

XXXX XXXX,
STUDENT

V.

MONTGOMERY COUNTY
PUBLIC SCHOOLS

*** BEFORE JENNIFER M. CARTER JONES,**
*** AN ADMINISTRATIVE LAW JUDGE**
*** OF THE MARYLAND OFFICE**
*** OF ADMINISTRATIVE HEARINGS**
*** OAH NO.: MSDE-MONT-OT-14-19118**

*** * * * ***

DECISION

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

STATEMENT OF THE CASE

On May 30, 2014, XXXX XXXX (Father) and XXXX XXXX (Mother) (collectively, Parents) filed a Due Process Complaint on the behalf of XXXX XXXX (Student) with the Office of Administrative Hearings (OAH). The Parents filed the Complaint against the Montgomery County Public Schools (MCPS) to review the identification, evaluation, or placement of the Student by MCPS under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2010). The Parents are seeking a determination that the Student’s appropriate placement for the 2013-2014 school year and for the 2014-2015 school year is the [School 1] ([School 1]) The Parents also seek reimbursement for the Student’s tuition at [School 1] for the 2013-2014 and 2014-2015 academic years.

On or about June 11, 2014, the parties waived participation in a pre-hearing resolution meeting.

I held a telephone prehearing conference on June 30, 2014. Michael J. Eig, Esquire, represented the Parents. Jeffrey A. Krew, Esquire, represented MCPS. On July 1, 2014, I issued a Prehearing Conference Report and Order (PCR) setting forth, among other things, the issue and relief sought by the Parents. I received no objection or request for amendment to my PCR. By agreement of the parties, due to their scheduling conflicts, the hearing was scheduled for September 8 -12, 2014.

On August 4, 2014, I received correspondence from Mr. Eig, requesting that the hearing be reset for October 20-22, 24 and 27, 2014, due to scheduling conflicts regarding another Maryland State Department of Education (MSDE) hearing. Mr. Eig represented that MCPS concurred with the request to reset the hearing. On August 5, 2014, I granted the request to reset the hearing, and rescheduled the hearing dates to include October 20-22, 27, and 28, 2014. When the hearing did not conclude by October 28, 2014, after consulting with the parties and considering their availability, I added two days to the hearing schedule, December 4 and 5, 2014.

I held the hearing on those dates at the MCPS headquarters in Rockville, MD. Mr. Eig represented the Student. Mr. Krew represented MCPS. The hearing dates fell more than 45 days after the resolution period described in federal regulations. 34 Code of Federal Regulations (C.F.R.) § 300.510(b) and (c); 34 C.F.R. § 300.515(a) and (c) (2014). The parties requested an extension of time for the issuance of my decision to thirty days from the close of the record, until January 5, 2014. 34 C.F.R. § 300.515; Md. Code Ann., Educ. § 8-413(h) (2014).

The legal authority for the hearing is as follows: 20 U.S.C.A. § 1415(f); 34 C.F.R. § 300.511(a) (2014); Md. Code Ann., Educ. § 8-413(e)(1) (2014); and Code of Maryland Regulations (COMAR) 13A.05.01.15C.

The contested case provisions of the Administrative Procedure Act; the MSDE procedural regulations, and the Rules of Procedure of the OAH govern procedure in this case.

Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2014); COMAR 13A.05.01.15C; COMAR 28.02.01.

ISSUES

Did MCPS fail to develop an appropriate Individualized Education Program (IEP) for the Student for the 2013-2014 school year, thus depriving him of a Free and Appropriate Public Education (FAPE)?

Are the Parents entitled to reimbursement for tuition to [School 1] for the 2013-2014 and 2014-2015 academic years and placement at [School 1] for the balance of the 2014-2015 school year?

SUMMARY OF THE EVIDENCE

Exhibits

I have attached an Exhibit List to this Decision.

Testimony

The Parents presented the following witnesses:

- Dr. XXXX XXXX, Educational Consultant, accepted as an expert in Special Education
- XXXX XXXX, [School 1] Director of Occupational Therapy (OT), accepted as an expert in OT
- XXXX XXXX, [School 1] Associate Head, accepted as an expert in social work, with an emphasis on working with children diagnosed with learning disabilities.
- XXXX XXXX, the Student's father
- XXXX XXXX, [School 1] Speech Language Pathologist, accepted as an expert in speech language pathology.
- Dr. XXXX XXXX, [School 1] Psychologist, accepted as an expert in clinical psychology

MCPS presented the following witnesses:

- XXXX XXXX, Deaf and Hard of Hearing (DHOH) Itinerant Teacher, MCPS, accepted as an expert in teaching of the deaf and hard of hearing.
- XXXX XXXX, School Psychologist, [School 2], accepted as an expert in speech language pathology

- XXXX XXXX, Speech Language Pathologist, MCPS, accepted as an expert in speech language pathology.
- XXXX XXXX, Occupational Therapist, MCPS, accepted as an expert in occupational therapy
- XXXX XXXX, [School 2] Special Education Resource Teacher, accepted as an expert in special education

FINDINGS OF FACT¹

The parties stipulated to the following facts:

1. The Student was born on XXXX, 1997. S
2. The Student is XXXX and of XXXX descent. (T. Father)²
3. The Student typically relates to children who are younger than he is and he has otherwise displayed some social immaturity. (T. XXXX)
4. The Student has been found eligible for special education services by the MCPS, as a student with a Specific Learning Disability (SLD).
5. The Student was diagnosed with a hearing impairment at twenty months of age.
6. The Student has a hearing aid for his left ear.
7. The Student has consistently displayed difficulties with social skills and making friends. (T. XXXX, T. Father).
8. The Student has a younger brother who is in the ninth grade at [School 2] ([School 2]). He has a sister who is the sixth grade at [School 3] ([School 3]). (T. Father)
9. [School 2] has a total of approximately 2,200 students. (T. XXXX)

¹ Findings of Fact 1, 4, 5, 30, 31, 38, 80, 81, 82, 83, 84, 86, 89, 102, 110, 133, 145, 148, 149, 150, 151, 154, 155, 156, and 192 were entered by joint stipulation. I have changed some of the wording of the stipulations but have not altered the substance.

² XXXX is a monotheistic religion with its origins in the XXXX region of XXXX.

10. Approximately fifteen percent of the [School 2] student body is coded to receive special education services. [School 2] has an integrated special education department. (T. XXXX)

11. [School 2] has thirty-five special education staff members. All of the para-professionals at [School 2] are retired teachers or are undergraduates preparing to become teachers. (T. XXXX)

12. [School 2] has a one hundred percent graduation rate. Of those who graduate, approximately ninety – to – ninety-five percent go on to a two-year or a four-year college. Those who do not go on to college go to vocational school. (T. XXXX)

13. At [School 2], every special education student must take one honors class. In this honors class, students use multiple modalities to learn the academic content. (T. XXXX)

14. [School 2] has a relationship with XXXX College. (T. XXXX)

15. [School 2] offers a number of transition services to graduating seniors receiving special education services, including internships, vocational counseling, ACT/SAT³ practice, and a transition plug-in in resource class. (T. XXXX)

16. [School 2] has a coffee shop where special education students learn to interact with others and operate a cash register. They also learn problem solving. (T. XXXX)

17. [School 2] has a transition team, which helps students who receive special education services with schedule planning, resume writing, proper work attire, conversational speech and interviewing. (T. XXXX)

18. Among the students who receive special education services at [School 2], at least three-to-five of the students function at the elementary school level. (T. XXXX)

³ American College Test and the Scholastic Aptitude Test.

19. As the primary public high school for XXXX, [School 2] has a very diverse student body, with students from many ethnicities and religions. (T. XXXX)
20. The Student has at least six cousins who attended and graduated from [School 2]. Those cousins were not enrolled in special education classes at [School 2]. (T. Father)
21. The Student attended the DHOH program at [School 4], an MCPS School. (T. Father)
22. By the end of the second grade, the Student displayed some academic difficulty and the Parents enrolled him in a private school, [School 5] ([School 5]), for his second and third grade years, in part, because the class sizes were smaller. The Parents paid the tuition for the Student's tuition. (T. Father)
23. After struggling at [School 5], the Student moved back to his home elementary school, [School 6], for fifth grade. At [School 6], the Student also struggled academically, and his parents spent several hours each evening working with the Student on his homework. (T. Father)
24. The Student attended [School 3] for sixth grade. (T. Father)
25. At age eleven, when the Student was in sixth grade, he received a cochlear implant in his right ear. (T. Father)
26. A cochlear implant is surgically-placed in the head and sends digital signals to allow the brain to interpret audible sounds. Individuals who have a cochlear implant must receive listening therapy to teach them how to interpret the digital signals as sounds. (T. Father, T. XXXX)
27. Hearing aids amplify sounds using an analog delivery system. The brain interprets analog sounds differently than the digital sounds provided by cochlear implants. (T. Father, T. XXXX)

28. When a child has a hearing aid, which amplifies sound via analog input in one ear, and a cochlear implant, which provides sound digitally, in the other ear, the child has to learn how to process the different and competing forms of hearing. (T. XXXX)

29. The Student received listening therapy at XXXX Hospital to help him learn to process both digital and analog sounds to improve his hearing. (T. Father).

30. During the 2009-2010 school year, the Student was in the seventh grade and attended the DHOH Program at [School 7] ([School 7]). S

31. During the 2010-2011 school year, the Student was in the eighth grade and attended [School 3] and received special education and related services under the educational disability of a hearing impairment. S

32. As of eighth grade, the Student had mild to severe hearing loss in his left ear.

33. In addition to his hearing loss, in eighth grade, the student displayed organization difficulties, which impacted his ability to access the spoken language of the curriculum, directions and class discussion and impacted his ability to process complex language in all content areas, written expression, and task completion.

34. The Parents spent up to four hours each evening assisting the Student with completing his homework in eighth grade. (T. Father)

35. The Parents did not observe the Student in class at [School 3] during his eighth grade year. (T. Father)

36. XXXX XXXX, MCPS DHOH teacher, worked extensively with the Student at [School 3]. (T. XXXX. T. XXXX) She is currently the DHOH itinerant teacher at nine schools for MCPS. Ms. XXXX teaches students and provides direct service to children with hearing loss in the mainstream setting; she consults with general education teachers, and she presents in-services to classes of children. (T. XXXX).

37. There is some overlap between the services Ms. XXXX provides to DHOH students and the services a Speech/Language Pathologist (SLP) provides. (T. XXXX)

38. The Student last attended MCPS during the 2010-2011 school year, when he attended [School 3].

39. The Student had an FM system at [School 3] during his eighth grade year.⁴ (T. Father; T. XXXX)

40. MCPS convened a reevaluation planning and periodic review IEP team meeting on November 30, 2010.

41. During his eighth grade school year at [School 3], the Student received the following cumulative grades:

Physical Education	A
Health Education	D
Algebra 1A	C
Algebra 1B	C
Advanced US History	B
Developmental Reading	B
English	C
Resource	A
Science	C

(MCPS 2)

42. XXXX XXXX was the Student's developmental reading teacher in eighth grade.

(Parents 2)

⁴ An FM system is an audio amplification device. The Student has a receiver attached to his hearing aid; when the teacher speaks, the Student hears it directly.

43. In eighth grade developmental reading, the Student was able to read at a seventh grade level, and could read short texts if he was able to refer back to the text. He displayed weakness with vocabulary and idioms. (Parents 2)

44. The Student displayed difficulty with interpreting lengthy texts, keeping up with longer readings, and understanding class readings. (Parents 2)

45. In eighth grade Algebra, the Student consistently turned in homework completed at a high level of performance, but he did not display that he could apply the concepts in his homework to classroom assessments. (Parents 2)

46. As of March 25, 2011, the Student had achieved a basic score on the Maryland Student Assessment (MSA) reading test and a proficient score on the MSA math test.

