for the 2022-2023 school year, including one that occurred after [REDACTED] drafted the progress report. Each session was thirty minutes

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<sup>315</sup> Test. [REDACTED] Tr., pp. 548-550.

<sup>316</sup> In September 2024, [REDACTED] observed the Student for approximately thirty minutes and was able to speak with and understand the Student for a brief encounter regarding an issue with his shoe. While it was useful to know that [REDACTED] has met the Student, she clarified that the purpose was to observe the instruction not necessarily to assess speech and language needs. As such, I considered this information, but did not give it much weight in my analysis.

in length as required by the IEP. [REDACTED] noted examples of the complete, grammatically correct sentences the Student said with the accurate increased vocabulary during each thirty-minute session in the related services log as well as the objectives or portions of the goal which she and the Student worked on during each session. [REDACTED] also included data about the Student initiating conversations with adults and peers, which justified her conclusion that the Student had met this speech and language goal. Because the criteria for mastery of the goal was 80% accuracy as measured over three consecutive sessions, the Student was able to master the goal within the first quarter of the school year.

The Student's ability to master his speech and language goal is supported by the upward trajectory he had with respect to his communication needs before he left the [REDACTED]. The IEP goals are driven by the present levels which outline the Student's needs. The Student had a relative strength on the verbal comprehension subtest as scored on the January 20, 2021 WISC-V<sup>317</sup> when compared to his scores on other subtests.<sup>318</sup> According to the Student's June 3, 2022 [REDACTED] IEP, the speech and language services present level, responding to questions with phrases and "struggl[ing] with common vocabulary" were the only identified areas of need.<sup>319</sup> The baseline for how frequently the Student responded with phrases versus complete sentences was not contained in the present level, but the [REDACTED] SLP included that with an "additional cue, he corrects it," meaning that when prompted he can give a complete answer in a complete sentence.<sup>320</sup> The [REDACTED] SLP also noted in the present levels that the Student had made "tremendous gains" in the 2021-2022 school year, and that he was making progress towards his goal.<sup>321</sup> The Student had a baseline of 60% accuracy for using common vocabulary when the

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<sup>317</sup> Wechsler Intelligence Scale for Children, Fifth Edition.

<sup>318</sup> BCPSS Ex. 2.6.

<sup>319</sup> Parent Ex. 5, p. 106.

<sup>320</sup> *Id.*

<sup>321</sup> *Id.*

June 3, 2022 [REDACTED] IEP was written<sup>322</sup> and a progress note, also dated for June 3, 2022, showed that he had progressed to 65% accuracy. There was no reference to initiating conversations in the present levels; however, in the April 20, 2022 Appendix A, the [REDACTED] IEP team noted that the Student “requires supports and cues from staff and to assist him with interacting more with his peers, strategies such as making him a teacher’s helper, structuring the environment to foster more activities with peers such as modeling building or completing a puzzle together.”<sup>323</sup> However, as of the June 2022 IEP meeting, that same team also documented in the Student’s IEP that the Student was “beginning to seek assistance for himself when he needs it and he [was] typically determined to complete his work to the best of his abilities” demonstrating his increased independence with initiating conversations, at least with staff.<sup>324</sup>

Finally, when considering the Student’s ESY services, the [REDACTED] IEP team did not identify the Student’s speech and language goal as a critical life skill in which the Student would regress and be unable to recoup after the normal school break in the summer.

In addition to mastering his speech and language goal in November 2022, the Student did not have continued communication needs which warranted the provision of related services. In other words, the Student’s upward trajectory continued when he transferred to the BCPSS. [REDACTED] [REDACTED] provided the Student with ten sessions of speech and language services and confirmed with three out of four of his teachers that the Student was able to express himself and understand the instructional materials in order to participate and learn the curriculum. For example, in his science class, the Student was able to express himself, respond to questions, and got along well with his peers. The Student could access the curriculum in his life skills class by demonstrating his reading, comprehension, and spelling skills. With the assistance of pictures, the Student’s

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<sup>322</sup> The specific date the IEP was written is not contained in the record, but I reasonably infer that the IEP draft existed before the June 3, 2022 IEP team meeting.

<sup>323</sup> BCPSS Ex. 2.4.-2.5.

<sup>324</sup> Parent Ex. 5, p. 105.



one word responses to questions in English class would turn into whole sentences. The Student also benefitted from modeling of complete sentences but understood the vocabulary, and could engage by answering questions in class. As such, the IEP team had no ongoing concerns that the Student's language disorder would impede his ability to access instruction and to demonstrate his learning.

There was no evidence that the Student was denied a FAPE as a result of the removal of his speech and language services for the 2022-2023 school year. The Student had passing grades in all subject areas. He also made progress on all of his IEP goals. The Parent has not presented any evidence or argument regarding how the Student experienced an educational detriment as a result of the dismissal from speech and language services. The Parent's main concern with the Student no longer receiving speech and language services was focused on his continued inability to process information to formulate responses without additional time.

While this is a valid concern, as explained by [REDACTED] credible testimony, the cognitive impact on the Student's ability to process information and respond to others, does not warrant the provision of speech and language services. Thus, the Parent did not meet her burden to show that the removal of speech and language services from the Student's IEP for the 2022-2023 school year denied the Student a FAPE.<sup>325</sup>

**ii. 2023-2024 School Year**

I further find that the Parent has not met her burden to show that speech and language services were necessary to provide the Student with FAPE for the 2023-2024 school year. The Parent argued that the Student should have continuously received speech and language services the entire time he has been enrolled in the BCPSS, and that the team's determination to refuse to add speech and language services back to the Student's IEP during the June 6, 2024 IEP team

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<sup>325</sup> *Endrew F.*, 580 U.S. at 398; *Rowley*, 458 U.S. at 398.

meeting was improper. It was the BCPSS' position that it properly considered the Parent's request, but the data did not support a need for speech and language services.

In addition to the June 6, 2024 IEP team meeting, I also considered the evidence from the December 6, 2023 IEP team meeting. In the December 6, 2023 IEP reading comprehension present level, under factors that interfere with learning and how they impact learning, the BCPSS noted that, "[the Student] has significant delays which affects his academics in the areas of communication, social and cognitive/academic performance. [The Student] experiences delays in receptive, expressive and pragmatic language. He also has difficulty processing and understanding information in a quick and accurate manner."<sup>326</sup> However, the Student's IEP team reviewed informal assessments and considered teacher input to determine that the Student "is able to functionally communicate his wants and needs in the classroom setting to participate meaningfully in class discussion, and communicate with his peers and staff."<sup>327</sup> There was no indication in the December 6, 2023 IEP, the corresponding PWN, or any other documentation to reflect that the Parent disagreed with this determination. The Parent's main focus during this meeting was removing the Student from the [REDACTED] program at [REDACTED]. She did not testify at the hearing that she voiced concerns with speech during this meeting—because she maintained that she did not find out about the dismissal until February 2024.

Even though the team met in February and April 2024, the provision of speech and language services was not explicitly discussed again until June 6, 2024, when the IEP team reviewed [REDACTED] report. During the June 6, 2024 IEP team meeting, the team discussed [REDACTED] recommendation that the Student receive speech and language therapy services. [REDACTED] discussed the assessment results from [REDACTED] report and noted that

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<sup>326</sup> BCPSS Ex. 14.7.

<sup>327</sup> BCPSS Ex. 11.1.

language is an area of relative strength for the Student because his Verbal Comprehension Index standard score of a 61 on the WAIS-IV was higher when compared to his Full Scale Intelligence Quotient (FSIQ) of 50.<sup>328</sup> [REDACTED] also discussed her October 2022 progress report. The Parent expressed her concern that the Student needs more time to process information and gather his thoughts before responding. Ultimately, the “team determined that ‘extended response time’ would be added to [the Student’s] Supplementary Aids and Services, but that direct speech services would not be appropriate at this time and that the supports in place through supplementary aids and services and accommodations and modifications will support [the Student’s] communication needs.”<sup>329</sup>

As mentioned before, [REDACTED] report and testimony related to the FAPE issues surrounding speech and language in the 2023-2024 and 2024-2025 school years. I found [REDACTED] testimony regarding the Student’s medical conditions and cognitive functioning to be very useful in understanding the Student’s profile; as such, I adopted that testimony in my Findings of Fact. However, that was the extent upon which I could rely on her testimony. [REDACTED] had never testified in a court or administrative proceeding before and had never been qualified as an expert. The vast majority of her practice involves [REDACTED] of students and research on sick cell anemia. While she occasionally attends IEP team meetings, she has never attended an IEP team meeting for this Student. Additionally, she does not provide direct treatment, counseling, or therapeutic services to any students as part of her position. Most importantly, she did not have the benefit of reviewing the Student’s educational records or observing him in the educational setting. The evaluation referral was for an update on the

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<sup>328</sup> See Parent Ex. 3.

<sup>329</sup> BCPSS Ex. 15.4.

Student's neurocognitive functioning, and not primarily for an educational purpose. From a clinical perspective, I was impressed with her experience and expertise, but her isolated encounter with the Student did not persuade me in terms of the skills and needs he has when performing them in the educational environment.

As far as the speech components of her evaluation, [REDACTED] clarified that she does not have training in speech sound and production even though she has administered the CELF-5 tests at least a hundred times.<sup>330</sup> Regarding the Student, however, [REDACTED] testified credibly that results of the Student's CELF-5 test are unreliable, and I agree. According to [REDACTED], the Student's scoring on the subtests were statistically impossible as the range on each one is from one to thirteen, which is the scaled score, but [REDACTED] gave scores 65, 60, 55, and 65, which are standard scores. [REDACTED] clarified that the core language score of 52 is theoretically possible, but she was not sure if the subtest scores were typos because she could not understand how such scores would have been reported. She testified that the correct scoring on the subtests (Formulated Sentences; Recalling Sentences; Understanding Spoken Paragraphs; and Semantic Relationships) would be scaled scores, not standard scores. [REDACTED] also testified that [REDACTED] report is limited in the sense that she had to rely on the Parent's account of the Student's education and did not have access to educational records to know how the Student performs in that environment or what strategies and/or supports have been tried and proven successful or ineffective.

There is no dispute that the Student has communication deficits, but whether those needs cause an educational impact warranting the provision of speech and language services as a related service on his IEP is the point of contention between the parties. [REDACTED] opined that extended wait time for verbal responses was appropriate because the Student, who "because

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<sup>330</sup> See Test. [REDACTED], Tr., 80.

of language, memory, processing speed, requires more time to think of and generate responses to things.”<sup>331</sup> Additionally, she noted that “speech pathology, itself, is not going to help alleviate that cognitive need for more time. That’s something that’s going to need to be woven into all aspects of his instruction.”<sup>332</sup> According to [REDACTED] credible testimony, the Student has reading comprehension and written language goals which are coupled with SAS that permit him to access the curriculum and make progress towards his IEP goals. It is only where additional specialized unique training from an SLP to help a student learn an educational strategy, or learn how to use such strategy, or to train the teacher on how to help the student demonstrate more of his skills within his unique circumstance, that speech and language service would be warranted.<sup>333</sup> As explained by [REDACTED], the Student’s unique circumstances do not fit this description. I agree.

The Student’s dismissal from speech language therapy services is similar to the case of *Davis v. D.C.*, 244 F. Supp. 3d 27, 47 (D.D.C. 2017). In *Davis*, the Student had been receiving 120 minutes per month of speech therapy and was dismissed from receiving special education services altogether. The court upheld the hearing officer’s determination that the Student was properly dismissed. In so doing, the court reasoned,

On this score, Plaintiff has not carried her burden. DCPS’s<sup>334</sup> specialist testified that N.D. did not demonstrate a disorder that “negatively impact[ed] that student’s ability to access or gain benefit from the general education curriculum” because her speech-language functioning was “not a source of academic difficulty.” Although the independent expert later identified a language impairment and potentially an auditory-processing deficit, he was unable to point out specific adverse effects. When asked directly, he testified that he “did not have th[e] data” on her classroom attainment.

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<sup>331</sup> Test. [REDACTED], Tr., p. 568.

<sup>332</sup> Test. [REDACTED], Tr., p. 558.

<sup>333</sup> See Test. [REDACTED], generally.

<sup>334</sup> As referenced above, this acronym refers to the District of Columbia Public Schools.

The data that do exist also do not demonstrate an academic effect. Davis cites N.D.'s standardized-testing reading scores, where she made absolute gains between Fall 2013 and Winter 2014, but her rank fell by 4 percentiles as compared to national averages. By Spring 2014, however, she had again made strides and improved by a percentile. Although the initial regress may suggest the need for therapy, the minor fluctuations that Davis seizes on are hardly of statistical moment. Finally, even though the independent specialist indicates what “would be” the academic effects of a language impairment, he nowhere discusses whether those impacts manifested in N.D.'s classroom experience. On the contrary, the DCPS expert opined that her speech and language difficulties could be accommodated through in-class strategies. All said, Davis simply has not put forth the evidence to show that the hearing officer got the speech-language-impairment call wrong.<sup>335</sup>

As in *Davis*, the Parent has not set forth sufficient evidence to show that there is an academic need for continued speech and language services. [REDACTED] testimony and report (although scored incorrectly) only demonstrate what the BCPSS already knew and what has been documented in every single IEP developed since June 2022—that his expressive and receptive language skills are less than what would be expected of his nondisabled peers (less than grade-level expectations). What her testimony and report did not prove was his need for specially designed instruction in the form of speech and language services. [REDACTED] is not a speech language pathologist, so her evaluation and recommendations were completed from a [REDACTED] perspective rather than the sound and production of speech. Even if I set aside the issues related to the scores in [REDACTED] report, I cannot ignore that she did not observe the Student in an educational environment, review all relevant educational records, or gather information from his teachers. Therefore, the Parent has not met her burden to show that the IEP team's June 6, 2024 decision to deny her request for the provision of speech and

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<sup>335</sup> *Davis*, 244 F. Supp. 3d 27, 47 (D.D.C. 2017) (internal citations omitted; emphasis in original).

language services was improper or that speech and language services should have been provided during the 2023-2024 school year in order for the Student to receive a FAPE.<sup>336</sup>

**iii. 2024-2025 School Year**

The June 6, 2024 IEP is operative until June 5, 2025. The Student's annual review is due in December 2024. The Parent did not set forth any additional arguments specific to the current school year. As I have determined that the IEP team's June 6, 2024 decisions regarding speech and language services were appropriate, it follows that without any evidence to the contrary, those decisions continue to be appropriate for the 2024-2025 school year. As such, I find that the Parent has not met her burden with respect to showing a denial of FAPE based upon the Student not receiving speech and language services for the 2024-2025 school year.<sup>337</sup>

**C. Provision of FAPE**

**i. SAS, Modifications, and Accommodations**

As mentioned above, the IEP must contain SAS<sup>338</sup> as well as program modifications<sup>339</sup> that will be provided for the child

(aa) to advance appropriately toward attaining the annual goals;

(bb) to be involved in and make progress in the general education curriculum in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and

(cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this subparagraph.<sup>340</sup>

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<sup>336</sup> *Endrew F.*, 580 U.S. at 398; *Rowley*, 458 U.S. at 398.

<sup>337</sup> *Endrew F.*, 580 U.S. at 398; *Rowley*, 458 U.S. at 398.

<sup>338</sup> “‘Supplementary aids and services’ means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§ 300.114 through 300.116.” 34 C.F.R. § 300.42; *see also* 20 U.S.C.A. § 1401(33).

<sup>339</sup> “‘Modifications’ means practices that change, lower, or alter learning expectations, in accordance with the Maryland Accommodations Manual.” COMAR 13A.05.01.03B(43).

<sup>340</sup> 20 U.S.C.A. § 1414(d)(1)(A)(i)(IV).

Another necessary component of the IEP is “a statement of any individual appropriate accommodations<sup>341</sup> that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments.”<sup>342</sup> The SAS, program modifications, and accommodations are also critical components to a student’s FAPE because they must be considered before moving a student to a more restrictive environment.<sup>343</sup> When a student has such SAS, program modifications, and accommodations on their IEP, the LEA is responsible for ensuring that a copy of the IEP containing those sections is accessible to all teachers and service providers responsible for its implementation.<sup>344</sup> Furthermore, each teacher and service provider must be aware of their specific responsibilities for IEP implementation and the “specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.”<sup>345</sup> In brief, SAS involve maximizing participation across various academic and nonacademic settings; modifications are about changes to learning expectations or outcomes; and accommodations involving equitable access to the general education curriculum.

The Parent argued, generally, that portions of the June 2022 [REDACTED] IEP were “stripped away,” but in her case-in-chief, she did not identify which SAS, modifications, and accommodations were removed or which should have been added to provide the Student with a FAPE. She provided extensive testimony, documentary evidence, and arguments regarding the provision of a laptop,<sup>346</sup> but did not argue that the Student should have been provided with a laptop as a SAS, modification, or accommodation in his IEP. Rather, the evidence was presented

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<sup>341</sup> “‘Accommodation’ means practices and procedures, in accordance with the Maryland Accommodations Manual, that provide students with disabilities equitable access during instruction and to assessments in the areas of: (a) Presentation; (b) Response; (c) Setting; and (d) Scheduling.” COMAR 13A.05.01.03B(1).

<sup>342</sup> 20 U.S.C.A. § 1414(d)(1)(A)(i)(VI)(aa).

<sup>343</sup> See 34 C.F.R. § 300.116(e).

<sup>344</sup> 34 C.F.R. § 300.323(d)(1).

<sup>345</sup> 34 C.F.R. § 300.323(d)(2).

<sup>346</sup> As an aside, the Student was not identified for assistive technology (AT) devices or services on any IEP including the June 2022 [REDACTED] IEP, but AT was not an area alleged as being deficient in the Due Process Complaint or clarified to be an issue during the Conference, or anytime thereafter.



by the Parent to demonstrate her arguments that: (1) the BCPSS' failure to provide the Student with a laptop for use during asynchronous days denied the student equal access to instruction; and (2) the lack of having a laptop resulted in a regression of a life skill, i.e., logging into and using a computer.

During cross-examination, the Parent testified that she disagreed with the addition of "extended time for processing speed" to the Student's June 6, 2024 IEP as a SAS rather than direct speech and language services. The Parent confirmed that she provided feedback during the June 6, 2024 IEP team meeting the Student needs more time to process information, because he "will tell her that he needs to tell her something and then he will state that he needs a moment to gather his" thoughts.<sup>347</sup> In direct response, the IEP team added extended response time as one of the SAS. I have already determined that the provision of direct speech and language services are not warranted to provide the Student with FAPE. The Parent provided no other argument or evidence regarding why the addition of extended response time as a SAS was inappropriate.

There is no evidence that the Parent challenged the Instructional and Assessment Accommodations, Modifications, and SAS during any of the IEP team meetings. To the contrary, during the June 6, 2024 IEP team meeting, the BCPSS documented that each one of these three IEP sections was discussed, and the team determined that the existing content of these sections continued to be appropriate. The team also determined that it would add errorless learning in addition to extended response time to further support the Student in the classroom, as was recommended by ██████████ in her evaluation report. This is the same pattern for all other IEP team meetings during the 2022-2023 and 2023-2024 school years, where all three portions of the IEP were discussed and revised as necessary. There is no indication that the Parent disagreed with these determinations. I appreciate the Parent's testimony that there are errors in the IEPs

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<sup>347</sup> Test. Parent, Tr., p. 397.

and PWNs, but other than stating that IEPs incorrectly identified which team members attended the IEP team meetings or inaccurate dates, she did not testify as to why or how they were erroneous. There also was no evidence that she requested amendments to these educational records.

For all of these reasons, I find that the Parent has not met her burden to prove that the SAS, program modifications and accommodations were not appropriately ambitious to provide the Student with FAPE in light of his unique circumstances for the 2022-2023, 2023-2024, and 2024-2025 school years.<sup>348</sup>

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<sup>348</sup> *Endrew F.*, 580 U.S. at 398.

## ii. Functional Academic Learning Supports

With the enactment of the IDEA, Congress found that, “[i]mproving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.”<sup>349</sup> As noted above, one of the purposes of the IDEA is to ensure that the provision of “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.”<sup>350</sup> In so doing, an LEA must develop an IEP that includes transition services. The federal regulation defines transition services as follows:

(a) ***Transition services*** means a coordinated set of activities for a child with a disability that—

(1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(2) Is based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests; and includes—

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

(iv) The development of employment and other post-school adult living objectives; and

(v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

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<sup>349</sup> 20 U.S.C.A. § 1400(d)(1)(A).

<sup>350</sup> 20 U.S.C.A. § 1400(d)(1)(A); *see also* Educ. § 8-403.

(b) ***Transition services*** for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.<sup>351</sup>

Under the federal regulations,

Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually thereafter, the IEP for each child with a disability, must include (1) appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and (2) the transition services (including courses of study) needed to assist the child in reaching those goals.<sup>352</sup>

In Maryland, the process for development of transition services begins no later than the first IEP to be in effect when the child turns 14.<sup>353</sup> When an IEP team plans to discuss postsecondary goals and transition services, the LEA must, to the extent appropriate, invite a representative from any agency “that is likely to be responsible for providing or paying for transition services.”<sup>354</sup> The regulation also requires the LEA to obtain parental consent for the agency representative’s presence at the meeting. The process for inviting third-party agencies and obtain parental consent in Maryland is referred to commonly as the agency linkages process.