47. As of March 25, 2011, the student was performing on the sixth-seventh grade level in written language; a sixth grade level in reading, with accommodations; below grade level in oral language; and at eighth grade level (on grade level) in math. (Parents 4)

48. On March 25, 2011, MCPS convened an annual review IEP team meeting. (Parents 4)

49. At the March 25, 2011 IEP team meeting, the team determined that the Student should have the access to the following instructional and testing accommodations:

- Human reader or audio recording for verbatim reading of entire test
- Audio amplification devices
- Video tape and descriptive video
- Screen reader for verbatim reading of entire text
- Notes, outlines, and instructions
- Electronic note-takers and word-processors
- Electronic word processors

- Response on test booklet
- Spelling and grammar devices
- Graphic organizers
- Extended time
- Reduced distraction
- Change in location to increase physical access or to use special equipment

(Parents 4)

50. At the March 25, 2011 IEP team meeting, the team determined that the Student should have access to the following supplementary aids, services, program modifications and supports provided by the Student as instructional support:

- Monitor independent work
- Frequent and/or immediate feedback
- Repetition of directions
- Provide assistance with organization
- Use of word bank to reinforce vocabulary and/or when extended writing is required
- Study guides
- Provide home sets of textbooks/materials
- Break down assignments into smaller units

(Parents 4)

51. At the March 25, 2013 IEP team meeting, the team determined that the Student should have access to the following supplementary aids, services, program modifications and supports provided by the Student's special education teacher:

- Provide assistance with organization;

- Breakdown long term assignments into smaller units with interim due dates;
- Provide opportunity to rehearse for oral presentations with prompts and cues for overall intelligibility of speech; and,
- Strategies to initiate and sustain attention

(Parents 4)

52. At the March 25, 2011, the IEP team meeting, the team developed the following goals and objectives for the Student's IEP year:

Behavior-Successful	
Goal: Given direct and indirect support and instruction as well as fading prompts, [the Student] will continue to develop self-advocacy and personal responsibility.	
Objective 1: [The Student] will increase his responsibility for school success by self-monitoring work completion and academic performance on Edline throughout the school year.	Objective 3: [The Student] will come to class with an organized binder and all necessary materials (including books, paper, writing tools, homework, handouts)
Objective 2: [The Student] will engage in work behaviors to accomplish classroom tasks, asking for clarification, support, and accommodations.	Objective 4: [The Student] will check over his work when completed before turning it in knowing it is his best effort.
DHOH	
Goal: Given a classroom environment, [the Student] will demonstrate effective listening to learn, process, and analyze information.	
Objective 1: [The Student] will listen and attend to the speaker.	Objective 3: [The Student] will listen carefully to expand and enrich vocabulary, while applying memory techniques
Objective 2: [The Student] will effectively manage his FM system, CI, and barriers to listening	Objective 4: [The Student] will demonstrate an understanding of what is heard by retelling, asking questions, relating prior knowledge, and summarizing.
Reading	
Goal: Given direct instruction, guided and independent practice in reading comprehension	

strategies with grade level text, [The Student] will be able to read, comprehend, interpret, analyze, and evaluate texts.	
Objective 1: [The Student] will state and support main ideas/thesis/messages in text across content areas.	Objective 3: [The Student] will develop and apply vocabulary through exposure to a variety of texts across content areas.
Objective 2: [The Student] will summarize or paraphrase text or a portion of text across content areas.	Objective 4: [The Student] will identify and explain information stated directly in the text, and will be able to draw inferences and/or make conclusions and generalizations.
Written Language	
Goal: Given direct instruction, guided and independent practice with curriculum tasks, graphic organizers, and the revising and editing strategies of effective writers, as well as access to a word processor, [the Student] will write to develop content for a specific purpose.	
Objective 1: [The Student] will compose text with information relevant to what is being asked in the prompt to fulfill the writing purpose, across content areas.	Objective 3: [The Student] will compose text using effective organizational patterns of ideas and syntax, word choice, and details, across content areas.
Objective 2: [The Student] will compose using evidence from the text and will provide a well-developed analysis of that evidence.	Objective 4: [The Student] will compose text using features of a word processor to strengthen written language (spell and grammar check, use of synonyms, ability to add/move text, go back and add more detail and elaboration).
DHOH	
Goal: Self-advocacy: Given support from the DHOH teacher, [the Student] will develop self-advocacy skills in order to promote independence and foster effective communication with school staff and peers.	

Objective 1: [The Student] will ask for clarification and changes necessary for effective communication.	Objective 3: [The Student] will compose text using effective organizational patterns of ideas and syntax, word choice, and details, across content areas.
Objective 2: When struggling to complete a task, [the Student] will ask for a checklist, rubric, or graphic organizer as needed.	Objective 4: [The Student] will seek out assistance of teachers and peers as needed for academic support.

(Parents 4)

53. The IEP team determined that the Student would receive special education services in a co-taught general education classroom for sixteen instructional hours each week (English, social studies, science, and U.S. History). He would receive special education in self-contained special education classes for four instructional hours each week and fifteen minutes each week (related studies and reading). The IEP also states that the Student would participate with non-disabled peers in non-academic and extracurricular activities. (Parents 4)

54. In April 2011, the Student underwent psycho-educational testing at the XXXX Center (“XXC”) completed by XXXX XXXX, Ph.D. (Parents 5)

55. Dr. XXXX used ten assessment instruments during her psycho-educational testing of the Student including the following: Wechsler Intelligence Scale for Children – Fourth Edition (WISC –IV), the Woodcock-Johnson III Tests of Achievement – Third Edition, (W-J III) the Woodcock-Johnson III Test of Cognitive Abilities (Form A), the Achenbach Child Behavior Checklist (CBCL), the Achenbach Teacher Report Form, Behavior Rating Inventory of Executive Functioning (BRIEF), the Beery Buktenica Developmental Test of Visual Motor Integration - Sixth Edition, Child Case History Form, Conners’ Rating Scale for Parents – Third Edition, and Conners’ Rating Scale for Parents – Third Edition (Conners), (Parents 5)

56. The WISC – IV assesses current level of intellectual (cognitive) functioning using four subtests, which assess verbal comprehension, perceptual reasoning, working memory and processing speed. The average range of functioning for each of these subtests falls between 90 and 109 when compared to same-age peers in the standardization sample. (Parents 5)

57. The Student obtained an overall score on the WISC – IV of 82, which placed him in the low average range – tending toward average. On the individual subtests, the Student scored as follows: verbal comprehension – 89 (upper limit of low average); perceptual reasoning – 77 (borderline); working memory – 88 (upper end of low average); and processing speed – 92 (average). (Parents 5, T. XXXX)

58. The W-J III of Achievement assess the Student’s reading skills using letter-word identification, reading fluency, and passage comprehension. (Parents 5)

59. The Student scored 101 on the letter-word identification subtest (average) 102 on the reading fluency subtest (average) and 81 on the passage comprehension subtest (low average). (Parents 5)

60. The Student scored a 109 broad math score and a 99 for his written language score. (Parents 5)

61. The Student’s W-J III scores placed him in the below average range.

62. Dr. XXXX also spoke with the Student’s mother, who advised Dr. XXXX that she was interested in transferring the Student to a private school that focuses on providing educational services for children with language-based learning disorders. (Parents 5)

63. As of April 2011, the Student was spending four to six hours completing his homework every evening with significant help from his parents. (T. Father) He also had difficulty making friends. (Parents 5; T. Father)

64. As of April 2011, the Student displayed weakness with non-verbal skills, including non-verbal pattern analysis and sequential reasoning, which suggested that visual reasoning was difficult for him. He displayed strengths on subtests that evaluated his ability to demonstrate knowledge of general factual information and solve auditorally-presented math problems. (Parents 5)

65. The Student had difficulty with integrating objects as he scored in the fourth percentile in visual motor integration (VMI). (Parents 5; T. XXXX)

66. The Student's scores on the WJ-III Tests of Achievement ranged from the extremely low to the superior range. He performed the strongest on subtests that evaluated rapid application of basic math calculations. He also displayed strengths in basic decoding and encoding, reading fluency, and calculation. The Student had weak scores were on tasks related to reading comprehension; and his weakest scores related to auditory comprehension; that is, he had significant difficulty processing and retaining information that had been presented auditorally, The Student's scores indicated that he may be able to keep up with peers on simple tasks, but will have a harder time when there are more conceptual demands. (Parents 5)

67. The Student displayed weak visual motor skills on the WJ-III.

68. The Student also scored in the average low average range on the W-J III Test of Cognitive Abilities, which measured his cognitive efficiency. (Parents 5, T. XXXX)

69. The BRIEF measures frontal lobe functioning. It measures a student's ability to plan and organize, to stay on task, and to organize materials. It also measures emotional control and impulsivity. (T. XXXX) The Student's parents filled out the BRIEF (Parents 5, T. XXXX)

70. Conners measures inattention and is typically used to diagnose attention deficit hyperactivity disorder.

71. When asked by Dr. XXXX how he felt about possibly attending a new school, the Student reported that it would be “both good and bad, because I might not have to spend as much time on [his] homework, but bad because [he’ll] have to leave his friends.” (Parents 5)

72. The discrepancy model for determining eligibility for special education is one in which the evaluator/assessor measures a student’s scores on educational achievement assessments against the student’s cognitive level (I.Q.) to determine if the student is significantly underachieving in school. (T. XXXX, T. XXXX). Special educators and IEP teams are not bound to rely on the discrepancy model when identifying the appropriate code for a student’s learning disability. They can also look at the student’s day-to-day functioning and how the student has responded to intervention. (T. XXXX)

73. Dr. XXXX determined that the Student was achieving at a level commensurate with his ability level and he did not meet the formal criteria for a specific learning disability, using the discrepancy model. Dr. XXXX also stated the following:

Given that [the Student’s] academic achievement is on grade level, it appears that he has thus far effectively used strategies in school to compensate for the processing concerns notice[d] in this evaluation. However, the impact of these difficulties should be monitored on an ongoing basis to ensure that his academic skills do not become adversely affected. The strategies he utilizes within the classroom may need to be altered as he advances through school.

(Parents 5)

74. On April 12, 2011, Dr. XXXX XXXX conducted a developmental cognitive neurology evaluation of the Student and issued a report (Parents 6). Dr. XXXX noted in her report that the Parents’ “are concerned about everything, but actually are just as concerned about activities and social adjustment as they are about school adjustment.” Dr. XXXX noted that the Parents’ concerns about the Students’ cognition, inattention and social problems rated higher than the Student himself. (Parents 6)

75. Dr. XXXX also noted in her report that the Parents “fear that [the Student] does not have good close friends, although he is not as troubled about his social life as are his parents.” (Parents 6)

76. Dr. XXXX determined from her neurological testing that the Student had problems with expressive language and she reported that the Student had a language-based learning disability. (Parents 6)

77. XXXX XXXX, MCPS special educator, reviewed Dr. XXXX’s assessment and corroborated her findings. (MCPS 3) Ms. XXXX suggested that the Student’s parents might want to explore addressing the Student’s inattention. (MCPS 3)

78. XXXX XXXX, [School 2] school psychologist, also reviewed Dr. XXXX’s assessment and corroborated her assessment that the Student was performing in school in a manner commensurate with his ability. (T. XXXX; MCPS 4)

79. The Student scored in the Proficient Range on the Maryland School Assessment (MSA) in both reading and math. (MCPS 3)

80. On or about May 31, 2011, the Parents submitted an application to [School 1] for the 2011-2012 school year.

81. On or about June 6, 2011, the Parents provided MCPS with copies of the April, 2011 Psycho-Educational Evaluation completed by XXXX XXXX, Ph.D. and the April 12, 2011 Developmental Cognitive Neurology Evaluation complemented by Dr. XXXX XXXX.

82. MCPS convened a periodic review IEP team meeting on June 15, 2011. S

83. MCPS convened a reevaluation determination IEP team meeting on July 19, 2011.

84. On or about August 1, 2011, the Parents were advised of the Student’s acceptance at [School 1] for the 2011-2012 school year.

85. By letter, dated August 10, 2011, the Student's Mother advised XXXX XXXX, [School 2] Principal, that she believed the Student had a language-based learning disability and that his hearing impairment was not the basis for the difficulties he experienced with accessing educational content. The Student's Mother advised Ms. XXXX that she did not believe the Student's IEP adequately addressed the Student's learning disability, as the Student's grades had been "slipping for years," and advised that she and the Student's father would be placing him in a private school in fall 2011. (Parents 17)

86. On or about August 15, 2011, the Parents entered into an Enrollment Contract for the Student's attendance at [School 1] during the 2011-2012 school year.

87. On or about August 29, 2011, Mr. Eig, for the Parents, advised XXXX XXXX, Principal for [School 2], that he had been retained to represent the Student related to his special education needs and requested that the Parents be allowed to observe MCPS's proposed placement at [School 2].