The United States Department of Education explained in the Analysis of Comments and Changes section of the preamble to the August 2006 final Part B<sup>355</sup> regulations that

[T]he Act requires a child’s IEP to include measurable postsecondary goals in the areas of training, education, *and* employment, and, where appropriate, independent living skills. Therefore, the only area in which postsecondary goals are not required in the IEP is in the area of independent living skills. ... It is up to the child’s IEP Team to determine whether IEP goals related to the development of independent living skills are appropriate and necessary for the child to receive [a] FAPE.<sup>356</sup>

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<sup>351</sup> 34 C.F.R. § 300.43.

<sup>352</sup> 34 C.F.R. § 300.320(b).

<sup>353</sup> COMAR 13A.05.01.09A(3).

<sup>354</sup> 34 C.F.R. § 300.321(b)(3).

<sup>355</sup> Part B of the federal regulations implementing the IDEA refer to services for children ages 3 to 21.

<sup>356</sup> 71 Fed. Reg. 46668 (Aug. 14, 2006) (emphasis added).

Because transition services in the area of independent living are not mandatory, the IEP team must assess a student's independent living skills, and the IEP Team must determine whether postsecondary goals geared towards independent living are necessary for that student to receive a FAPE. Furthermore, community participation as a form of transition services is not mandatory and may not be appropriate for each student. Thus, an IEP team must determine whether transition services in the form of community access and participation skills are necessary for the child to receive a FAPE by considering the child's unique circumstances. If so, those skills must be reflected in the transition services portion of the child's IEP.

The Parent contended that the Student was not afforded the same learning opportunities that he had before transferring to [REDACTED], specifically those related to functional academic learning skills with an emphasis on life skills. It was the Parent's position that the Student has regressed since transferring to BCPSS and attending [REDACTED]. Accordingly, she testified that she requested that the Student be removed from [REDACTED] multiple times to different BCPSS staff and the IEP teams. Her requests were to no avail. Further, when the Parent voiced her concerns regarding the inadequacies of the [REDACTED] program, such as the lack of life skills instruction and/or community-based instruction, the BCPSS "attempted to back build these deficits with programs that were unsuitable and would have been detrimental to [the Student's] development."<sup>357</sup> The Parent argued that the BCPSS offered the [REDACTED] program to supplement programming not available at [REDACTED], knowing the [REDACTED] program was not appropriate for the Student's age and educational needs. As a result of these failures, the Parent contended that the BCPSS failed to develop an IEP that offered a FAPE, particularly with respect to the functional academic learning supports (including life skills) that the Student required.

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<sup>357</sup> Opening statement, Parent, Tr., p. 39.

According to the Parent's testimony, while in middle school in the [REDACTED], the Student received instruction through the [REDACTED] program in a fairly large classroom with half of the classroom set up like it was a home with a stackable refrigerator, a bed, and a table. The Student also participated in physical education and would participate in a laundry day where he and classmates would wash and dry the gym clothes that they purchased from the school. He was in a structured, self-contained classroom with two teachers and approximately twenty children in the [REDACTED] program. For high school, the [REDACTED] IEP team proposed trying "something new," i.e., placement "in an LRE-C with life skill supports."<sup>358</sup>

As part of his daily routine at home after each school day, the Parent would reinforce the life skills that the Student worked on while in the [REDACTED] program such as brushing his teeth, putting clothes away, and getting his materials (books, homework, and uniform) ready for the next day. When asked to describe the "community-based learning skills" that the Student received in the [REDACTED] the Parent testified that through the "community-based instruction program," the Student "would go out into the community, for example, the fire department, or the police station, or any entity that the school had a partnership with to see how the work force is done, and if it's something that would be, he would like to do when he gets older."<sup>359</sup>

Every year the Parent would receive a syllabus with the general education curriculum and dates for the students to visit various locations in the community. She was required to sign a permission slip and acknowledged on cross-examination that these experiences were offered as field trips (police station, fire station) in middle school. The Parent further conceded that the community-based instructional days, were to begin in high school.

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<sup>358</sup> Test. Parent, Tr., p. 435.

<sup>359</sup> Test. Parent, Tr., p. 266.

However, the Parent also testified during cross examination that in middle school, she was required to send [REDACTED] with the Student to go with his class to the grocery store, the Dollar Store, or Sam's Club, where the students would learn how to shop and use money. Also, while the Student was in middle school, the Parent spoke with the Student's teachers every other day about his progress in the [REDACTED] program. His homework reflected (were identical to) the classroom activities and served to reinforce what he did in the classroom from the entire week.<sup>360</sup>

[REDACTED] is the Parent's significant other, and they have been dating for the past four and a half years. Between January and April 2022, they lived together. For the duration of their relationship, [REDACTED] served as a father-figure for the Student and acted as his stepfather, even though he and the Parent are not married. When the Student attended school in the [REDACTED], on average, [REDACTED] would assist the Student with homework a couple of times per week, and when [REDACTED] did not assist, the Parent would help the Student with homework completion.

Approximately four-to-five months after the Student moved to a school within the BCPSS, [REDACTED] testified that he noticed that the Student's homework was "elementary" and repetitive even though the Student was "past that point."<sup>361</sup> He also noticed that the Student was not brushing his teeth properly and not keeping his room clean.<sup>362</sup> He testified that he visited the Student to observe him in school at [REDACTED] because the Student was not bringing home any homework and there was an incident with another Student "jack[ing]" the Student up against a locker.<sup>363</sup> He testified that he visited the Student at [REDACTED] ten to fifteen times<sup>364</sup> and although the teacher was present, he observed an "unstructured," "loose atmosphere" with students displaying loud, disrespectful behavior, "lingering around," and not wearing uniforms.<sup>365</sup>

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<sup>360</sup> See Test. Parent, Tr. p., 265.

<sup>361</sup> Test. [REDACTED], Tr. p., 122.

<sup>362</sup> Test. [REDACTED], Tr. p., 124.

<sup>363</sup> Test. [REDACTED], Tr. p., 128.

<sup>364</sup> The specific dates and times of [REDACTED] visits were not provided.

<sup>365</sup> Test. [REDACTED], Tr., pp. 125, 130.

██████ also testified that he currently assists the Student with activities such as tying his shoes, wiping his body parts, washing his face, putting away shoes in his room, and straightening up his bed.

To support her contention that the Student requires a program similar to the ██████ program, the Parent relied upon the recommendation and testimony of ██████. When asked about her ██████ program recommendation, ██████ testified that,

In my opinion, that this is through working with students, and this is through assessing students such as [the Student], my opinion is that students who have the degree of deficits that [the Student] shows in overall intellectual functioning as well as academic skills and adaptive life skills do greatly benefit from having increased opportunities for hands on instruction, for instruction that is taking more abstract concepts and making the[m] more concrete as possible. But they benefit from opportunities for repetition of information and for opportunities to also practice some of these skills in the community as well.<sup>366</sup>

██████ provided examples of life skills including learning time and money, communication skills, self-care skills and navigating in the community.<sup>367</sup> She administered the Texas Functional Living Scale (TFLS) test. On this assessment, ██████ asked the Student to do a series of tasks designed to simulate some of these real-life tasks, like the examples she provided in her testimony. The specific tasks included counting change, pretending to follow a recipe, addressing an envelope, filling out a check; and simulating taking medications at a certain time.<sup>368</sup> ██████ testified that the Student “did struggle with all of these tasks, and his performance was well below expectation for [his] age.”<sup>369</sup>

The Parent also offered a Comprehensive Career Assessment report completed by ██████ from September 2024 to support the contention that the Student does not have the requisite functional academic life skills that he requires to receive a FAPE.

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<sup>366</sup> Test. ██████, Tr., p. 56.

<sup>367</sup> See Test. ██████, Tr., p. 57.

<sup>368</sup> See Test. ██████, Tr., p. 61.

<sup>369</sup> *Id.*



This report outlines a two-day, eight-hour career assessment which was conducted on June 18 and August 13, 2024, in a one-on-one setting at the DORS for the purposes of determining the Student's interests, skills, and limitations, and to develop vocational goals. The assessor recommended, among other things, educational and school support services focused on developing practical and functional adaptive skills, and basic life skills. The assessor further concluded that a focus on employment is premature and that the Student required community-based learning opportunities to develop greater functional life skills and participate in actual job trial experiences which were not solely in the school environment.

The assessor discouraged errorless learning in favor of learning by natural consequences, environmental cues, observing co-workers, hands-on on-the-job training, trial and error, and reinforced high internal motivation. As far as school programming is concerned, the assessor further recommended supports for basic organization skills; provision of speech, physical therapy, and occupational therapy services; social skills/behavior support therapy, social/interpersonal skills strategies, and basic advocacy skills. This report did not exist at the time of the Parent's due process complaint filing, was not disclosed until the five-business day disclosures for this hearing as part of discovery and had not yet been reviewed by the IEP team. As such, I cannot rely upon its contents to make my determination.<sup>370</sup>

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<sup>370</sup> *K.E. ex rel. K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 808 (8th Cir. 2011) (internal citations omitted) ("The District also did not yet have the benefit of Dr. Unal's testimony from the administrative hearing concerning the severity and complexity of K.E.'s mental illness and the psychological and social work services that might be necessary for the District to monitor and address it. For those reasons, while we may agree with K.E. that additional services and adaptations may well be warranted now in light of the information that Dr. Unal has provided, it would be improper for us to judge K.E.'s IEPs in hindsight. 'An IEP is a snapshot, not a retrospective,' and we must 'take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated.' Using that frame of reference, we do not conclude that K.E.'s IEPs were deficient because they lacked the services and adaptations that she now contends are necessary.").

Further, the September 2024 Career Assessment Report offers the assessor's suggestions of what life skills opportunities should be afforded *prospectively*, it offers no evidence regarding whether the life skills opportunities included in the Student's existing IEP or prior BCPSS IEPs were inappropriate. Lastly, the Parent did not present the assessor as a witness, thus she could not explain how the assessment should apply to the issues in this case.<sup>371</sup>

The Parent has not met her burden to prove her allegation that the Student was denied a FAPE because the IEP did not provide a program with functional academic learning supports. As mentioned above, the U.S. Supreme Court has held that an appropriate education for a student with a disability is one that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."<sup>372</sup> The Parent provided no concrete quantitative data to suggest the IEP was not reasonably calculated for the Student to make progress in light of his unique circumstances or that the Student has regressed. The Parent had the opportunity to subpoena witnesses to meet her burden and chose not to subpoena or present the testimony of any of the Student's teachers or other direct service providers from the [REDACTED] or the BCPSS. She did not produce syllabi, work samples, or any other data she received from the [REDACTED] to show what functional and academic life skills supports the Student received in the [REDACTED] program while attending [REDACTED]. She did not offer the MAP-M and MAP-R data from the Student's BCPSS records to show any regression in the Student's life skills from the time he was educated in the [REDACTED] program in the [REDACTED] to when he received his education with the BCPSS.

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<sup>371</sup> COMAR 28.02.01.21D ("Expert testimony may be admitted, in the form of an opinion or otherwise, if the ALJ determines that the testimony will assist the ALJ to understand the evidence or to determine a fact in issue. (1) In making that determination, the ALJ shall determine whether: (a) The individual's knowledge, skill, experience, training, or education is sufficient to qualify them as an expert; (b) Expert testimony on the particular subject is appropriate; and (c) There is a sufficient factual basis to support the testimony.").

<sup>372</sup> *Endrew F. at 398.*

Instead, the Parent concluded that because the BCPSS did not produce artifacts in its evidence binder showing the provision of life skills instruction that such instruction did not occur. The absence of evidence does not constitute evidence in this case, and the BCPSS does not bear the burden of proof in this case. She did not refute the competent, reliable expert testimony of all four of the BCPSS witnesses who have personal knowledge of the [REDACTED] programs, reviewed the Student's records, and had the opportunity to observe him in the educational environment (even for a brief time), who all testified that the [REDACTED] program has embedded life skills instruction and that the Student has been able to access such programming.

Further, I conclude that the Parent's documentary evidence does not support her contention that the BCPSS inappropriately removed functional academic learning supports in developing the Student's August 2022 IEP, as the June 2022 [REDACTED] IEP does not define life skills. The portion of the LRE page which might have done so is cut off, and the visible portion of the page only mentions organizing the Student's belongings. While there was a SAS for periodic self-care support, the June 2022 [REDACTED] IEP team did not indicate what that term means. Rather, it was linked to the description of the SAS for strategies to initiate and sustain attention and did have its own description. While the BCPSS had the obligation to ensure that all student records were properly received and were complete at the time of the Student's transfer, this obligation does not shift the Parent's burden to show at the hearing what services and SAS were on the June 2022 [REDACTED] IEP that she contends were not provided and were necessary for FAPE. Also, the Parent did not allege a procedural violation related to the BCPSS' records obligation in her due process complaint.<sup>373</sup>

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<sup>373</sup> 34 C.F.R. § 300.511(d) ("The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under § 300.508(b), unless the other party agrees otherwise.").

Though neither the Parent nor any of her witnesses mentioned the transition pages of the June 2022 [REDACTED] IEP, this portion of the IEP itself does not elucidate what life skills mean for this Student. The postsecondary goals included: “Employment (required): After receiving a Maryland High School Certificate of Program Completion, [the Student] will work as a [REDACTED] with adult supports” and “Training: After receiving a Maryland High School Certificate of Program Completion, [the Student] will participate in training to learn the skills to be a [REDACTED] with adult supports.”<sup>374</sup>

The Student did not have any postsecondary goals for education or independent living on the June 2022 [REDACTED] IEP. Rather, the June 2022 [REDACTED] IEP team selected “Job Sampling and Employment Training” and “Activities of Daily Living” as the “Functional and Skill Development Activities” the Student would have participated in during the 2022-2023 school year. As the basis for its determination regarding functional and skill development activities, the IEP team noted: “[The Student] needs a course of study that will support his post-secondary goal of working in supported employment, in an environment that interests him. Proposed course will include functional and adaptive coursework including community-based instruction<sup>375</sup> focusing on] daily living skills and employability skills.”<sup>376</sup> The “daily living skills” were not further delineated.

Lastly, the Student had transition activities in the June 2022 [REDACTED] IEP. Those transition activities included: Academic – practice strategies to initiate and sustain attention for task completion; and Employment training – complete a student interest sheet for the 2022/2023 school year identifying preferences and interests and complete a transition assessment for

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<sup>374</sup> Parent Ex. 5, pp. 114-116.

<sup>375</sup> As referenced above, [REDACTED] testified that community-based instruction can be provided within a school building. Based on the testimony of [REDACTED], [REDACTED] and [REDACTED], the [REDACTED] citywide program has embedded curriculum which expressly includes ADLs, independent living, and employability skills.

<sup>376</sup> BCPSS Ex. 1.16.

2022/2023 school year. Though the Parent asserted that the BCPSS failed to include functional academic learning supports to develop the Student's life skills that were originally provided for in the June 2022 [REDACTED] IEP, a thorough review of the legible portion of the June 2022 [REDACTED] IEP reveals that no such identifiable functional academic learning supports expressly existed in that IEP.

The Parent focused on life skills for [REDACTED] ([REDACTED]), organizing belongings, computer skills, and laundry; yet other than organization, none of these life skills are set forth in the June 2022 [REDACTED] IEP. Even with organization of his belongings, there is no present level on the June 2022 [REDACTED] IEP, which showed his level of functioning and needs regarding life skills from which I (or the BCPSS for that matter) could discern the Student's life skills baseline before transferring to [REDACTED]. Additionally, there is no quantitative data from the Parent to show the Student's current functional level in the area of life skills. A comparative analysis is necessary to determine whether regression occurred. Without it, I cannot reach the conclusion that the Student's life skills have regressed.

Furthermore, on cross-examination, when questioned about the lack of information regarding life skills information in the June 2022 [REDACTED] IEP, the Parent indicated that the withdrawal packet included more information. I reviewed the full contents of the withdrawal packet. In the June 8, 2022 Appendix A, the [REDACTED] IEP team referred to self-management and social skills which were incorporated into the [REDACTED] program, but there was nothing specific to the Student's self-care or life skills needs.<sup>377</sup> There was nothing else in the withdrawal packet regarding life skills. The IEP itself is the operative document that an LEA must legally implement; therefore, even if the information existed elsewhere in the withdrawal packet, it would not be legally binding.

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<sup>377</sup> BCPSS Ex. 2.2-2.3.

I also cannot ignore that there is potentially missing data regarding the Student's current cognitive functioning as it relates to regression of skills. [REDACTED] strongly recommended a "follow-up with his [REDACTED] . . . to monitor for a degenerative process that may contribute to functional decline. His medical team has also recommended repeat genetics testing, as these malformations<sup>378</sup> are strongly suggestive of an underlying genetic etiology."<sup>379</sup> Furthermore, [REDACTED] made a referral to [REDACTED] [REDACTED] for follow-up regarding the Student's history of [REDACTED] for repeated neuroimaging and/or genetics testing, as may may be warranted, "especially given concerns for functional regression."<sup>380</sup> Lastly, [REDACTED] noted that "based on current test results, [the Student] will require repetition and practice in many areas for an extended period before he will be able to independently generalize these skills to the home and community, and he will need a significant level of support and guidance."<sup>381</sup> Given the potential that the Student's medical condition might be the cause of the Student's functional regression, I am unable to rule this out as the root cause of why the Parent may see regression of skills at home. It is important that the team have a complete understanding of the Student's needs which includes any updated medical information. The IEP team cannot act on information that it does not have in its possession, nor can I make a decision that FAPE was denied, when this potential cause exists.

Lastly, I did not find persuasive the Parent's argument that the BCPSS offered the [REDACTED] program to address the Student's need for life skills because [REDACTED] did not have a life skills program. I also do not find credible the Parent's contention that the IEP team admitted during the December 6, 2023 meeting that they did not have a life skills program. I find more persuasive and credible [REDACTED] testimony that [REDACTED] offers embedded life skills

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<sup>378</sup> Referring the Student's diagnoses of m [REDACTED] and [REDACTED] .

<sup>379</sup> Parent Ex. 3, p. 66-67.

<sup>380</sup> Parent Ex. 3, p. 72.

<sup>381</sup> Parent Ex. 3, p. 67.

instruction and the [REDACTED] program was only offered as an alternative placement to address the Parent's concerns about community-based instruction outside of the school building. His testimony is consistent with the PWN from the December 6, 2023 meeting. The IEP team, including the Parent, decided not to place the Student in the [REDACTED] program at the April 2024 IEP team meeting. If the IEP team felt that [REDACTED] did not provide the Student with FAPE or life skills, another placement would have been offered after the Parent rejected the [REDACTED] program. The IEP team did not make a different placement because [REDACTED] was sufficient to provide a FAPE to the Student.

The BCPSS developed IEPs for the 2022-2023, 2023-2024, and 2024-2025 school years,<sup>382</sup> which were reasonably calculated to enable the Student to make progress in light of his unique circumstances and included programming for functional and academic learning supports.<sup>383</sup> The IEP team, including the Parent, considered all available information including parent input, formal and informal assessment data, teacher observations, progress towards IEP goals, use of accommodations and SAS, grade level expectations for curriculum standards, and the Student's individualized needs during the August 3, 2022, November 3, 2022, December 6, 2023, February 23, 2024, April 16, 2024 and June 6, 2024 IEP team meetings. During each meeting, the IEP team considered the Parent's input, updated the IEP with current information, and generated a PWN<sup>384</sup> to outline the actions proposed and refused as well as the reasons such decisions were made. Though some of the functional goals were repeated from year to year,<sup>385</sup>

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<sup>382</sup> The current IEP is from June 6, 2024, and therefore is the IEP currently being implemented for the 2024-2025 school year.

<sup>383</sup> *Endrew F.*, 580 U.S. at 398.

<sup>384</sup> The June 6, 2024 PWN combined the February, April and June 2024 meetings together as it was a continuation of the same IEP team meeting.

<sup>385</sup> Repeating the same IEP goals does not necessarily mean that the IEP is not reasonably calculated to enable the Student to make progress in light of his unique circumstances. See *Edward M.-R. by & through T.R.-M. v. D.C.*, 660 F. Supp. 3d 82, 113 (D.D.C. 2023) (finding the hearing officer determination consistent with *Endrew F.*) ("Rather, the hearing officer explained, 'limited academic progress does not ipso facto signal a violation of the IDEA any more so than does the existence of substantially similar IEPs year over year.'") (internal citations omitted).

the Student continued to make progress towards his IEP goals and to earn passing grades during the 2022-2023 and 2023-2024 school years. The Parent did not challenge the validity of the IEP goals at the hearing or allege it as an issue during the Conference or anytime thereafter.<sup>386</sup> In the 2023-2024 school year, the Student also made progress towards his transition activities and worked in the [REDACTED].

For all of the reasons stated above, I find that the Parent has not met her burden on this issue.