88. The Parents never observed MCPS's proposed placement at [School 2]. (T. XXXX)

89. The Student attended [School 1] for the ninth grade during the 2011-2012 school year.

90. XXXX XXXX is the Associate Head at [School 1]. As Associate Head, he helps to run programs, supervise teachers, facilitates IEP meetings, and meets with students. His position is similar to a Vice Principal in the public school. (T. XXXX)

91. Mr. XXXX was a member of the admissions panel that decided to admit the Student to [School 1]. Mr. XXXX did not speak with any of the Student's teachers at [School 3] or observe the Student in class at [School 3] before making his decision to admit him.

92. Mr. XXXX has served as the chairperson for each of the Student's IEP meetings.
(T. XXXX)
93. The high school program at [School 1] includes a full day of specialized instruction geared to help students access the general education curriculum. (T. XXXX)
94. The [School 1] high school program has 127 enrolled students. (T. XXXX)
95. High school class sizes at [School 1] are typically seven-to-nine Students. (T. XXXX)
96. Most graduates of [School 1] go on to attend two or four year colleges. (T. XXXX)
97. For the Student's first three years at [School 1], he played on the junior varsity (JV) XXXX team. This year, the Student has indicated that he will try out for the varsity team.
(T. XXXX)
98. During his junior year, the student participated in the [School 1] XXXX Club and gave a presentation on XXXX.(T. XXXX; T. XXXX)
99. [School 1] offers transition services to its graduating students to address students' postsecondary goals.
100. In Fall 2011, during the Student's first year at [School 1], the Parents hired special education consultant Dr. XXXX XXXX. (T. XXXX)
101. Dr. XXXX initially reviewed assessments and other documents regarding the Student and talked to the Parents about the Student. (T. XXXX)
102. In September 2011, the Student underwent a comprehensive speech/language evaluation at the [School 1] completed by XXXX XXXX.
103. The Student has weak receptive language skills, which means that he has difficulty understanding vocabulary and being able to answer questions about one-to-three

sentences of information. As a result, the Student has difficulty following directions and answering questions about information that has just been told to him. (T. XXXX)

104. The Student also has weak expressive language skills, which means that he has difficulty defining words, describing the relationship between words, complex-sentence formulation, explaining the meaning behind his ideas. (T. XXXX).

105. Another speech/language area of difficulty for the Student is auditory memory, which means that he has difficulty recalling numbers, words and sentences when asked to repeat them – he omits prepositional phrases, which impacts his ability to follow directions. (T. XXXX)

106. The Student displays difficulty with linguistic executive functioning, which means that he has difficulty sequencing steps related to instructions – which makes it difficult for him to complete assignments. Another area of difficulty for the student is meta-cognition, which means that he does not have insight into his own deficits and weaknesses, and, therefore, it is difficult for him to advocate for himself when he is struggling, because he doesn't recognize that he is, indeed, struggling to comprehend. (T. XXXX)

107. On October 12, 2012, Ms. XXXX administered to the Student the WJ-III Normative Update Tests of Achievement. (MCPS 9-D)

108. Using an average score range of 90-110, between April 2011, when the Student was enrolled at [School 3] and was tested by Dr. XXXX, and October 2012, when the Student was enrolled at [School 1] and was tested by Ms. XXXX, the Student's scores increased or decreased on the WJ-III Test of Achievement in the following manner:

Test area	April 2011	October 2012	Increase/Decrease/Same
Broad Reading	95	96	Same

Broad Math	109	88	Significant decrease ⁵
Math Calculation	113	99	Decrease
Math Fluency	124	127	Same
Writing Fluency	95	115	Increase
Passage Comprehension	81	83	Same
Applied Problems	97	71	Significant decrease
Writing Samples	100	76	Significant decrease
Word Attack	89	94	Increase
Academic Knowledge	81	82	Same

(Parents 5; MCPS 9-D)

109. Overall, the Student displayed a decrease in academic achievement between April 2011, when he was enrolled at [School 3], and October 2012, when he was enrolled at [School 1].

110. On October 26, 2011, [School 1] developed an IEP for the Student. (Parents 20)

111. The October 26, 2011 IEP did not include psychological services for the Student. (Parents 20)

112. The October 26, 2011 IEP included 1.5 hours of group (non-integrated) speech language services. (Parents 20)

113. Each student at [School 1] receives integrated speech/language services, that is, observation by the speech/language pathologist, consultation with a teacher, or presentation of information regarding speech/language-related topics. (T. XXXX)

⁵ An increase or decrease in the score is significant if there is a difference of approximately 8-10 points. (T. XXXX). An increase or decrease of just one or two points does not indicate a better or worse performance on the individual tests.

114. Direct speech/language services are provided to students at [School 1] for an additional cost. (T. XXXX)

115. Approximately seventy percent of students at [School 1] receive individual and/or group speech/language services. (T. XXXX)

116. In February 2013, Ms. XXXX tested the student using the Listening Comprehension Test – Adolescent (LCT-A), the Gray Oral Reading Test – Fifth Edition (GORT-5), the Gray Silent Reading Test (GSRT), and the Writing Process Test (WPT). (MCPS 9-E)

117. The LCT-A assesses specific listening comprehension skill areas related to classroom listening situations. Students read small passages with no visual cues and then are asked specific questions about the story. (MCPS 9-E. T. XXXX)

118. On the LCT-A, the range for an average score is 86-114. (MCPS 9-E)

119. The Student received a score of 81 on the LCT-A, which reflected that he was below average. (MCPS 9-E)

120. On the LCT-A, the Student displayed relative strengths related to answering questions about details, vocabulary and information presented in short messages. He displayed difficulty answering questions that required him to identify the main ideas and to make inferences from the information presented. (MCPS 9-E)

121. During the current 2014-2015 academic year at [School 1], Ms. XXXX works individually with the Student once per week, and once per week in a group. Ms. XXXX works with the Student regarding understanding figurative language – idioms and similes, because he has difficulty understanding phrases that are not straightforward or literal, making connections between ideas, note-taking strategies, monitoring his own oral and written language for cohesion and clarity, and linguistic executive functional goals, including generating ideas and identifying supports for those ideas. (T. XXXX)

122. Ms. XXXX has never observed the student in a large classroom setting and never spoke with the Student's educators at [School 3]. (T. XXXX)

123. Ms. XXXX is unfamiliar with [School 2], special education programming or otherwise. (T. XXXX)

124. Occupational therapy constitutes services that promotes independence. School-based occupational therapy is focused on services that allow students to complete his educational daily activities. (T. XXXX)

125. School-based occupational therapy can address gross and fine motor skills, visual perceptual skills, visual motor integration, and executive functioning. Executive functioning skills relate to planning (organizing students' day, assignments, and tasks). Occupational therapists also work with students with time management, including checklists, calendars and daily planners. (T. XXXX)

126. In February 2012, [School 1] Occupational Therapist XXXX XXXX performed an OT evaluation of the Student's occupational and motor skills. (Parents 21)

127. Ms. XXXX performed the following OT assessments of the Student:

- The Behavioral Assessment of Dysexecutive Syndrome for Children (BADSC) – uses six different tasks to assess skills and demands involved in everyday activities to highlight problem areas;
- Clinical observations – of motor functions, postural and ocular responses and other neuromuscular responses related to learning, behavior and skill development;
- The Full Range Test of Visual Motor Integration (FRTVMI) – related to visual stimuli to motor response;
- Handwriting and keyboarding screenings – informal measures of written communication skills relative to peers;

- The Motor-Free Visual Perception Test (MVPT-3) – testing visual perceptual ability without significant motor responses;
- The Rey-Oterrieth Complex Figure Test Complex Figure Test) – assessing cognitive processes including planning, organizational skills, problem-solving strategies, and perceptual, motor and memory functions;
- Upper School Questionnaire – brief developmental history of information about the student.

(Parents 21)

128. Ms. XXXX did not do a classroom observation of the Student as part of her assessment. (T. XXXX)

129. As of February 2012, the Student displayed difficulty with interpreting what he sees accurately (visual perception). This meant that he might have difficulty with discriminating subtle differences in what he sees and attend to detail. (T. XXXX)

130. As of February 2012, the Student displayed difficulty with visual motor integration (*e.g.*, using tools accurately and handwriting) (T. XXXX, Parents 21)

131. Every student at [School 1] receives integrated OT. The Student received additional direct OT services at [School 1]. (T. XXXX)

132. [School 1] charges an amount for OT services in addition to the tuition. (T. XXXX)

133. In March 2012, Ms. XXXX completed a follow up speech/language evaluation of the Student. S

134. During his ninth grade school year (2011-2012) at [School 1], the Student received the following cumulative grades:

Physical Education	A
Digital Photography	A-
Ancient World History	B
Physical Science	B-
Algebra 1	B-
Assistive Technology	B+
English 9	C

(Parents 25)

135. The Student's Grade Point Average (GPA) his freshman year was 3.06. (Parents 25)

136. In spring 2012, Dr. XXXX observed the Student at [School 1] twice during one of his classes. He did not speak with the Student before, during, or after these observations and he did not complete an observation report. (T. XXXX)

137. Dr. XXXX also spoke with XXXX XXXX, Associate Head at [School 1], when he went to observe the Student. (T. XXXX)

138. [School 1] completed an IEP report of the Student's Goals and Objectives on May 14, 2012. The IEP did not include psychological services (T. Father)

139. The Student attended [School 1] for the tenth grade during the 2012-2013 school year.

140. As of May 14, 2012, for most of his goals and objectives, the Student was developing skills and providing inconsistent responses. The Student had mastered goals and objectives in a limited number of areas, mostly related to math.

141. The Student did not have any goals or objectives on his May 14, 2012 [School 1] IEP that addressed the use of a protractor or a ruler. (T. XXXX, Parents 23).

142. Dr. XXXX, [School 1] clinical psychologist, began working in group sessions with the Student in or about February 2014, during his tenth grade year, after the Parents requested psychological services. (T. XXXX)

143. During his tenth grade school year at [School 1], the Student received the following cumulative grades:

Physical Education	A
Health	B+
Geometry	B+
Digital Photography	B+
Modern World History	B-
Health and Conditioning	A
English	C
Music Perspectives	C+
Biology	C-

144. The Student's GPA for his sophomore year was 2.93 on a scale of 4.0.

145. On or about June 19, 2012, the Parents entered into an Enrollment Contract for the Student's attendance at [School 1] during the 2012-2013 school year.

146. On February 19, 2013, [School 1] completed an IEP for the Student. This IEP included clinical psychology services for the Student. (Parents 23, T. Father)

147. [School 1] charges an amount in addition to tuition for clinical psychology services. (T. Father)

148. In February, 2013, the Student underwent a speech/language evaluation at the [School 1] completed by XXXX XXXX.

149. On or about April 12, 2013, the Parents entered into an Enrollment Contract for the Student's attendance at [School 1] during the 2013-2014 school year.

150. The Student attended [School 1] for the eleventh grade during the 2013-2014 school year.

151. On November 5, 2013, the Parents requested, through Mr. Eig, that MCPS convene an IEP team meeting to develop an IEP.

152. The Parents attached to their November 5, 2013 request Ms. XXXX' Annual Speech and Language Report (MCPS 9-A); The Student's May 14, 2012 [School 1] IEP (MCPS 9-B); Ms. XXXX's July 2012 Language and Learning Report (9-C); the Student's October 11, 2012 scores on the WCJ-III (MCPS 9-D); Ms. XXXX' February 2013 Speech/Language Testing Summary (MCPS 9-E); Ms. XXXX' February 2013 Annual Speech/Language report (MCPS 9-F); the Student's February 19, 2013 [School 1] IEP (9-G); and, the Student's grades at [School 1] during the 2012-2013 academic year (MCPS 9-H).

153. By letter dated November 13, 2013, MCPS attorney, XXXX XXXX requested that the Parents give MCPS permission to obtain information regarding the Student from [School 1] and to allow MCPS staff to observe the Student at [School 1]. The Parents gave MCPS permission to obtain information from and observe the Student in class at [School 1].

154. MCPS convened a reevaluation planning IEP team meeting on December 4, 2013. At this meeting, MCPS determined it would like to conduct its own educational and psychological assessments.

155. In December, 2013, Ms. XXXX completed a follow up speech/language evaluation of the Student. (MCPS 12A)

156. On January 9, 2014, XXXX XXXX, an MCPS special education resource teacher; XXXX XXXX, MCPS Occupational Therapist, and XXXX XXXX, an MCPS DHOH itinerant teacher, observed the Student at [School 1].

157. Ms. XXXX, Ms. XXXX and Ms. XXXX observed the Student in a 45-minute history class, which had approximately ten students. (T. XXXX)

158. During this class, the Student was not engaged. One other student was fully engaged and asked numerous questions. The other students in the class did not display any involvement in the class. (T. XXXX)

159. When the teacher asked for questions, the Student asked about a term the teacher had just defined/discussed. (T. XXXX)

160. Although the teacher and the students were reviewing for an exam, the Student pulled out his iPad and edited an unrelated paper. Then, he began playing on the iPad. (T. XXXX) The teacher did not tell the Student to put his paper or his iPad away. She did not rephrase questions or check for understanding with the Student. (T. XXXX, T. XXXX)

161. The Student did not have difficulty manipulating his iPad. (T. XXXX, T. XXXX, MCPS 13)

162. On January 21, 2014, the Student underwent an educational evaluation completed by Ms. XXXX. (report dated February 26, 2014). (MCPS 19) She used the following subtests of the WJ-III Test of Achievement, for which the Student achieved the following scores.

Letter-Word Identification	99 (47 th percentile - within average range)
Calculation	94 (34 th percentile- within average range)
Passage Comprehension	100 (51 st percentile – within average range)
Applied Problems	97 (43 rd percentile – within average range)

Writing Samples	100 (50 th percentile – within average range)
Reading Vocabulary	23 (23 rd percentile – below average)

(T. XXXX, MCPS 19).

163. Between Dr. XXXX’s April 2011 achievement testing and Ms. XXXX’s February 2014 testing, the Student’s scores increased or decreased on the WJ-III Test of Achievement in the following manner:

Test area	April 2011	February 2014	Increase/Decrease/Same
Letter-word identification	101	99	Small decrease
Math Calculation	113	94	Significant decrease
Passage Comprehension	81	100	Significant increase
Applied Problems	95	97	Small increase
Passage Comprehension	81	83	Same
Applied Problems	97	97	Same
Writing Sample	100	100	Same
Reading Vocabulary	91	88	Small decrease

164. On February 2, 2014, Ms. XXXX reviewed Ms. XXXX’ December 2013 Annual Speech-Language Report (T. XXXX, Parents 45)

165. On February 11, 2014, the Student underwent a psychological evaluation completed by Ms. XXXX XXXX, an MCPS school psychologist (report dated February 25, 2014). (MCPS 18)

166. Ms. XXXX administered the following tests as part of her evaluation: the Wide Range Assessment of Memory and Learning, second edition (WRAML), the Connors’

Comprehensive Behavior Rating (Connors' Comprehensive), the BRIEF-Teacher, and a clinical interview with the Student. (MCPS 18)

167. The WRAML includes two tests which measure visual memory, two tests that measure auditory memory and two that measure attention and concentration. (T. XXXX; MCPS 18)

168. The Student had a verbal memory score of 80, which is borderline – to low average. The Student scored higher, an 88, on the visual memory score (low average to average). Overall, the Student's memory ranked in the 12th percentile, which was low. (T. XXXX; MCPS 18)

169. The Connors' Comprehensive measures attention, emotional distress, upsetting thoughts, social problems, hyperactivity, and perfectionist behaviors. (T. XXXX) Ms. XXXX had the Student, his parents and the Students' teachers complete the Connors' Comprehensive. (T. XXXX) The Parents interpreted the Student's negative behaviors as elevated, high average, or very elevated in the areas of emotional distress, separation fears, social problems/social anxiety, academic difficulties, language, perfectionistic and compulsive behaviors. The teachers rated the Student as average in those areas. The Student rated himself as high average or very elevated regarding emotional distress, separation fears, defiant/aggressive behaviors, and academic difficulties. (MCPS 18)

170. Ms. XXXX also interviewed the Student. (T. XXXX)

171. As of February 11, 2014, the Student felt more confident about himself after being at [School 1] for the last three years. (T. XXXX)

172. The Student liked that at [School 1], he did not feel singled out when he received his services. The Student felt good about his internship and the fact that he had friends at [School 1] (T. XXXX)

173. Ms. XXXX made recommendations regarding what accommodations would address the Student's deficits and the IEP team considered those recommendations at the March 12, 2014 IEP meeting. (T. XXXX)

174. Clinical psychology differs from school psychology in that clinical psychology focuses more on social and emotional issues, generally. School psychology focuses on social and emotional issues as it impacts students in the school setting. (T. XXXX)

175. School psychologists focus on how students learn, working with teachers in the classroom to address issues related to learning, including anxiety and socio-emotional issues. (T. XXXX)

176. [School 1] created an Individual Learning Plan (ILP) for the Student, dated February 19, 2014. [School 1] titles its educational program for a student "Individualized Learning Plan" when the student pays privately for the school tuition. When the student's tuition is funded by the MCPS, [School 1] titles the program "Individualized Education Plan." (T. XXXX, Parents 46)⁶

177. Among the services recommended in the [School 1] February 19, 2014 ILP was 1.5 hours of Speech-Language services per week, 45 minutes of individual OT per week, and 45 minutes of psychological services per week, provided by a clinical psychologist. (Parents 46)

178. Regarding OT, the ILP noted that the student needed OT services to target weaknesses in keyboarding skills, visual motor integration, visual perception, and visual spatial organization. (Parents 46)

179. The OT portion of the ILP indicated that OT services would be provided through functional skills training, a calendar to plan long term assignments, visual perceptual skill development, ocular motor skills training, and limiting information on a page. (Parents 46)

⁶ It is unclear when [School 1] instituted this naming for the individualized plans for its students as the Student's previous plans were titled Individualized Educational Plans despite the fact that the Parents paid for the tuition.

180. The February 19, 2014 ILP included the following goals and objectives regarding

OT:

Goal 1: [The Student] will improve functional independence within the school environment.

Objectives:

- 1.1 [The Student] will demonstrate improved functional skills by focusing and attending to tasks, which he perceives to be challenging while adding details and self-editing.
- 1.2 [The Student] will utilize concepts of time management for academic and prevocational activities with 90% accuracy (e.g. telling, estimating and planning time and adhering to deadlines).
- 1.3 [The Student] will demonstrate the ability to plan, initiate, and execute manageable steps for a multi-step activity with only verbal directions.

Goal 2: [The Student] will improve visual spatial perception, and/or perceptual motor skills for greater success during functional activities.

Objectives:

- 2.1 [The Student] will demonstrate improved visual perception by correctly identifying pertinent details within a text or picture.
- 2.2 [The Student] will demonstrate improved perception of visual figure ground by finding a[n] object among a collection of objects while completing academic tasks.

181. Regarding psychological services, the ILP noted that the Student needed psychological services provided by a clinical psychologist to continue to learn advocacy skills and stay motivated academically. (Parents 46)

182. The February 19, 2014 ILP included the following goals and objectives regarding psychological services:

Goal 1: [The Student] will verbally express knowledge of personal strengths and weaknesses.

Objectives:

- 1.1 [The Student] will identify 5 positive personal attributes to therapist.
- 1.2 [The Student] will identify 5 general areas of personal difficulty to therapist.
- 1.3 [The Student] will identify 5 specific limitations to therapist.
- 1.4 Given [the Student]'s learning disability, [he] will identify 3 of 5 academic strengths and 3 of 5 weaknesses, and identify accommodations that facilitate learning for each.

Goal 2: [The Student] will exhibit age-appropriate verbal and nonverbal skills in conversation with adults and peers.

Objectives:

- 2.1 [The Student] will exhibit attentive body language (i.e., facing the conversant, sitting erect, sitting relatively still) when being addressed by an adult/peer on 4 of 5 trials as observed by therapist or teacher(s)
- 2.2 [The Student] will make an appropriate verbal response when addressed by an adult/peer 4 of 5 times as observed by therapist or teacher(s).
- 2.3 [The Student] will appropriate[ly] initiate conversation with an adult (proper voice tone and content) on 4 of 5 trials as observed by therapist or teacher(s).
- 2.4 [The Student will appropriate[ly] initiate conversation with peer (proper voice and tone and content) with regard to age-appropriate topic on 4 of 5 trials as observed by therapist or teacher(s).
- 2.5 [The Student] will maintain conversations at length expected for age (e.g. 4 exchanges for an 8 year old) on 4 of 5 trials as observed by therapist or teacher(s).

(Parents 46)

183. Pursuant to the February 19, 2014 [School 1] ILP, the Student would receive psychological services to address his social skills deficits. (Parents 46)

184. None of the Students IEPs or ILPs at [School 1] called for DHOH or audiological services. (Parents 46)

185. On or about February 26, 2014, the Parents entered into an Enrollment Contract for the Student's attendance at [School 1] during the 2014-2015 school year.

186. Also on February 26, 2014, Ms. XXXX administered an assessment of the Student, using the WJ-III Tests of Achievement. Ms. XXXX only administered subtests including letter-word identification, calculation, passage comprehension, applied problems, writing samples, and reading vocabulary. The student scored as follows on those subtests:

- Letter-word identification – 99 (47th percentile, within average range)
- Calculation – 94 (34th percentile, within average range)
- Passage Comprehension – 100 (51st percentile, within average range)
- Applied problems – 97 (43rd percentile, within average range)
- Writing samples – 100 (50th percentile, within average range)
- Reading vocabulary – 88 (23rd percentile, below average)

(MCPS 19)

187. Ms. XXXX XXXX also reviewed Dr. XXXX's April 2011 psychoeducational test results and Dr. XXXX's WJ-III October 2012 test results. (T. XXXX)

188. MCPS convened a reevaluation determination IEP team meeting on March 12, 2014. At this meeting, the team determined the Student's hearing impairment was not his primary disability and changed his disability code to SLD. (T. XXXX, T. XXXX, T. XXXX, T. Father)

189. In making its determination that the Student's primary disability should be coded SLD, the team considered that the student continued to display difficulty accessing educational content, and that he continued to display learning issues years after the cochlear implant and multiple types of intervention at [School 1]. The IEP team also considered that the Parents were adamant that his disability code should be changed. (T. XXXX, T. XXXX)

190. The IEP can designate the Student as learning disabled under only one disability code. The disability code does not direct the services a child will receive. (T. XXXX, T. XXXX, T. XXXX, T. XXXX)

191. School OT addresses how students occupy their time in school, including using their hands and paying attention in class. Clinical OT is more oriented to rehabilitation of people with head-related trauma. (T. XXXX)

192. On March 20, 2014, the Student underwent an OT evaluation completed by XXXX XXXX, an MCPS occupational therapist. (MCPS 25, T. XXXX)

193. Ms. XXXX used the following test procedures and assessment tools as part of her evaluation of the Student: Review of Referral Information, Review of Confidential File, Informal Conference with the Student, Individual Testing (VMI, Written Output), Clinical Findings/Observations (MCPS 25)

194. As of March 20, 2014, at [School 1] the Student typically played games during his OT sessions. He did not know what OT skills the games were intended to address. (T. XXXX, MCPS 25)

195. Also as of March 20, 2014, the Student's handwriting was legible and he was able to use the keyboard effectively. The Student did not display difficulty using hand-held implements. The Student used a binder system to help him stay organized. (T. XXXX, MCPS 25)

196. The Student scored in the average range on the VMI, which tests visual motor integration. During the test, the Student used a pencil with appropriate pressure and control and appropriate posture. The Student was able to integrate his visual perceptual skills with his fine motor skills to produce adequate handwriting. (T. XXXX, MCPS 25)

197. The Written Output assessment assesses a student's skill and proficiency with keyboarding and handwriting. The Student was faster at using a keyboard to write than using handwriting. His handwriting was functional. (T. XXXX, MCPS 25)

198. Ms. XXXX did not talk with the Student's teachers at [School 1] as part of her assessment (T. XXXX)

199. In spring 2014, Dr. XXXX again became involved with the Student at the Parents' request.

200. In spring, 2014, Dr. XXXX observed the Student in his Trigonometry class at [School 1]. In this class, the Student did not write down the instructions for an exercise related to the Pythagorean Theorem and was only able to complete the exercise after the teacher gave him individual step-by-step instructions. Approximately two-thirds through the class lesson, the Student closed his books, put his head down, and began chatting with another student about fantasy sports. (T. XXXX)

201. Dr. XXXX has never observed the Student in a large group. (T. XXXX)

202. MCPS convened an IEP team meeting on April 23, 2014. The following members of the Student's IEP team attended this meeting: the Parents, Ms. XXXX, [School 2] Principal; Ms. XXXX, General Educator; XXXX XXXX, Special Educator; Mr. XXXX, Guidance Counselor; Ms. XXXX, School Psychologist; Ms. XXXX, Speech/Language Pathologist (SLP), Ms. XXXX, MCPS Attorney; XXXX XXXX, DHOH Instructor; XXXX XXXX, Occupational Therapist; and Dr. XXXX. (MCPS 29) Dr. XXXX, [School 1] clinical psychologist; XXXX XXXX, [School 1] SLP; and XXXX XXXX, [School 1] Associate Head, participated in the IEP meeting by telephone.