### **iii. May 16, 2024 [REDACTED] Report**

If a parent shares an evaluation obtained at private expense, the LEA must consider the results of that evaluation when making decisions involving the provision of FAPE to the child (provided that the evaluation meets LEA's criteria).<sup>387</sup> The provision of the private evaluation report serves as a form of parental input to be considered and discussed by the IEP team.<sup>388</sup> When reviewing the private evaluation report, the IEP team must determine whether the data contained therein warrants revisions to the existing IEP. However, there is no obligation to adopt the contents of the report or to adhere to all of the private evaluator's recommendations.<sup>389</sup> In other words, the obligation "to consider" the private evaluation has its plain meaning and does not require the IEP team to "agree" or "concede"<sup>390</sup> to the contents therein.

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<sup>386</sup> See 34 C.F.R. § 300.511(d).

<sup>387</sup> 34 C.F.R. § 300.502 (c)(1).

<sup>388</sup> The IEP team is required to revise the IEP "as appropriate," and at least once a year, to address "lack of expected progress" and to account for "information about the child provided to, or by, the parents," among other factors. *Id.* § 1414(d)(4)(A).

<sup>389</sup> "Consideration," moreover, "does not require [that there be] substantive discussion, that every member of the [IEP team] read the document, or that the [IEP team] accord the private evaluation any particular weight." *S.W. v. N.Y. Dep't of Educ.*, 92 F. Supp. 3d 143, 158 (S.D.N.Y. 2015); see also *J.S. v. N.Y.C. Dep't of Educ.*, 104 F. Supp. 3d 392, 404 n.3 (S.D.N.Y. 2015) (observing that a CSE (New York's term for an IEP team) is "not required to give [an] independent evaluation any particular weight or afford any deference to its recommendations"). *B.M. v. Pleasantville Union Free Sch. Dist.*, No. 20-CV-2192 (KMK), 2021 WL 4392281, at \*13 (S.D.N.Y. Sept. 24, 2021).

<sup>390</sup> *T.S. v. Bd. of Educ. of Town of Ridgefield*, 10 F.3d 87, 89–90 (2d Cir. 1993) (internal citations omitted) ("No definition of the term 'considered' is offered in either the federal or state regulations. . . . Plain meaning is ordinarily our guide to the meaning of a statutory or regulatory term. The plain meaning of the word 'consider' is 'to reflect on: think about with a degree of care or caution.' Webster's Third New International Dictionary 483 (1986).").



If an IEP team considers and disagrees with the private evaluation report, such refusal must be explained in the PWN provided to the parent.<sup>391</sup> Any failure to properly consider the assessment results and/or recommendations from a private evaluation report would constitute a procedural violation. As noted above, procedural violations are only entitled to be redressed (be remedied) if there is substantive harm to the student's rights or the parent's rights under one or more of the three requirements outlined in the IDEA.<sup>392</sup>

The Parties did not dispute that the IEP team met on June 6, 2024 to review the contents of ██████████ May 16, 2024 report. However, they did not agree that the report was fully reviewed, that the discussions during the June 6, 2024 meeting were properly documented, or that the decisions to reject certain portions of the report were proper. I will address each of the recommendations that ██████████ made as it relates to the educational setting.

**a. Disability Category**

First, ██████████ recommended that the Student continue to receive special education services under the multiple disabilities code (Intellectual Disability and Other Health Impairment). Under the federal regulation, the term "multiple disabilities" is defined as

[C]oncomitant impairments (such as intellectual disability-blindness or intellectual disability-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.<sup>393</sup>

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<sup>391</sup> 34 C.F.R. § 300.503.

<sup>392</sup> "A procedural violation is actionable under the IDEA only if it results in a loss of educational opportunity for the student, seriously deprives parents of their participation rights, or causes a deprivation of educational benefits. *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 525–26, 127 S. Ct. 1994, 2001, 167 L.Ed.2d 904 (2007) (citing 20 U.S.C.A. § 1415(f)(3)(E)); *J.L. v. Mercer Island Sch. Dist.* 592 F.3d 938, 953 (9th Cir.2010). Thus, though it is important that a school district comply with the IDEA's procedural requirements, rather than being a goal in itself, such compliance primarily is significant because of the requirements' impact on students' and parents' substantive rights. Here although Bayonne's initial unresponsiveness in the face of Appellants' concerns was unfortunate and undoubtedly frustrating to them, they ultimately had an opportunity to participate meaningfully in the creation of an IEP for D.S. that was in effect for most of his ninth-grade year." *D.S. v. Bayonne Bd. of Educ.*, 602 F.3d 553, 565 (3d Cir. 2010).

<sup>393</sup> 34 C.F.R. §300.8(c)(7).

██████████ did not further clarify why she felt that the Student's current educational disability of intellectual disability did not suffice to meet the Student's current educational needs. While she acknowledged that the Student had an ██████████ as well as ██████████, she did not clarify during her testimony or in her report, how both ██████████ are so intertwined that one could not be selected over the other, necessitating the need for the multiple disabilities categorization. In fact, during cross-examination, ██████████ admitted that she did not review the Student's IEP or educational records other than the psychological report conducted by the ██████████.

The Student's December 6, 2023 IEP, which was the IEP in effect during the June 6, 2024 IEP team meeting reflected an educational disability code/category of intellectual disability. There is no indication in the June 6, 2024 IEP or the corresponding PWN that the IEP team discussed changing the Student's educational disability. This is a procedural deficiency as there is an obligation to consider the entirety of a private assessment report, even though there is no obligation to accept and/or adopt its recommendations in their entirety. Furthermore, the disability category does not govern the type of services a student will receive; instead, the Student's unique educational needs drive the educational programming.<sup>394</sup>

Thus, while this remains an outstanding item for the IEP team's consideration, the Parent has not proven that failure to consider this recommendation amounted to a denial of FAPE. The only evidence of educational benefit came from the BCPSS' exhibits (grades and progress notes).

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<sup>394</sup> A child's categorized disability cannot form the basis for removal from the regular educational environment. "The process for determining the educational placement for children with ██████████ disabilities (including children who are deaf, hard of hearing, or deaf-blind) is the same process used for determining the educational placement for all children with disabilities. That is, each child's educational placement must be determined on an individual case-by-case basis depending on each child's unique educational needs and circumstances, rather than by the child's category of disability." 71 Fed. Reg. 46, 586 (2006).

The BCPSS' evidence did not show that the Student was deprived of an educational benefit due to the current disability code. He continued to make progress towards his IEP goals and received passing grades. There was no further explanation of how the failure to consider a change in the disability code meets the other requirements of a procedural violation. The Parent indicated that she participated in the June 6, 2024 meeting with her attorney and her educational advocate. While she disagreed with the school-based IEP team members' decisions, she did not argue that the disability code should be changed or how any failure of the BCPSS to do so amount to deprivation of her rights to meaningfully participate in the IEP decision-making process or deprivation of the Student's rights to receive a FAPE. Therefore, I cannot find in her favor for this portion of her Due Process Complaint.<sup>395</sup>

**b. Placement**

██████████ also recommended placement in a special education "level 5 school," with self-contained/small group classroom for his primary academic courses, a heavy emphasis on functional life skills, such as the ██████████ program, and continuation of special education services through age 21. Her recommendation was based upon the extent of the Student's "cognitive, academic, and adaptive skill delays . . . where his instruction can be individualized to his level of functioning and paced in a manner based on his progress."<sup>396</sup> Further, under the "Educational History" section of her report, ██████████ noted that "[t]he family has hired an attorney and investigator and is pursuing non-public placement. [The Student's] ██████████, ██████████ ██████████, has recommended that he be placed in a school for children with special learning needs (level V school) with access to a functional life skills program given his complex medical and developmental history."<sup>397</sup>

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<sup>395</sup> 20 U.S.C.A. § 1415(f)(3)(E); 34 C.F.R. §§300.513(a)(2), 300.502(c)(1).

<sup>396</sup> Parent Ex. 3, p. 67.

<sup>397</sup> *Id.* at p. 62.

The IEPs developed by the BCPSS on August 3, 2022, November 3, 2022, December 6, 2023, and June 6, 2024 all reflect that the Student would continue to receive special education services through June 2027. This determination was consistent with the June 2022 [REDACTED] IEP which reflected the same completion date. While the BCPSS did not document whether it considered this recommendation, such discussion was unnecessary as the Student was already on a certificate track with this projected services end date.

In accordance with the services descriptions on the IEPs dated August 3, 2022, November 3, 2022 and December 6, 2023, and [REDACTED] testimony, the Student has self-contained classes for all academic content areas with two adults (a teacher and a paraeducator) and ten to twelve students in each class and receives direct instruction in life skills embedded in the [REDACTED] program. The Student participates in band as his general education elective with his non-disabled peers in the 2023-2024 and current school year (2024-2025). The IEP team considered this recommendation and determined that his needs could be met in the [REDACTED] program.

As such, the June 6, 2024 IEP continued to reflect the Student's placement at [REDACTED] with the same level of services. The BCPSS documented its refusal to change the Student's placement and the Parent's disagreement with its decision on the PWN, which the Parent received. More specifically, the Parent and her attorney requested that the Student be in an eleven-month nonpublic placement due to his academic and life skills needs. While I appreciate that the Parent disagreed with the final decision from the June 6, 2024 IEP team meeting, that does not equate to a denial to consider [REDACTED] placement recommendations from the private [REDACTED] assessment.

During cross-examination, the Parent explained that

The reason why I put level five school on his Due Process Complaint is that I was told that if the school district does not have a program that fits what is in his IEP,

whether it says LRE or whatever, there should be an IEP meeting, and they should change that to level five.<sup>398</sup>

She further testified that in conducting her own research, she discovered that the functional academic learning support services that the Student was receiving in the [REDACTED] could be provided at either the [REDACTED] or the [REDACTED]. Because the [REDACTED] was closer to her home, she selected that one as the Level V placement in her Due Process Complaint. Her testimony regarding the requested remedy is inconsistent with her subsequent testimony that she agreed with the Student's opportunities to be educated with his non-disabled peers during electives.<sup>399</sup> Ultimately, the Parent testified that she wants whatever services are in the Student's "best interest" and that "if his IEP fits," based upon "what his IEP recommend[ed] after evaluations," she would "stand by it."<sup>400</sup>

The Parent has not provided sufficient evidence that the Student requires a more restrictive placement to receive a FAPE. [REDACTED] testified that her understanding of a Level V school is it "is a term which is, not universally used anymore, but that that refers to a school in which all of the students who are attending that school or a significant percentage of the student;s attending that school are receiving specialized instruction, given relatively severe learning."<sup>401</sup> [REDACTED] opined that the Student would benefit from such a Level V placement, and she also recommended a program with "a heavy emphasis on functional life skills within that school."<sup>402</sup> However, she also acknowledged that the Student would benefit from participation in activities outside of school with his non-disabled peers with extra supervision, structure, and adult support.<sup>403</sup>

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<sup>398</sup> Test. Parent, Tr., p. 417.