203. At the April 23, 2014 IEP team meeting, the team reviewed the Student's results from the WJ III, and determined that the Student displayed the following characteristics regarding reading:

[The Student] is an engaged reader who makes connections when reading. He can summarize and make logical conclusions. He has difficulty finding textual evidence in support of arguments, lacks evaluation and analytical conclusions. His needs are in the area of comprehension, sequencing events, vocabulary, and inference. His broad reading scores in WJ III were average as compared to his peers with standard score of 96.

(MCPS 29)

204. At the April 23, 2014 IEP team meeting, the team reviewed the Student's results from the WJ III, and determined that the Student displayed the following characteristics regarding written language:

[The Student's] standard score in written language were on average as compared to his peers in 2011, 2012 and 2014 WJ III – 98, 99 and 100 respectively. His strengths are in the area of communicating basic thoughts and ideas, paragraph structure and self initiation of assignments. His needs are in the area of targeted vocabulary, supporting statements with textual evidence, following written directions, organization of ideas, grammar, especially staying in present tense, proofreading and editing.

(MCPS 29)

205. At the April 23, 2014 IEP team meeting, the team reviewed the Student's results from the WJ III, and determined that the Student displayed the following characteristics regarding math:

[The Student] was on proficient level in math MSA. WJ III standard score in April 2011 was 109, which is average, but his score on WJ III October 2012 fell below average to 88. His calculation score was average in 2014 at 94. No deficit or impact was stated in the area of math in middle school. Present report from private school indicates his strengths in understanding number concepts, math reasoning skills, visual interpretation of diagrams and pictures, sequencing skills and use of algorithms in solving math problems and timely completion of homework and class work. [His] needs are in the areas of problem solving, taking

notes, sustaining attention and use/application of the vocabulary. It would benefit him to use a calculator to assist with calculations.

(MCPS 29)

206. At the April 23, 2014 IEP team meeting, the team also reviewed the Student's results from private evaluations, including Ms. XXXX's evaluation, and determined that the Student displayed the following characteristics regarding oral language:

Review of private evaluation: Verbal reasoning and oral explanatory tasks continue to be an area of concern. Results of The Listening Comprehension Test-Adolescent: revealing the following standard scores: Main Idea Details 89, Reasoning 71; Vocabulary and Semantics 88, Understanding Messages 92, Total Test 81. Overall score is below age expectations, strengths were noted in [the Student's] ability to understand short messages and infer overall intent. Ability to express the main idea and offering opinions or expressing reasoning was poor. Ms. XXXX reports that he also demonstrates weaknesses in understanding vocabulary and using context to understand vocabulary, understanding and following directions, answering inferential questions and making predictions. This information seems based on her observations of his performance.

(MCPS 29)

207. Based upon teacher reports and classroom observations, at the April 23, 2014 IEP team meeting, the team determined that the Student displayed the following characteristics regarding attention:

[The Student] has difficulty maintaining focus or attention or persist through a task. He [fidgets] with materials present in close proximity. His not attentive seem [sic] to weave in and out during instruction. Questions have to be repeated because he doesn't pay attention when the instruction is being presented.

(MCPS 29)

208. Based upon teacher reports, at the April 23, 2014 IEP team meeting, the team determined that the Student displayed the following characteristics regarding Organization:

[The Student] has difficulty with task completion on time and staying on task in class. He doesn't come prepared to class with homework consistently completed on time or meeting teacher expectation. Assignments are not complete [in] a timely manner. He is improving with completion and submission of assignments on time. He has difficulty organizing independently, planning long term

assignments or managing his time effectively. His executive functioning impacts his organization of ideas and impacts his written language and oral expression.

(MCPS 29)

209. Based upon a December 5, 2012 audiological assessment, at the April 23, 2014 IEP team meeting determined that the Student displayed the following characteristics regarding his hearing:

[The Student] wears a hearing aid in his left ear and a [cochlear implant] in his right ear. He cannot fully access auditory information even with amplification. He may miss or misunderstand spoken instructions if he cannot see the speaker's face in noisy settings, or in darkened rooms.

(MCPS 29)

210. Based upon Ms. XXXX's March 20, 2014 OT evaluation of the Student, at the April 23, 2014 IEP team meeting, the team determined that the Student displayed the following characteristics regarding his visual motor skills:

03/20/14: Beery VMI-6: Std. score = 96 (average). Written Productivity Profile: Handwriting from rote memory: 18.6 wpm from near-point copy; 18.6 wpm from dictation: 21.3 wpm; independent composition: 25.2 wpm; keyboarding from rote memory: 23.6 wpm; from near-point copy: 34.4 wpm; from dictation: 29.7 wpm; independent composition: 27.2. Strengths: follows directions in 1:1 setting; mobility; average visual motor integration skills; grasp patterns for classroom tools and objects; functional keyboarding skills; legibility of handwriting; commensurate handwriting and keyboarding speeds. Needs: none requiring school based OT.

(MCPS 29)

211. At the April 23, 2013 IEP team meeting, the team determined that the Student should have the access to the following instructional and testing accommodations:

- Human reader or audio recording for verbatim reading of entire test
- Audio amplification devices
- Descriptive/captioned video
- Text-to-speech software for verbatim reading of entire text

- Visual cues
- Electronic word processors
- Response on test booklet
- Monitor test response
- Mathematics tools and calculation devices
- Spelling and grammar devices
- Visual organizers
- Graphic organizers
- Extended time
- Change schedule or order of activities
- Reduced distraction
- Change in location to increase physical access or to use special equipment

(MCPS 29)

212. At the April 23, 2013 IEP team meeting, the team determined that the Student should have access to the following supplementary aids, services, program modifications and supports provided by the Student's general education teacher:

- Allow use of highlighters during instruction and assignments;
- Allow use of organizational aids;
- Check for understanding;
- Frequent and/or immediate feedback;
- Paraphrase questions and instruction;
- Provide student with copy of student/teacher notes;

- Use of word bank to reinforces vocabulary and/or when extended writing is required;
- Use of graphic organizers; and,
- Preferential seating

(MCPS 29)

213. At the April 23, 2013 IEP team meeting, the team determined that the Student should have access to the following supplementary aids, services, program modifications and supports provided by the Student’s special education teacher:

- Provide assistance with organization;
- Breakdown long term assignments into smaller units with interim due dates;
- Provide opportunity to rehearse for oral presentations with prompts and cues for overall intelligibility of speech; and,
- Strategies to initiate and sustain attention

214. At the April 23, 2014 IEP team meeting, the team developed the following goals and objectives for the Student’s IEP year:

DHOH	
Goal: Given support from the DHOH teacher, [the Student] will advocate for instructional accommodations and effective communication. describe, represent or apply numbers or their relationships or will estimate or compute using mental strategies, paper/pencil, or technology (3 of 5 trials utilizing teacher reports)	
Objective 1: [The Student] will demonstrate active listening strategies weekly by participating in class discussions, asking questions, and clarifying.	Objective: [The Student] will advocate for his hearing needs, including preferential seating and the consistent use of the FM system in all academic settings.
Objective 2: [The Student] will be pro-active and meet with teachers as needed to clarify instruction.	Objective: [The Student] will self-monitor his listening and reading comprehension and ask for clarification from a peer or teacher as needed.

Goal: Given a classroom environment, [the Student] will improve his auditory memory and vocabulary skills by identifying and using compensatory strategies. (4 of 5 trials utilizing teacher reports)	
Objective 1: By attending to the speaker, [the Student] will expand and enrich his vocabulary, while employing memory techniques.	Objective 3: With the aid of contextual cues, [The Student] will learn unfamiliar vocabulary and then use the new words appropriately orally and/or in writing.
Objective 2: [The Student] will demonstrate an understanding of what is heard by retelling, relating prior knowledge, using lesson-specific vocabulary and summarizing.	
Speech and Language	
Goal: [The Student] will meaningfully use 7-9 word sentences when answering factually based why and how questions about extended auditory information presented in class. (80 % accuracy utilizing informal procedures, observation record, and an SLP log/tally.)	
Objective 1: [The Student] will use 7 word sentences to answer the questions that include the phrasing of the question.	Objective 3: [The Student] will answer inferential questions and defend his statement by referring to the text.
Objective 2: [The Student] will use 7 word novel sentences that are contextually appropriate to the question and include concepts specific to the topic.	
Reading	
Goal: Given direct instruction and through use of contextual or textual evidence, [the Student] will increase his inferential and higher order thinking using before, during, and after reading strategies across all content areas. (80 % accuracy utilizing informal procedures and classroom-based assessment.)	
Objective 1: [The Student] will scan nonfiction texts for illustrations, graphs, and key words or concepts in bold print prior to reading the full text.	Objective 3: Post reading, [the Student] will rephrase, explain and summarize textual information.

<p>Objective 2: While reading, [the Student] will make note of unfamiliar words or ambiguous content and request clarification from his teacher.</p>	<p>Objective 4: [The Student] will use contextual clues and evidence to make inferences.</p>
<p>Behavior – Attention</p>	
<p>Goal: Given direct instruction, [the Student] will apply and demonstrate listening and attention skills appropriately in a variety of settings and for a variety of purposes across the curriculum, using sustained attention strategies. (4 out of 5 trials utilizing informal procedures).</p>	
<p>Objective 1: [The Student] will demonstrate attention to instruction by asking appropriate questions and/or contributing appropriate comments during class discussions.</p>	<p>Objective 3: [The Student] will initiate and complete assignments in a timely manner with the help of a planner</p>
<p>Objective 3: [The Student will] take notes to help facilitate sustained attention and listening comprehension</p>	
<p>Organization</p>	
<p>Goal: Given adult support, [the Student] will use time management and organization strategies to be academically successful. (9 out of 10 trials, utilizing informal procedures)</p>	
<p>Objective 1: [The Student] will use an agenda book or personal assistive device to note upcoming due dates for assignments and assessments. He will create a to-do list and check assignments on Edline.</p>	<p>Objective 3: [The Student] will persist with task through mastery.</p>
<p>Objective 3: [The Student] will complete his assignments in a timely manner</p>	<p>Objective 4: [The Student] will follow directions and complete his class work in a timely manner.</p>
<p>Speech and Language</p>	
<p>Goal: [The Student] will describe target/curriculum based vocabulary using at least 3 descriptors. (80 % accuracy, utilizing informal procedures and observation record.)</p>	
<p>Objective 1: [The Student] will express a category for target vocabulary or concepts.</p>	<p>Objective 3: [The Student] will explain words with multiple meanings.</p>
<p>Objective 2: [The Student] will describe items based on function.</p>	<p>Objective 4: [The Student] will define words as they are used in the context presented.</p>

Written Language	
Goal: Given direct instruction, [the Student] will write for a variety of purposes across the curriculum, using writing strategies learned in class, with teacher input. (4 out of 5 trials, utilizing informal procedures and classroom-based assessment.)	
Objective 1: [The Student will] use a variety of pre-writing strategies to generate, select, narrow and develop ideas using a graphic organizer	Objective 3: [The Student will] use thesis statements, textual supports, elaborations/details and a concluding sentence in sequential organized manner in his writing.
Objective 3: [The Student will] use a rubric to guide and organize his writing with purposeful intent.	Objective: [The Student will] edit and revise drafts as needed based on the feedback of the teacher paying attention to spelling and grammar.

215. Transition services are a coordinated set of activities for a student with a disability geared toward preparing a student to move from school to post-secondary activities, including college. (T. XXXX)

216. The IEP team considered transition services for the Student and determined that the Student's special education team would explore post-secondary options to choose a college, university or vocational school and help the Student to explore career interests. (MCPS 29)

217. The IEP team determined that the Student would receive special education services in the general education classroom for eleven hours and fifteen minutes each week. He would also receive special education in self-contained special education classes for eleven hours and fifteen minutes each week. The IEP also dictated that the Student would participate with non-disabled peers in non-academic and extracurricular activities. (MCPS 29)

218. Pursuant to the April 23, 2014 IEP, the Student's general education classes would be in science, English and math, as supported by a special education teacher. (T. XXXX)

219. The Student would take an honors resource class in National, State and Local Government (NSL) in a self-contained special education class. (T. XXXX)

220. During the eleven hours and fifteen minutes the Student is in special education self-contained resource classes, special educators work on pre-teaching, re-teaching and post-teaching the materials the Student learns/learned in his supported general education classes. They also work on graphic organization, social skills and skills for transitioning after graduation. (T. XXXX)

221. Additionally, the IEP team determined that the Student would receive Speech/Language instruction outside of the general education classroom for two hours and fifteen minutes each month; audiological services outside of general education for one hour each year; counseling services with a [School 2] guidance counselor thirty minutes each week; and instruction from a teacher of the hearing impaired for one hour and thirty minutes each week. (MCPS 29)

222. Pursuant to the April 23, 2014 IEP, the Student would spend thirteen hours and fifty minutes per week outside of general education and sixteen hours per week in general education. (MCPS 29)

223. During the hours the Student would receive services inside general education classrooms, he would be supported by a special education teacher or an aide. (MCPS 29)

224. The IEP team considered whether the educational program announced in the April 23, 2014 IEP constituted the LRE for the Student to receive his education in the MCPS. (MCPS 29)

225. At the April 23, 2014 IEP meeting, the team worked collaboratively and developed the Student's IEP, and recommended placement at [School 2]. (MCPS 29)

226. Dr. XXXX, the Parent's advocate, agreed that the goals and objectives and the supplementary aids and services announced in the IEP were appropriate. Dr. XXXX and the Parents did not agree that the Student should receive special education services in the general

education classroom for eleven hours fifteen minutes per week. They rejected the IEP. (T. Father, T. XXXX, T. XXXX, T. XXXX)

227. The Parents also rejected the April 23, 2014 IEP because it did not include OT services. (MCPS 29, T. Father)

228. During 2013-2014 (eleventh grade) school year at [School 1], the Student received the following cumulative grades:

PE – Weightlifting/Conditioning	A
Algebra II	C+
Latin I	A
U. S. History	D+
English	C
Internship	B+

229. The Student’s GPA for his junior year at [School 1] was 2.74.

230. The Student’s GPA declined each year he was at [School 1].

231. The Student currently displays disorganization and executive dysfunction at home. Despite having a prescribed XXXX medication for over two years, the Student’s father still must give the student his medicine every day. (T. Father)

232. The Parents have paid approximately \$40,000 each year for the Student’s tuition at [School 1]. (T. Father)

233. The Student currently receives psychological services from Dr. XXXX, and he has received those services since late tenth grade. The main themes for the group are their experiences at [School 1] and the students’ post-secondary plans. (T. XXXX)

234. During psychological services with the group, the Student usually sits off to the side, away from everyone. Sometimes, he is not engaged and he does not appear to understand what is going on. Part of the reason for his distance is his hearing.(T. XXXX)

235. The Student began taking XXXX, a mood stabilizing drug, within the last few months. (T. Father, T. XXXX) Since he has been taking XXXX, the Student has been brighter and more interactive. (T. XXXX).

236. Dr. XXXX never spoke with any of the Student's educators at [School 3]. She also has never observed the Student in a classroom at [School 1] or in a general education setting, like [School 3] or [School 2] (T. XXXX)

237. [School 1] charges \$100 per session for group and/or individual psychological services. (T. XXXX)

238. [School 1] does not utilize an FM system with the Student. (T. XXXX, T. XXXX)

239. Students' completed homework at [School 3] constituted ten percent of the overall grade (T. XXXX). Students' completed homework at [School 2] also constitutes only ten percent of the overall grade at [School 2]. (T. XXXX)

240. [School 2] has the Best Buddies program, which pairs disabled students with non-disabled peers to encourage social interaction. (T. XXXX, T. XXXX)

241. Ms. XXXX also sponsors a lunch group at [School 2] designed to allow students to interact with their peers. (T. XXXX)

242. [School 2] constitutes the LRE for the Student.

DISCUSSION

A. The Legal Framework

The identification, assessment and placement of students in special education is governed by the IDEA, 20 U.S.C.A. §§ 1400-1482 (2014 & Supp. 2014), 34 C.F.R. Part 300, Md. Code Ann., Educ. §§ 8-401 through 8-417 (2009), and COMAR 13A.05.01. The IDEA provides that all children with disabilities have the right to FAPE. 20 U.S.C.A. § 1412.

The requirement to provide FAPE is satisfied by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.

Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176 (1982). In *Rowley*, the Supreme Court defined FAPE as follows:

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

458 U.S. at 200, 201. In *Rowley*, the Supreme Court set out a two-part inquiry to determine if a local education agency satisfied its obligation to provide FAPE to a student with disabilities.

First, a determination must be made as to 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 educational benefit. 458 U.S. at 206-207.

Providing a student with access to specialized instruction and related services, however, does not mean that a student is entitled to “the best education, public or non-public, that money can buy” to maximize educational benefits. *Hessler v. State Bd. of Educ. of Maryland*, 700 F.2d 134, 139 (4th Cir. 1983) (citing *Rowley*, 458 U.S. 176). Instead, FAPE is satisfied when a child’s IEP is designed to allow the child to receive educational benefit. *Rowley*, 458 U.S. at 203.

Therefore, “educational benefit” requires that “the education to which access is provided be

sufficient to confer some educational benefit upon the handicapped child.” *Rowley*, 458 U.S. at 200. See also *MM ex rel. DM v. School Dist. of Greenville County*, 303 F.3d 523, 526 (4th Cir. 2002) (citing *Rowley*, 458 U.S. at 207); *A.B. v. Lawson*, 354 F.3d 315 (4th Cir. 2004). Thus, the IDEA requires an IEP to provide a “basic floor of opportunity that access to special education and related services provides.” *Tice v. Botetourt*, 908 F.2d 1200, 1207 (4th Cir. 1990). Yet, the benefit conferred by an IEP and placement must be “meaningful” and not merely “trivial” or “de minimis.” *Polk v. Central Susquehanna Intermediate Unit*, 853 F.2d 171, 182 (3rd Cir. 1988), cert. denied, 488 U.S. 1030 (1989); see also *Deal v. Hamilton County Bd. of Educ.*, 392 F.3d 840, 862 (6th Cir. 2004), cert. denied, 546 U.S. 936 (2005); *Board of Educ. of Frederick County v. Summers*, 325 F. Supp.2d 565, 576 (D. Md. 2004).

The Court of Appeals for the Fourth Circuit has recognized that no bright line test can be created to establish whether a student is progressing or could progress educationally. Rather, the decision-maker must assess the evidence to determine whether the Student’s IEP and placement were reasonably calculated to enable the Student to receive appropriate educational benefit. See *In Re Conklin*, 946 F.2d 306, 312 (4th Cir. 1991); Md. Code Ann., Educ. § 8-403 (2014).

The IEP is the tool for providing necessary services to the disabled child. 20 U.S.C.A. § 1414(d). Congress instructed each public school system to review such a child’s IEP

- (i) . . . periodically . . . to determine whether the annual goals for the child are being achieved; and
- (ii) revises the IEP as appropriate to address –
 - (I) any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;
 - (II) the results of any reevaluation . . . ;
 - (III) information about the child provided to, or by, the parents . . . ;
 - (IV) the child’s anticipated needs; or
 - (V) other matters.

20 U.S.C.A. § 1414(d)(4)(A)(i) & (ii) (Supp. 2014).

Furthermore, while a school system must offer a program which provides educational benefits, the choice of the particular educational methodology employed is left to the school system. *Rowley*, 458 U.S. at 208. “Ultimately, [IDEA] mandates an education for each handicapped child that is responsive to his or her needs, but leaves the substance and the details of that education to state and local school officials.” *Barnett v. Fairfax County*, 927 F.2d 146, 151-152 (4th Cir. 1991), *cert. denied*, 502 U.S. 859 (1991).⁷

In addition to the IDEA’s requirement that a disabled child receive some educational benefit, the child must be placed in the LRE to achieve FAPE, meaning that, ordinarily, disabled and non-disabled students should be educated in the same classroom. 20 U.S.C.A. § 1412(a)(5); 34 C.F.R. §§ 300.114(a)(2)(i) and 300.117. Yet, placement in the general education environment may not be appropriate for every disabled child. Consequently, removal of a child from a regular educational environment may be necessary when the nature or severity of a child’s disability is such that education in a regular classroom cannot be achieved. 34 C.F.R. § 300.114(a)(2)(ii).

There has always been a statutory preference for educating children with learning disabilities in the LRE with their non-disabled peers. The IDEA provides as follows:

To 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, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. § 1412(a)(5)(A) (Supp. 2010).

However, this “mainstreaming” requirement is “not an inflexible federal mandate.”

Hartmann v. Loudoun County Bd. of Educ., 118 F.3d at 1001. The MCPS was obligated to provide

⁷ The IDEA is not intended to deprive educators of the right to apply their “professional judgment.” *Hartmann v. Loudoun County Bd. of Educ.*, 118 F.3d 996, 1001 (4th Cir. 1997).

the Student with a placement that afforded him at least an opportunity to interact with nondisabled peers, if he will receive educational benefit in that placement.

The IDEA does not require a local educational agency to pay for the cost of private education if the agency has made a FAPE available to the child and the parents have nevertheless elected to place the child in a private school. 34 C.F.R. § 300.148(a) (2013). Parents who unilaterally place their child at a private school without the consent of school officials do so at their own financial risk. *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15 (1993) (citing *Burlington* at 373-74). Parents may recover the cost of private education only if they satisfy a two-pronged test: (1) the proposed IEP was inadequate to offer the child a FAPE and (2) the private education services obtained by the parent were appropriate to the child's needs.

The burden of proof in an administrative hearing under IDEA is placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005). Accordingly, in this matter the Parents have the burden of proving that the Student's IEP for the 2013-2014 and 2014-2015 school years, as they pertained to his placement at [School 2], were and are not reasonably calculated to provide him with an educational benefit.

The April 23, 2014 IEP was reasonably calculated to provide the Student with FAPE.

An IEP is the "primary vehicle" through which a school provides a student with FAPE. *M.S. ex rel Simchick v. Fairfax County School Bd.*, 553 F.3d 315, 319 (4th Cir. 2009). The IEP "must contain statements concerning a disabled child's level of functioning, set forth measurable annual achievement goals, describe the services to be provided, and establish objective criteria for evaluating the child's progress." *M.M. v. School District of Greenville County*, 303 F.3d at 527; see 20 U.S.C.A. § 1414(d)(1)(A). The IEP should be the result of a collaborative process, usually one or more meetings, in which the parents, and their representatives, discuss the child's

abilities and needs with school staff. When developing the Student's program, the team considered all of the assessments, progress reports and information provided by the Parents and MCPS staff.

Certainly, the critical underpinning of the IDEA, is that students with disabilities must be provided with an individualized program of education commensurate with their abilities to allow them to make reasonable academic progress. *Rowley*, 458 U.S. at 203. Therefore, "educational benefit" requires that "the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child." *Rowley*, 458 U.S. at 200; *see also MM ex rel. DM v. School Dist. of Greenville County*, 303 F. 3d 523, 526 (4th Cir. 2002) (*citing Rowley*, 458 U.S. at 207); *A.B. v. Lawson*, 354 F.3d 315 (4th Cir. 2004); *Polk v. Central Susquehanna*, 853 F.2d 171, 182 (3rd Cir. 1988), *cert. denied*, 488 U.S. 1030 (1989).

The goals and objectives of the disputed IEPs were developed in accordance with the applicable law and regulations.

The Parents' Position

The Parents contend that the Student would not reasonably be expected to make the necessary educational progress under the April 23, 2014, MCPS IEP and that the Student's placement in the special education program at [School 2] would not be appropriate. The Parents assert that the Student has a complex special education profile. In addition to being hearing impaired, the Student also has language, motor, attention, executive function and visual integration deficits as well as a significant history social inappropriateness and anxiety.

The Parents do not challenge the IEP goals and objectives or the services and accommodations provided in the IEP. Rather, the crux of the Parents' position is that the Student is unable to access and process educational content in general education classes. Pointing to the fact that the Student is socially distant and has problems attending to classroom content, even in

small contained classrooms at [School 1], they assert that the Student could not possibly make meaningful educational progress in such a large school and in general education classes with significantly greater distractions in the small self-contained classes at [School 3]. Pointing to the fact that the Student performed poorly when he attended [School 3], a large MCPS school, in the eighth grade, the Parents contend that because the April 23, 2014 IEP essentially mirrors the IEP the Student had while at [School 3], he is destined to fail with the placement proposed by the MCPS.