<sup>399</sup> See Test. Parent, Tr., p. 421.

<sup>400</sup> Test. Parent, Tr., pp. 421-422.

<sup>401</sup> Test. [REDACTED], Tr., p. 87. [REDACTED] was cut off by [REDACTED] before she fully completed her statement.

<sup>402</sup> Test. [REDACTED], Tr., p. 89.

<sup>403</sup> Test. [REDACTED] Tr., p. 92.

Further, she testified that based upon her evaluation, she believed the Student could participate in electives such as band, art, music, and physical education with non-disabled peers because of his interpersonal strengths of engaging with others and his perseverance to complete tasks. She also opined that he would benefit from language, social, and behavior modeling from his non-disabled peers in those educational settings (electives) with supports, and that such benefit may be developmentally beneficially for him.<sup>404</sup>

The progress reports and teacher observations provided by [REDACTED], the Student's band teacher, indicated that the Student has satisfactory behavior and an ability to participate in his elective with nondisabled peers.<sup>405</sup> While I appreciate the Parent's testimony that the Student told her that he just watches other children, I find [REDACTED] input more persuasive. During the June 6, 2024 meeting, [REDACTED] shared that that the Student played in the percussion section of the band, and during the December 6, 2023 meeting, she shared that the Student was scheduled to participate in a school performance. It is logical to conclude that the Student had to learn how to play the instrument in order to participate in the school performance, so I find [REDACTED] account that the Student actively engages in band to be more persuasive than the Parent's second-hand information to the contrary.

There are statements in the June 2022 [REDACTED] IEP and [REDACTED] report that the Student can be easily influenced by his nondisabled peers and does not understand the difference between a friend and someone he just met. However, there were no data to suggest that these behaviors have occurred with the same frequency or have caused safety concerns while he has been attending the [REDACTED] program at [REDACTED].<sup>406</sup>

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<sup>404</sup> See Test. [REDACTED], Tr., p. 93.

<sup>405</sup> See BCPSS Ex. 23.16-23.17.

<sup>406</sup> As noted above, the behavior issues noted by [REDACTED] were not clarified and the record does not contain evidence whether the Student being "jacked" up by another student, as [REDACTED] characterized it, was caused by these types of concerns.

██████████ reported that there was an issue with the Student using bad language in the second semester of the 2023-2024 school year, but he was easily redirected to refrain from doing so, and in the June 6, 2024 IEP team meeting, ██████████ reported that the Student had stopped exhibiting such behavior.

The purpose of the LRE continuum is to enable students with disabilities to be included with their nondisabled peers in the educational environment through academic and nonacademic settings.<sup>407</sup> The Parent provided no evidence about the [REDACTED] program or the [REDACTED] program and each respective program's appropriateness to meet the Student's needs, nor was there any evidence that the Student has been accepted into the [REDACTED] program or the [REDACTED]. The evidence is clear that the Student's unique needs to receive FAPE require mainstreaming opportunities and that a more restrictive environment is not required in order for him to make progress towards his goals and to access the curriculum. Thus, the Parent did not prove that the IEP was not reasonably calculated in this regard.

**c. Adult support/nurse support**

██████████ recommended a “1:1 aide or nursing support for self-care skills (e.g., ██████████).” The Parent clarified that the Student had ██████████ (██████████ and ██████████ ██████████) when he was younger and required ██████████, but testified that he continues to have problems with ██████████ until he gets home. There were no notations in the medical records or ██████████ report to reflect this type of behavior in ninth grade or thereafter. The team considered this recommendation at the June 6, 2024 IEP team meeting and determined that this was not a need.

407 “We have acknowledged that this statutory language ‘obviously indicates a strong congressional preference for mainstreaming’ students into the general education classroom but that ‘[m]ainstreaming ... is not appropriate for every [child with a disability].’ *DeVries ex rel. DeBlaay v. Fairfax Cty. Sch. Bd.*, 882 F.2d 876, 878 (4th Cir. 1989). Instead, ‘[t]he proper inquiry is whether a proposed placement is appropriate under the [IDEA]’--in other words, whether a child’s placement--the setting where the child learns--provides the child with a FAPE. *Id.* (citation omitted).” *R.F. by & through E.F. v. Cecil Cnty. Pub. Sch.*, 919 F.3d 237, 246 (4th Cir. 2019).

During the June 6, 2024 IEP team meeting, the team discussed that the teachers have not had any concerns regarding the Student's ability to independently use the [REDACTED] and there have been no reports of [REDACTED] or [REDACTED]. Additionally, the teachers shared that they have not received any concerns from the Parent regarding the Student's ability to independently use the [REDACTED]. During the meeting, the team inquired of the Parent whether or not this was a new concern, and the Parent indicated that the Student had a one-on-one aide in elementary school and middle school.<sup>408</sup> The IEP team reviewed the June 2022 [REDACTED] IEP and confirmed that the Student did not have one-on-one support listed on that IEP; therefore, the Student would not have received one-on-one support had he remained in the [REDACTED] for high school. The IEP team also confirmed that the Student was supervised by a paraeducator throughout the day at [REDACTED] including transitions, lunch, and scheduled [REDACTED] breaks. Based upon this information, the IEP team determined that a one-on-one aide did not appear to be appropriate at that time. This discussion was documented in the Parent input portion of the June 6, 2024 IEP as well as on the corresponding PWN, which was sent to the Parent.

While I appreciate the Parent's testimony that the Student continues to have issues with [REDACTED] and [REDACTED] when he [REDACTED] at home, she did not prove how this issue has an educational impact. She testified that the Student attempts [REDACTED] at home but is unable to properly [REDACTED], [REDACTED], and takes multiple showers. As a result, she or [REDACTED] assist him with properly [REDACTED] himself. A medical condition or diagnosis alone is insufficient to justify the provision of special education services.

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<sup>408</sup> See BCPSS Ex. 15.12.



Specially designed instruction<sup>409</sup> requires adaptation of the curriculum based on an educational need stemming from the Student’s disability. For example, if the Student was missing instruction because he was ill from this condition, that could be the basis of an educational impact; or if there was data to show that the Student was unable to concentrate during classroom instruction because of this behavior, that could be a basis of an educational impact. There are a myriad of scenarios, but none of them were present in this case. There is no nexus between the Student’s purported [REDACTED] and [REDACTED] issues at home and any impact on his ability to progress in the curriculum or make progress towards his IEP goals.

I find that the BCPSS properly considered this request and complied with IDEA’s requirements to provide a PWN explaining why the Parent’s request was rejected.<sup>410</sup> I further find that its determination was proper as there was no data to support the need for adult support for [REDACTED].

**d. ESY**

Additionally, [REDACTED] recommended ESY services to help minimize learning loss given his deficits in memory. The Student was found eligible for ESY on December 6, 2023 for five, four hour sessions per week, for four weeks (total of twenty hours), and the documentation for the IEP team’s decision identified the areas of deficits/critical life skills. The team discussed ESY during the June 6, 2024 IEP team meeting as well, including the previous ESY eligibility determination on December 6, 2023. The IEP team determined that the ESY determination continued to be appropriate, but the Parent and her attorney said that they had concerns of

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<sup>409</sup> As a reminder, “[s]pecially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction— (i) To address the unique needs of the child that result from the child's disability; and (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.” 34 C.F.R. § 300.39(b)(3).

<sup>410</sup> 20 U.S.C.A. § 1415(f)(3)(E); 34 C.F.R. §§300.513(a)(2), 300.502(c)(1).

regression before and after ESY and that the Student would benefit from an eleven-month program. In response, the team discussed that there was no data to support a regression of skills before or after ESY. The BCPSS documented this discussion, including the Parent's and her attorney's disagreement with the team's determination, on the parent input section of the June 6, 2024 IEP and on the corresponding PWN, which was sent to the Parent.

I find that the BCPSS properly considered this request, and complied with IDEA's requirements to provide a PWN explaining why the Parent's request for ESY to be addressed through an eleven-month program was rejected.<sup>411</sup> Other than the "Level V School" request noted above, there was no evidence at the hearing regarding the need for an eleven-month program. I have already determined that the data does not support such a restrictive setting. I further find that the IEP team's determination was proper that the Student qualified for ESY services to be provided by the BCPSS during the summer of 2024.

**e. Transition**

In her report, [REDACTED] expressly recommended goals and support in all areas of transition planning, which include instruction, community experiences, development of employment and other post school adult living objectives, as well as daily living skills and a functional vocational evaluation. [REDACTED] was not asked to expound upon the specific examples of transition activities that she recommended in her report. Her recommendations included:

- Integrated, explicitly taught daily living skills and community experiences, which the Student could also practice in the community (e.g., grocery shopping, visiting a bank to deposit/withdrawal money, completing job application, etc.).
- Academic skills and the acquisition of adaptive life skills programming with opportunities for building skills for social relationships/interactions (i.e., social

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<sup>411</sup> 20 U.S.C.A. § 1415(f)(3)(E); 34 C.F.R. §§300.513(a)(2), 300.502(c)(1).

skills groups or training), helping him develop an understanding what is and is not safe in terms of both physical actions and interpersonal interactions (e.g., personal boundaries), and encouraging use of other practical requirements for getting around the world (e.g., use of money, public transportation).

- Employment/post school adult living objectives to include a functional vocational evaluation in the context of what is realistic for the Student given his cognitive abilities, which may involve exposing him to the process of searching for a job, completing application materials, interviewing, and learning skills of that job in a supportive environment and eligibility for Division of Rehabilitation Services (DORS).<sup>412</sup>

Based upon the Student interview and TPI-3 conducted on October 10, 2023, the Student was interested in becoming a [REDACTED] and to live independently. Therefore, on the December 6, 2023 IEP, the team included the following transition activities on his IEP:

- Employment training: participating in the on-the-job skills and behavior activities in class and being able to share these skills in a role-play in class; and participating in a self-advocacy disabilities awareness skills workshop in school and sharing what he has learned in class;
- Training: attending a training program to become a [REDACTED];
- Academic: researching training requirements and wages relating to job retail associate jobs; completing a job interview practice questionnaire and participating in a mock interview in class;
- Independent living: participating in school-based training, such as purchasing appropriate items for personal use and participating in an activity requiring him to buy things from a store for personal use; and participating in a travel training exercise to learn about the different bus routes and times and various public transportation available in Baltimore.<sup>413</sup>

During the June 6, 2024 IEP team meeting, the team added a self-care goal regarding grooming as suggested by the advocate. The IEP team also proposed adding ADLs and independent living transition activities that were suggested by the advocate<sup>414</sup> and proposed that they be provided in the school building. The Parent and her attorney rejected this offer, noting

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<sup>412</sup> See Parent Ex. 3, p. 68.