Underpinning the Parents' contention that the Student's placement at [School 2] is inappropriate is that the Student has a proven history of social difficulty and that he would not make progress toward achieving his annual goals nor benefit from his program in general education classes and in a setting with a building and population as large as [School 2]. The Parents assert that the Student's IEP team at [School 3] failed to properly code the Student as a child with a specific language-based learning disability, but rather focused exclusively on the coding of DHOH.

In addition to the contention that [School 2] is too large and general education classes are too distracting for the Student to make meaningful educational progress, the Parents also assert that the Student has benefitted from OT and clinical psychological services at [School 1] and that the April 23, 2014 IEP was inappropriate in its failure to include those services. Accordingly, the Parents assert that the IEP was not designed to provide the Student with FAPE

The Parents further maintain that the Student has made significant progress in executive functioning, language and social skills while at [School 1], proving that the [School 1] program is more appropriate for the Student. The Parents contend when the Student was enrolled at [School 3], they had to spend four hours per night working with the Student on his homework to ensure that he could pass his courses, but at [School 1], they spend no more than twenty minutes

per evening working on homework, indicating that he is grasping the educational material better than he did when he was placed in a partially general education large public school. The Student has also begun participating in groups, he has developed friendships, and has generally improved socially.

Accordingly, the Parents are seeking tuition reimbursement for the Student's placement at [School 1] for the 2013-2014 school year and, due to fact that the Student is currently enrolled at [School 1] for the 2014-2015 school year, the Parents seek reimbursement for that the current school year as well and placement there for the remainder of the school year.

MCPS' Position

MCPS contends that the IEP team correctly determined that the April 23, 2014 IEP was absolutely designed to provide the Student with FAPE in the LRE in the special education program at [School 2] for the 2013-2014 school year, and for the current academic year. That program would have provided the Student FAPE partially in self-contained special education small resource classes while still being exposed in general education classes with non-disabled peers, satisfying the LRE requirement. It contends that the IEP was reasonably calculated for the Student to achieve meaningful educational benefit.

MCPS maintains that [School 2] is well-equipped and well-staffed to meet the Student's educational and related service needs in the least restrictive environment. To that end, although it acknowledges that the Student made some progress related to social skills at [School 1], MCPS contends that the Student has not performed any better, academically, than he did at [School 3], an MCPS school. Accordingly, MCPS asserts that the Parents have failed to prove that the Student needs small self-contained special education classes to derive meaningful academic benefit.

The MCPS also asserts that [School 1] is an inappropriate placement for the student because it provides no greater academic programming and, as a small exclusively self-contained special education school, it violates the mandate that children receive their education in the LRE.

MCPS further maintains that the Parents' contention that the Student requires individual OT and psychological services to make meaningful educational progress is unfounded because the Student's social anxiety are addressed by the April 23, 2014 IEP provision of counseling. The Student's OT needs are effectively integrated into the Student's special education services and supports provided by the general education teacher, the special education teacher, and the DHOH teacher in both the general education classroom and the self-contained classroom.

MCPS argues that under the applicable law, the analysis ends on the first test under the two-prong analysis of *Burlington* and *Carter* because the IEP was calculated to provide FAPE and because [School 2] was an appropriate placement.

In the event that I find that the April 23, 2014 IEP and/or placement was inappropriate for the Student, the MCPS also contends that the Parents have not proven that [School 1] is providing services and accommodations that give him any greater opportunity for meaningful educational benefit than [School 1], and therefore, [School 1] is an inappropriate placement for the Student as it is not the LRE.

The Student and his Educational History in Private and Public Schools

A. The Student

The Student is currently seventeen years old and has always been in a special education setting in and out of the public school system. The Student lives with the Parents, who have two younger children, a daughter and a son, neither of whom have disabilities, and both of whom are educationally-gifted.

The Student was diagnosed with a hearing impairment when he was approximately 20 months old. During the time between his birth and the discovery of his hearing impairment, the Student missed significant opportunities for the developmental language skills, which has resulted in long-term language-based deficits (T. XXXX). The Student was enrolled in DHOH services at an early age (pre-elementary services) and from elementary school through middle school, received special education services under a code of hearing impaired.

When the Student was school-age, the Parents enrolled him at [School 4]. Although the Parents liked [School 4], they and the Student's teachers began to notice additional deficits, including attention, language-related and social problems. In an effort to find an appropriate fit for the Student's multiple deficits, the Parents unilaterally enrolled the Student at [School 5] for his third and fourth grade years, in part, because of the smaller class sizes. When the Student continued to display deficits, they reenrolled him in public school at [School 6] for fifth grade.

The Student began his middle school education in 2009 at [School 3]. Once the Student was at [School 3], the Parents noticed that the Student was unable to complete his homework correctly and began working with him for up to four hours per night assisting him with his homework. In January 2010, during the Student's sixth grade year at [School 3], his Parents arranged to have the Student surgically fitted with a cochlear implant in his left ear. The Student already had a hearing aid for his right ear and he maintained that hearing aid after he received the cochlear implant.

The Student again switched schools in seventh grade, when he attended [School 7] and received services in the DHOH program. The Parents returned the Student to [School 3] in the eighth grade,

In 2011-2012, during the student's eighth grade academic year, the Parents, after consulting with DHOH professionals and after retaining Dr. XXXX XXXX to conduct psycho-

educational testing of the Student, became adamant that the Student's disability was not primarily rooted in his hearing impairment, but that he had a language-based specific learning disability (SLD). The Parents requested that MCPS change his disability code from DHOH to SLD, and when IEP team declined to do so, preferring to maintain the code as DHOH, the Parents unilaterally placed the Student at [School 1].

The Student has made some improvements, socially, at [School 1], but his grades and teacher reports indicate that he has performed, academically, either on par or worse than he did when he was enrolled in public school at [School 3]. As of the most recent MCPS IEP meeting on April 23, 2014, the MCPS agreed to code the Student as SLD, although the services and accommodations on the April 23, 2014 IEP remain similar to those he received in the eighth grade when he was coded DHOH.

The Student does not require a small, self-contained classroom to access educational content

Other than the Father, the Parents' primary witness regarding their position that the Student requires small self-contained classrooms to access educational content was Dr. XXXX, an educational consultant.

Dr. XXXX testified that the Student's diagnostic profile was very complex and that his issues are commingled. Particularly, Dr. XXXX testified that in spring 2014, when he observed the Student in a classroom setting at [School 1], the Student displayed difficulties in the area of executive functioning to the extent that he was impulsive and lost attention quickly; he did not remain engaged in the classroom learning activity for the entire class period and, approximately two-thirds of the way through the class, the Student closed his books put his head down, and began chatting with another student about fantasy sports. Dr. XXXX opined that the Student's difficulties with verbal expression, auditory processing and executive functioning would prevent him from being able to fully engage in what was being instructed, even in the small class setting

at [School 1] with no greater than ten students. If, opined Dr. XXXX, the Student was unable to attend in a very small class, it would be difficult for him to do so in a large classroom.

Particularly, the Student would become overwhelmed by the increased action, stimulation, and language demands that would cause him to struggle in a large setting.

Dr. XXXX further testified that he did not believe that the Student's difficulty with keeping up with the educational content of his work was related to his hearing impairment – but rather, resulted from a specific language-based learning disability.

Ultimately, because the Student benefitted from his education at [School 1], and because [School 1] had good transition services, he believed that the [School 1] was the appropriate placement for the Student.

Ms. XXXX, [School 1] SLP, lent context to Dr. XXXX's testimony regarding his specific language-based deficits. Particularly, she testified that the Student displays weak receptive language skills, which means that he has difficulty understanding vocabulary and being able to answer questions with about one-to-three sentences of information. As a result, the Student has difficulty following directions and answering questions about information that has just been told to him. He also has weak expressive language skills, which means that he has difficulty defining words, describing the relationship between words, complex-sentence formulation, explaining the meaning behind his ideas. Another speech/language area of difficulty for the Student is auditory memory, which means that he has difficulty recalling numbers, words and sentences when asked to repeat them – he omits prepositional phrases, which impacts his ability to follow directions. (T

Ms. XXXX further testified that she has found that the Student displays difficulty with linguistic executive functioning, which makes it difficult to sequence steps, to follow instructions, and to complete assignments. Another area of difficulty for the student is meta-

cognition, which means that he does not have insight into his own deficits and weaknesses, and, therefore, it is difficult for him to advocate for himself when he is struggling, because he doesn't recognize that he is, indeed, struggling to comprehend.

Although Ms. XXXX conceded that it is best that children with expressive and receptive language disabilities learn in an environment where they can model age-appropriate language of non-disabled peers, she nevertheless testified that she believed that the Student's speech/language deficits are better addressed in small classes, where teachers can better monitor whether he understands the material. Because small classes lend less distraction to the Student than large ones, Ms. XXXX further testified that she believes that in a larger classroom, he would struggle to attend to the information presented and be more prone to inappropriate behaviors. Because he is currently struggling in his small classroom setting, having more competing factors would cause him significant problems.

Dr. XXXX, [School 1] clinical psychologist, echoed Dr. XXXX's and Ms. XXXX's testimonies and testified that she provides socio-psychological services to the Student in a group setting of only six other students at [School 1], and that even in that small group and small setting, the Student still struggles with tracking conversations, understanding what has been said, and advocating when he is not tracking what is being said or hearing. Particularly, Dr. XXXX testified, the Student usually sits off to the side, away from everyone. Sometimes, he is not engaged and he does not appear to understand what is going on.

The Student's Father testified that believed that the Student is much better off in the small self-contained classes at [School 1] as he has seen an improvement in his ability to work on his own.

Particularly, the Student's Father testified that in eighth grade, he and the Student's mother would spend up to four hours each night working with the Student on his homework. It

was frustrating when the Student was unable to replicate the information he had learned via his work with his parents on homework on class-based assessments. Even more frustrating for the Parents was the fact that although there was an online system for advising students and parents of assignments and students' grades and scores on exams and projects, often the Student's failing grades would not be updated until weeks after the exam and/or project, making it difficult for them to address it with the Student. Since the Student has been at [School 1], however, the Student no longer needs the four hours of assistance required when the Student was at [School 3]. As a result, the Parents and the Student are much less frustrated.

The Father acknowledged that the Student still displays many deficits in executive functioning and organization skills. To that end, the Father testified as follows:

Oh my God, we spend . . . and continue to spend a lot of time trying to help him be organized whether – you know, he takes . . . his antibiotics for his XXXX. . . . I mean, he has been taking it for, I don't know, two years, he . . . still can't do it every night. I – I have to give it to him, he just . . . can't – he can make a list, he can, you know, tell me he has to check things off. I mean, we do the same things with his homework[.] [H]e's, you know, he . . . has a list of things he's got to make sure he gets done and . . . it's just not – it's not in him.”

(T. Father, Tr: 445). Despite these lingering problems, the Student's Father was unequivocal that [School 1] is the best place for the Student.

Witnesses for MCPS disagreed with the Parents position. Ms. XXXX testified that the Student was successful in general education classes at [School 3] because, similar to the proposed program in the June 2014 IEP, the Student was supported by a special education teacher or para-professional. Ms. XXXX elaborated that when an issue came up with the Student, the special education teacher or para-professional was able to address it immediately and employ the Student's accommodations.

Ms. XXXX further explained that she believed the Student was more likely to be successful at [School 2], notwithstanding the fact that a portion of his special education services

would be provided in general education classes because he would be supported by a DHOH teacher. Ms. XXXX explained that DHOH children who have hearing aids and/or cochlear implants and who attend MCPS schools will always receive DHOH services because it is difficult to discern the impact the hearing disability has on their ability to access educational content. She explained that in some circumstances, the student will require services, including special seating away from distracting or loud environmental factors; providing information to teachers regarding DHOH accommodations, including repeating directions and rephrasing.

Ms. XXXX also testified that, when, like the Student, DHOH children are diagnosed later than birth, they have life-long language deficits. In such cases, Ms. XXXX works with students to directly teach things like figurative language to address those deficits. She also addresses speech problems, difficulty hearing high frequency sounds, hearing-related social problems, self-advocacy, and other issues. Regarding self-advocacy, Ms. XXXX elaborated that she works with DHOH children to teach them how to recognize and ask for what they need. Often, explained Ms. XXXX, DHOH children need an exception from taking notes and need to have them given to them, so they can focus on understanding, auditorally, and processing what is being said. To that end, Ms. XXXX explained that DHOH students usually display slower processing speeds because their hearing disability requires more time to interpret information and directions.