<sup>413</sup> See BCPSS Ex. 14.17-14.22.

<sup>414</sup> While the Parent attached the advocate's proposed goals to her due process complaint, she did not offer them as evidence during the hearing. Neither party provided evidence of the advocate's suggested transition activities or whether the proposed goals were one in the same.

that they should be provided in the community setting. The team revised the second ADLs transition activity to include an enumeration of the tasks that the Student will complete ([REDACTED], [REDACTED], [REDACTED] and [REDACTED]).

The BCPSS considered the Parent's and her attorney's request that the transition activities be provided in the community setting and documented the refusal on the corresponding PWN.<sup>415</sup> The team did not document its consideration of each of these transition activities or the reasons that it rejected the Parent's requests on the PWN. However, through the testimony of [REDACTED], transition specialist, the BCPSS explained that given the potential dangers within certain areas of the city, the BCPSS does not offer transition activities in the community through the [REDACTED] program.

Though I find that the BCPSS failed to provide the Parent with a PWN reflecting the reasons that it rejected all of the proposed transition activities from [REDACTED] report, that failure does not rise to a denial of FAPE. As I have stated, under the IDEA, an administrative law judge may only find that a student with a disability did not receive a FAPE based upon a procedural violation if the procedural inadequacies:

- (I) Impeded the child's right to a FAPE;
- (II) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
- (III) Caused a deprivation of educational benefit.<sup>416</sup>

The mere fact that the IEP was not revised to include every suggestion made by [REDACTED] does not result in a denial of the Student's right to FAPE or deprivation of an educational benefit. Without more evidence, I cannot reach a different conclusion. The Parent's right to meaningfully participate in the IEP development process was not impeded given that the

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<sup>415</sup> 20 U.S.C.A. § 1415(f)(3)(E); 34 C.F.R. §§300.513(a)(2), 300.502(c)(1).

<sup>416</sup> 20 U.S.C.A. § 1415(f)(3)(E)(ii).

IEP team considered her input and was readily willing to revise the IEP to include the transition activities suggested by the Parent's advocate,<sup>417</sup> but she and her attorney rejected that option. The Parent's and her attorney's rejections were based upon methodology,<sup>418</sup> i.e., such services being provided in the school building rather than the community; not provision of the transition activities.

Further, the Parent did not prove how or why the existing transition activities that the Student had on his December 6, 2023 IEP or has on June 6, 2024 IEP were insufficient to address [REDACTED] recommendations. The Student was already learning how to complete a job application and could fill out his name independently and his address with a model. During the 2023-2024 school year, the Student worked in the school store and had a transition activity to practice purchasing personal items. Furthermore, the Student had a goal for counting money and a transition activity for travel training. Lastly, the Student had transition activities to search for jobs and conduct practice interviews, and he had already been referred to DORS. The only thing that the existing IEPs did not address was social interactions or social skills training. However, other than behavioral therapy, which I have already addressed above, the Parent made no further arguments and did not clarify why this should be addressed in the transition activities.

**f. Speech/Language Therapy**

[REDACTED] recommended providing the Student with speech and language therapy services to address ongoing concerns with receptive and expressive language. As discussed above, during the June 6, 2024 IEP team meeting, the IEP team considered the request for speech and language services to be added to the Student's IEP.

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<sup>417</sup> As noted above, neither party offered the advocate's suggestions as an exhibit. They were attached to the Parent's Due Process Complaint but were not offered as evidence.

<sup>418</sup> See *Rowley*, 458 U.S. at 207 (1982).

The IEP team rejected this option based upon the Student's ability to access the curriculum and participate in his courses. The IEP team included the specific reasons for its rejection on the parent input section of the June 6, 2024 IEP as well as on the corresponding PWN provided to the Parent. Further, to address the Parent's concerns, the team added an SAS for extended response time.

I find that the BCPSS properly considered this request, and complied with IDEA's requirements to provide a PWN explaining why the Parent's request was rejected.<sup>419</sup> I have already found that its determination was proper as there was no data to support the need for direct speech and language services as a related services on the Student's IEP.

**g. Accommodations**

██████████ recommended several accommodations and SAS as part of her evaluation of the Student. During the June 6, 2024 IEP team meeting, the IEP team discussed instructional assessment accommodations and modifications. The team determined that the current supports continued to be appropriate. Additionally, the team discussed the SAS section of the IEP. Lastly, the team reviewed the current SAS in conjunction with the recommendations from the May 16, 2024 assessment report. Based upon its review, the IEP team determined that the following SAS would be added to further support the Student in the classroom: (1) errorless learning, and (2) extended response time ("wait time" to process information when delivering verbal responses).

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<sup>419</sup> 20 U.S.C.A. § 1415(f)(3)(E); 34 C.F.R. §§300.513(a)(2), 300.502(c)(1).

The rest of [REDACTED] recommendations were already encompassed within the Student's existing IEP as of the date of the meeting, as follows:

[REDACTED] recommendation	December 6, 2023 existing IEP <sup>420</sup>
Break new and more complicated tasks into smaller pieces and build new material on already mastered skills.	<p>The Student had chunking of text to avoid frustrations and to assist with completing assigned tasks especially when long informational text or chapters of the books are being discussed in class.</p> <p>Additionally, the Student also had breakdown assignments into smaller units and due to his intellectual disability, classroom instruction, and assignments were to be presented in smaller segments to allow him ample time to process information.</p> <p>The Student had modified content and due to his significant cognitive and academic deficits, he required extensive and substantial modification to the general education curriculum, explicit and ongoing instruction of the Common Core (essential understanding) and functional academic skills.</p>
Offer individualized reinforcement and repetition as needed.	<p>The Student had repetition of directions to “make sure he understands the instructions when completing a task in class.”</p> <p>He also had frequent and/or immediate feedback “to make sure [he] understands the lessons” and to “check on how he is performing/completing the tasks.”</p>
Keep all oral directions clear and concise. Complex, multi-step directions should be presented one at a time. Information will need to be repeated or simplified.	<p>The Student had repetition of directions to “make sure he understands the instructions when completing a task in class.”</p> <p>He also had frequent and/or immediate feedback “to make sure [he] understands the lessons” and to “check on how he is performing/completing the tasks.”</p>

<sup>420</sup> For all quotes in the chart below, see BCPSS Ex. 14.

	<p>Additionally, the Student also had breakdown assignments into smaller units and due to his intellectual disability, classroom instruction, and assignments would be presented in smaller segments to allow him ample time to process information.</p>
Provide verbal and nonverbal cues for redirection as needed.	<p>The IEP goals indicated that the Student was given adult support, and the present levels mentioned cueing and prompting.</p>
Provide meaningful context to newly presented information	<p>The Student had frequent and/or immediate feedback “to make sure [he] understands the lessons” and to “check on how he is performing/completing the tasks.”</p>
Use a multi-modal or multi-sensory format, with use of manipulatives; this is particularly important for math instruction.	<p>The Student had use of pictures for reading; use of manipulatives for reading; access to objects to manipulate in order to sustain attention; use of highlighters for reading, math and writing; use of organizational aids such as visual aids, graphic organizers, T-charts, idea webs, story element charts to support comprehension, use of lined paper and opportunities to copy print to organize writing.</p> <p>Additionally, the Student had use of calculation device (calculator) and access to human reader</p>
Check in with him to ensure that he comprehends task instructions/expectations.	<p>The Student had repetition of directions to “make sure he understands the instructions when completing a task in class.”</p> <p>He also had frequent and/or immediate feedback “to make sure [he] understands the lessons” and to “check on how he is performing/completing the tasks.”</p> <p>Also, the Student had monitor test response, to help him remain on task.</p>
Cues and/or prompts to assist with word finding and expressive language. Examples multiple choice, forced choice (“Is this a handle or a hammock?”), phonemic cues (i.e., provide the initial sound of the target word), semantic cues (e.g., describe features of the object), and/or fill-in-the-blank.	<p>The Student had the use of sentence starters in his written expressive language goal in addition to provision of a word bank.</p> <p>In the reading comprehension goal, the Student was given modified grade-level text with visual support, graphic organizers and verbal prompting.</p>



	<p>The Student had use of word bank to reinforce vocabulary and/or when extended writing was required, in order to guide him with the vocabulary words of the week for him to formulate sentences and to acquire vocabulary skills.</p>
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The BCPSS failed to provide the Parent with a PWN reflecting the reasons that it rejected all of the proposed accommodations/SAS from ██████████ report, however, none of the three requirements for procedural violations have been met. Again, I cannot simply conclude that failure to include every suggestion in the PWN resulted in a denial of the Student's right to FAPE or deprivation of an educational benefit. Further, the Parent did not prove how or why the existing SAS and accommodations that the Student had on his December 6, 2023 IEP were insufficient to address ██████████ recommendations. Lastly, the Parent was present during the June 6, 2024 meeting and was represented by an attorney and an advocate. The IEP team reviewed and accepted two of ██████████ SAS and accommodations suggestions and documented the Parent's input. There was no evidence that the Parent's right to meaningfully participate in the IEP development process was impeded.

I find that the BCPSS properly considered this request, and complied with IDEA's requirements to provide a PWN explaining why the Parent's request was rejected.<sup>421</sup> I find its determination was proper as most of the recommendations were already addressed in the existing IEP, and the team made revisions to include the two which were not.

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<sup>421</sup> 20 U.S.C.A. § 1415(f)(3)(E); 34 C.F.R. §§300.513(a)(2), 300.502(c)(1).

#### IV. Remedies

As set forth herein, the Parent did not prove by a preponderance of the evidence that the BCPSS denied the Student a FAPE. The IEPs developed by the BCPSS were appropriate to meet the Student's educational needs in light of his unique circumstances and there was insufficient evidence to establish that the IEPs developed for the 2022-2023, 2023-2024, and 2024-2025 school years were not implemented as written. The Parent has not met her burden on any of the issues, and did not prove that she was entitled to relief in the form of placement at [REDACTED] or the [REDACTED] for the current and next two school years at public expense, or any other equitable relief requested or not requested.

To the extent that the Parent offered evidence regarding the following matters not alleged in her Due Process Complaint, I do not have jurisdiction to hear them.<sup>422</sup> Matters such as allegations that she was deprived of her right to meaningfully participate in IEP team meetings, that the Student had unequal access to a laptop,<sup>423</sup> inaccuracies in student records, or any procedural deficiencies with the development or implementation of the IEP were not alleged in the Due Process Complaint and were not discussed during the prehearing conference when the issues to be decided at the due process hearing were discussed. Furthermore, there was no request to amend the Conference Report and Scheduling Order to correct the issues, no request to amend the due process complaint, and at the start of the hearing when the issues were read into the record, there were no objections or corrections made as a preliminary matter.

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<sup>422</sup> 34 C.F.R. §300.511(d) ("The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under § 300.508(b), unless the other party agrees otherwise."); *see also John A. v. Bd. of Educ. for Howard Cnty.*, 400 Md. 363, 388–89, 929 A.2d 136, 151 (2007) (internal citations omitted). ("The powers of the OAH and its ALJ's are measured by the granting statute. . . An ALJ cannot enlarge agency jurisdiction, nor may subject matter jurisdiction be conferred upon the agency by the courts or the parties before the OAH. . . The scope of an administrative hearing is limited to the matters contained in the 'complaint' filed triggering the hearing.").

<sup>423</sup> As noted above, I addressed the laptop issue as potentially a SAS; and did not address it for any other purpose not alleged in the Due Process Complaint.

As to the matters/allegations listed in the above-paragraph, I do not have subject matter jurisdiction. As discussed at the prehearing conference, the OAH does not have subject matter jurisdiction over any discrimination or equal access matters under Section 504 of the Rehabilitation Act of 1973 with respect to the BCPSS students and therefore, any equitable access or disability discrimination issues regarding the laptop are not properly before me.

Furthermore, there is a separate legal process for requests to amend the Student's records under the Family Educational Rights and Privacy Act (FERPA) and each LEA is required to have a policy outlining parental rights and hearing rights under FERPA.<sup>424</sup> While there is some overlap with FERPA and the IDEA, and the federal regulations implementing the IDEA, these issues were not brought forth during the Conference or any time thereafter for correction. This applies equally to the errors in grading on the work samples that the Parent testified to and disclosure of other students' records. Therefore, allegations regarding inaccuracies in the Student's records (including team participants, dates, etc.) or any adjacent record issues are not properly before me.

The Parent did not specifically allege any procedural FAPE claims including any alleged denial of a right to meaningfully participate in IEP team meetings.<sup>425</sup> She testified that she never attended the August and November 2022 meetings, because she never participated in any meetings by phone. These issues were not alleged, nor discussed at the prehearing conference or anytime thereafter. I only comment here because I am charged with making credibility determinations. The fact that there is overwhelming evidence that the Parent received documents before and after these meetings, that she signed at least two to three documents reflecting that these meetings occurred, and that she is a very active, diligent parent, contradicts her testimony.

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<sup>424</sup> See 34 C.F.R. §§ 300.610-627.

<sup>425</sup> See *M.W. ex rel. S.W. v. N.Y.C. Dep't of Educ.*, 725 F.3d 131, 139 (2d Cir. 2013) (“[P]arents must articulate how a procedural violation resulted in the IEP's substantive inadequacy or affected the decision-making process.”).

I find it hard to believe that she would simply receive a letter in July 2022 that informed her that an IEP team meeting should occur, and then never take any further steps when no meeting was scheduled (according to her testimony). This would have meant that she did not participate in any meetings for the entire 2022-2023 school year but continued to sign documents saying that meetings occurred. I cannot follow this logic. It would have been helpful to have audio recordings of these meetings so that there was no doubt who was present, when they occurred, or what was said, but no such recordings were offered as evidence.

The IEP team does have a legal obligation to consider the Career Assessment report from September 2024, as the assessor made significant recommendations regarding postsecondary goals and transition activities including life skills and community-based instruction. It is possible that the Student requires more intensive supports as outlined in the September 2024 Career Assessment; however, the IEP team has not yet reviewed it. Therefore, it would be premature for me to rely upon it as basis for finding that the BCPSS denied the Student a FAPE.<sup>426</sup>

Notwithstanding my determination that the Parent has failed to meet her burden to prove the BCPSS denied the Student a FAPE, I would be remiss if I did not acknowledge that the Parent is a strong advocate for her son. I sympathize with her frustration with this process. The name of the [REDACTED] program changing is confusing (life skills, to [REDACTED], to now, low incidence). It is reasonable that she found the differences in the IEP development process between the [REDACTED] and the BCPSS unclear, as they may never have been fully explained to her.

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<sup>426</sup> *K.E.*, *supra*, 647 F.3d 795, 808 (8th Cir. 2011).

One such difference is that the Parent always “signed” IEPs in the [REDACTED] and believed (mistakenly) she had the right to “approve” IEPs after the initial IEP, which she legally does not.

Following each respective IEP team meeting, the BCPSS issued cover letters with all documents created from the respective meeting attached, which reflected the word “Draft IEP” when they were final versions. This may have exacerbated her mistaken belief that she must provide written consent before the IEP is final.

The fact that the Parent requested information about her child’s educational performance on multiple occasions without response from the BCPSS or with delayed responses, likely further complicated matters and enhanced the Parent’s frustrations. Receiving incorrect student work samples, errors with the work packet distribution for asynchronous learning, and multiple IEP team meetings caused further breakdowns in trust between the Parent and the BCPSS. Ensuring that the Parent understood the programming, could review the Student’s classroom work, and was privy to the tools utilized in the Student’s classroom so she could reinforce the same concepts at home, might have made these circumstances better. It may have also resulted in the Parent’s trust that the BCPSS was adequately addressing the Student’s needs.

However, although the lack of communication, clarity or consistency was not ideal, these circumstances do not amount to a denial of FAPE.<sup>427</sup> Thus I find that the BCPSS is entitled to judgement in its favor based on the merits of the hearing.

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<sup>427</sup> “What the statute guarantees is an appropriate education, not one that provides everything that might be thought desirable by loving parents.” *MN on behalf of EN v. Katonah Lewisboro Sch. Dist.*, No. 19-CV-6793 (CS), 2020 WL 7496435, at \*11 (S.D.N.Y. Dec. 21, 2020) (internal citations omitted).

## **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Baltimore City Public Schools System did not deny the Student a free appropriate public education because it provided comparable services from the prior in-state transfer IEP for the 2022-2023, until the development of a new appropriate IEP.<sup>428</sup>

I further conclude as a matter of law that the Baltimore City Public Schools System did not deny the Student a free appropriate public education because it had no legal obligation to provide comparable services from the prior in-state transfer IEP for the 2023-2024 and 2024-2025 school years.<sup>429</sup>

I further conclude as a matter of law that Baltimore City Public Schools System did not deny the Student a free appropriate education because it properly removed speech and language services from the Student's IEP on November 3, 2022.<sup>430</sup>

I further conclude as a matter of law that Baltimore City Public Schools System developed an appropriate IEP that is reasonably calculated and appropriately ambitious to enable the Student to make progress in light of his unique circumstances for the 2022-2023, 2023-2024 and 2024-2025 school years, including appropriate accommodations, modifications, supplementary aids and services, necessary to confer a meaningful educational benefit for the

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<sup>428</sup> 20 U.S.C.A. § 1414(d)(2)(C)(i)(I); 34 C.F.R. §§300.323(e), 300.502(b)(2)(i); 71 Fed. Reg. 46540, 46681 (Aug. 14, 2006); Md. Code Ann., State Gov't § 10-217 (2021); COMAR 28.02.01.21K(1); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005); *E.L. ex rel. Lorsson v. Chapel Hill-Carrboro Bd. of Educ.*, 773 F.3d 509, 517 (4th Cir. 2014); *Cavanagh v. Grasmick*, 75 F. Supp. 2d 446, 468 (D. Md. 1999); *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

<sup>429</sup> 20 U.S.C.A. § 1414(d)(2)(C)(i)(I); 34 C.F.R. §§300.323(e), 300.502(b)(2)(i); 71 Fed. Reg. 46540, 46681 (Aug. 14, 2006); Md. Code Ann., State Gov't § 10-217 (2021); COMAR 28.02.01.21K(1); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005); *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

<sup>430</sup> 20 U.S.C.A. § 1401(29); 34 C.F.R. § 300.34(a), (c)(15)(i)-(v); Md. Code Ann., State Gov't § 10-217 (2021); COMAR 28.02.01.21K(1); *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386 (2017); *Davis v. D.C.*, 244 F. Supp. 3d 27, 47 (D.D.C. 2017); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005); *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

Student; and a self-contained program with functional and academic learning support for the Student to receive a FAPE.<sup>431</sup>

I further conclude as a matter of law that Baltimore City Public Schools System developed an appropriate IEP that is reasonably calculated and appropriately ambitious to enable the Student to make progress in light of his unique circumstances for the 2022-2023, 2023-2024 and 2024-2025 school years, when it properly considered the recommendations from the private [REDACTED] completed by the [REDACTED] on May 16, 2024.<sup>432</sup>

I further conclude as a matter of law that the Parent has not met her burden and thus the Baltimore City Public Schools Systems is entitled to judgement in its favor.<sup>433</sup>

### **ORDER**

I **ORDER** that:

The Parent's June 21, 2024 Due Process Complaint be and the same hereby is

**DISMISSED AND DENIED.**

November 25, 2024  
Date Decision Issued

Tracee N. Hackett  
Administrative Law Judge

TNH/sh  
#215173

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<sup>431</sup> 20 U.S.C.A. § § 1401(33); § 1414(d)(1)(A)(i)(IV), (VI)(aa), 1414(d)(4)(A); 34 C.F.R. §§ 300.42, 300.43, 300.116(e), 300.320(b); 300.323(d); Md. Code Ann., State Gov't § 10-217 (2021); COMAR 13A.05.01.03B(43); COMAR 13A.05.01.03B(1); COMAR 13A.05.01.09A(3); COMAR 28.02.01.21K(1); *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 398 (2017); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005); *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 187-204 (1982); *D.S. v. Bayonne Bd. of Educ.*, 602 F.3d 553, 565 (3d Cir. 2010); *T.S. v. Bd. of Educ. of Town of Ridgefield*, 10 F.3d 87, 89-90 (2d Cir. 1993).

<sup>432</sup> 34 C.F.R. §§ 300.502(c)(1), 300.503; Md. Code Ann., State Gov't § 10-217 (2021); COMAR 28.02.01.21K(1); *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 398 (2017); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005); *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 187-204 (1982); *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

<sup>433</sup> Md. Code Ann., State Gov't § 10-217 (2021); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005); *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

## **REVIEW RIGHTS**

A party aggrieved by this final decision may file an appeal within 120 days of the issuance of this decision with the Circuit Court for Baltimore City, if the Student resides in Baltimore City; with the circuit court for the county where the Student resides; or with the United States District Court for the District of Maryland. Md. Code Ann., Educ. § 8-413(j) (2022). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence.

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

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

### **Copies Mailed To:**

[REDACTED]  
[REDACTED]  
[REDACTED]

Thurman Zollicoffer Jr., Esquire

[REDACTED]  
[REDACTED]  
[REDACTED]

Manisha Kavadi, Esquire

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
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