Ms. XXXX also pointed out that the Student should be provided with an FM system. This system allows a teacher to speak into a microphone that is directly linked to the DHOH Student's hearing aid, amplifying the sound of her voice while drowning out distracting atmospheric noise.

Using the services and accommodations in the Student's April 23, 2014 IEP, Ms. XXXX opined that he would be provided with FAPE.

Ms. XXXX, the [School 2] Special Education Resource Teacher, agreed with Ms. XXXX's testimony and amplified it. According to Ms. XXXX, [School 2], with thirty-five

special education staff members, has one of the largest special education programs in the State, if not the country. One hundred percent of the special education students graduate and approximately ninety-to-ninety-five percent go on to a two-year or four-year college. Those who do not go to college, go to vocational school. Regarding the fact that the April 2014 IEP called for the student to spend eleven hours and fifteen minutes in general education classes, supported by a special education teacher, Ms. XXXX explained that each of the special education adult support personnel who provide services in the general classroom, are either retired teachers or undergraduates pursuing their teaching certificate.

Ms. XXXX further explained that of [School 2]'s approximately 2,200 students, approximately fifteen percent have learning disabilities requiring special education services. Among those fifteen percent, testified Ms. XXXX, many have profiles similar to the Student.

Furthermore, according to Ms. XXXX, there are ample opportunities for the Student to gain greater independence at [School 2], including a lunch group sponsored by [School 2] SLP Ms. XXXX, the Best Buddies Program, internships, and a mentorship partnership with a local agency.

Ms. XXXX, Ms. XXXX and Ms. XXXX visited [School 1] on January 9, 2014, to observe the Student in the classroom setting at [School 1]. According to each of them, during his U.S. History class. Each the Student was not paying attention to the instruction the teacher was giving, but rather, he pulled out his iPad and began to play on it. In fact, when the teacher asked whether anyone had any questions, the Student raised his hand and asked the teacher to review a term that she had just finished discussing. According to Ms. XXXX, even though the Student was not attending to the lesson, he nevertheless appeared to be much further academically advanced than all but one of the other students in the class, as they were not playing and talking and paying attention to the content of the lesson at all.

The primary concerns the Parents and the Student's educators at [School 1] have regarding the placement of the Student in general education classes in a large school such as [School 2] are 1) the Student will be too distracted and overwhelmed by the large classroom setting to gain any meaningful benefit from educational instruction; and 2) the Student will regress, socially.

I reject the first contention for a number of reasons. First, a review of the Student's academic history does not support the conclusion that he performs better, academically, in small, self-contained classes than he did when he was enrolled at [School 3], receiving a substantial portion of his education in general education classrooms.

During the 2010-2011 school, year when the Student was enrolled at [School 3] for eighth grade, his performance was average. His grades, cumulatively, were in the low-B, high-C range. The Student manifested some significant deficits regarding his ability to organize, interpret lengthy texts, and vocabulary, but managed to access the academic content using the services and accommodations contained in his IEP.

In April 2011, the Parents were concerned that the Student's academic deficits were no longer primarily hearing-related, and they independently retained Dr. XXXX XXXX to conduct psycho-educational testing of the Student. According to Ms. XXXX's tests of the Student's cognitive abilities. The Student's overall score of 82 on the WISC-IV and his overall scores on the WJ-III Tests of Cognitive Abilities indicated that his cognitive abilities fall within the low average range, with some outlying areas in the solidly average range.

Dr. XXXX also gave the Student the WJ-III Tests of Achievement, to assess his academic abilities. According to Dr. XXXX, the Student's scores ranged from the extremely low range to the superior range, with his highest scores in mathematical calculations. Comparing the Student's scores on cognitive assessments with his scores on achievement tests, Dr. XXXX

concluded that the Student is “achieving at a level that is basically commensurate with his ability level.” (Parents 5). To that end, Dr. XXXX reported as follows:

Given that [the Student’s] academic achievement is on grade level, it appears that he has thus far effectively used strategies in school to compensate for the processing concerns notice in this evaluation. However, the impact of these difficulties should be monitored on an ongoing basis to ensure that his academic skills do not become adversely affected. The strategies he utilizes within the classroom may need to be altered as he advances through school.

(Parents 5).

The Student’s achievement was tested twice after Dr. XXXX, once by Ms. XXXX, at [School 1] in October 2012, and next, by Ms. XXXX in February 2014. Ms. XXXX used the full WJ-III achievement battery and Ms. XXXX administered subtests of the assessment. A review of the scores indicates that although the Student displayed some fluctuation in scores, on balance, the Student achieved, on grade level, in the average to low-average range.⁸

Similarly, the Student’s grades seem to indicate that he consistently performed in low-average to average range. Although MCPS argued that after the Student left [School 3], his grade point average decreased every year, neither party made me privy to the educational content of his academic programs at [School 3] and [School 1], so there may be factors that influenced the downward trend of the Student’s grades, including the increased rigor of the work as the Student progressed from grade to grade or that the Student was working more independently without as much assistance from his parents. I find that the Student’s grades remained somewhat consistent, fluctuating slightly downward.

The fact that the Student’s achievement did not improve at [School 1], where he was receiving his educational content in small classes with few students, belies the Parents’ position that he needs such an environment to attain measurable educational benefit. To the contrary, the Student attained measureable educational benefit commensurate with his cognitive ability at

⁸ See comparison of WJ-III Tests of Achievement Scores at findings of fact 116 and 173.

[School 3], when he was enrolled in large classrooms, and he attained measurable educational benefit, commensurate with his cognitive ability at [School 1], where he was enrolled exclusively in small, self-contained classes. Accordingly, the Parents' contention that the Student would not be provided a FAPE at [School 2] with a portion of his education in general education classrooms, rings hollow.

The Parents placed great emphasis on the fact that they spent four hours each night working with the Student on his homework when he was at [School 3] and the Father testified that if they had not spent such a significant amount of time doing so, the Student would have failed. The weight of the evidence, however, rebuts the Parents presumption. According to the teacher reports from [School 3], although the Student turned in consistently completed and correct homework, the Student's teachers noted that he displayed difficulty in applying the content of the homework to in-class assessments. Ms. XXXX's unrebutted testimony was that homework accounted for only ten percent of the Student's grades. Considering this evidence, it is logical to conclude that, although the Student may have had lower grades at [School 3] if the parents hadn't assisted him so much with his homework, only ten percent of his grade would have been affected. Considering the small percentage of the grade attributed to the homework, and the fact that the Student was able to maintain average grades at [School 3] despite his trouble applying learned material to his classwork and assessments, I find that it is more likely than not that the Student's general education, special education, and DHOH teachers employed the tools, services and accommodations in his IEP and worked with the Student to make meaningful progress.

This conclusion is certainly corroborated by Dr. XXXX's assessment that the Student's achievement was on grade level, and that "it appears that he has thus far effectively used strategies to compensate for the processing concerns noted in this evaluation." (Parents 5)

Furthermore, neither the Parents nor any of the Parents' witnesses have observed the Student in a large classroom, and thus, have no personal objective evidence that the Student has performed or would perform any worse in such an atmosphere. In fact, the ample supports available at [School 2], coupled with the fact that, academically, the Student performed at [School 3] at least as well as he did when he was at [School 1], merits the conclusion that the Student would, at the very least, be on equal educational footing at [School 2].

It is of further note that a comparison of the Student's March 25, 2011 IEP with the April 23, 2014 IEP at issue reveals that the Student received more instruction in general education classes at [School 3], during his eighth grade year, than is recommended for the Student for the balance of the 2013-2014 academic year. Particularly, in 2011, the Student was slated to receive special education services in a co-taught general education classroom for sixteen instructional hours each week (English, social studies, science, and U.S. History). He would receive special education in self-contained special education classes for only four instructional hours each week (related studies and reading) and in non-academic and extracurricular activities. By contrast, the April 23, 2014 IEP dictated that the Student would receive eleven hours and fifteen minutes in co-taught general education classes, and eleven hours and fifteen minutes in self-contained special education classes. Neither party addressed the reason for the decreased general education hours. What was clear from the testimony of the MCPS witnesses is that those who would be the Student's educators at [School 2] comprehensively evaluated the Student, including considering the input of the Parents, the Parents' educational consultant, Dr. XXXX, and the Student's education material provided by [School 1], when arriving at its recommended plan.

What I must weigh is the Parents' subjective, anecdotal testimony that they spend far less time helping the Student with his homework, and Dr. XXXX's opinion based upon limited knowledge of the Student's history at [School 3] and his limited familiarity with the Student, in general,⁹ with the objective evidence that supports the conclusion that the Student performed no better at [School 1] than he did when he was in eighth grade at [School 3]. Taking into consideration that the work the Student was expected to complete at [School 1] was more difficult as he moved to subsequent grade levels, the grades the Student achieved at [School 1] were certainly commensurate with, if not lower than, those he achieved at [School 3]. Furthermore, according to Ms. XXXX, Ms. XXXX, and Ms. XXXX, when they observed the student in his U.S. History class at [School 1], he was not paying attention to the instruction and he was inappropriately playing with his iPad during instruction. This observation was not isolated, as Dr. XXXX testified that he, too, observed a significant lack of attention by the Student when he observed him in his math class in spring 2014.

Ultimately, the Parents have failed to prove that the April 23, 2014 IEP was flawed because the Student will not be able to access educational content in a large school within general education classes. In so finding, I note that I found compelling Ms. XXXX's testimony that the Student continues to require DHOH services because his significant language deficits are related, in part, to his hearing impairment and to the delay in services as a young child. The

⁹ Dr. XXXX's interaction and experience with the Student was fairly limited. According to Dr. XXXX, he observed the Student at [School 1] five times for a total of approximately six hours, and he has interacted with the Student only twice, once in 2012, when he engaged him in a brief conversation about sports and tennis shoes, and once, in October 2014, when he talked to the Student about school and about this hearing. Dr. XXXX testified that the Student told him that he liked [School 1], he had friends, and he was happy. Although Dr. XXXX spoke with the Student's parents and was familiar with the Parents' position that the Student required small self-contained classes like those he attended at [School 1], it appears that he relied upon that position of the parents in his advocacy of an educational plan for the Student without making an adequate effort to develop an independent understanding of the Student's needs. That is, he never meaningfully evaluated the atmosphere within which the Student would receive special education services at [School 2], and thus, his opinion is based upon an incomplete snapshot of the Student, rendering it unreliable.

Student did not receive any DHOH services at [School 1]. He also was not provided with a FM device, which allows him to have direct amplification of the teachers' voice and instructions.

The fact that the MCPS April 12, 2014 IEP includes DHOH services as part of the Student's educational content bolsters my view that the educational program proposed by the MCPS is appropriate to address the Student's unique needs so that he can make meaningful educational progress.

Although Ms. XXXX testified that she did not believe the Student had difficulty hearing, contrary to that position, [School 1] psychologist Dr. XXXX testified the Student's hearing constitutes an ongoing basis of disability. First, when testifying about the Student's small psychology group she leads, Dr. XXXX testified that the Student does not make himself a central part of the discussion due, in part, to his hearing difficulties. Later, when testifying about how the Student would perform at [School 2], in "special" classes such as music or art, she stated that he would have difficulty due to his processing issues and his hearing. (T. XXXX)

I find that the weight of the evidence supports the conclusion that the Student required DHOH services. Although witnesses from [School 1] testified that the Student did not appear to have any trouble hearing instruction, none of those witnesses have particular experiences working with children who receive DHOH services or a clear understanding of how hearing difficulties might impact the Student's processing speeds and receptive ability. Although the Student may also require services and accommodations that address other aspects of his learning difficulties, certainly, the inclusion of services and accommodations that focus on how his hearing impacts his ability to make progress on his IEP goals and accommodations is integral to the Student's success.

It is unnecessary to speak at length about whether the absence of DHOH goals, objectives, services and accommodations on the Student's [School 1] IEP/ILP or whether the

failure of [School 1] to implement hearing-related supports for the Student may have rendered its educational program inappropriate for the Student. What is important is that the MCPS *did* include these DHOH goals, services, and accommodations on its IEP and as part of the Student's educational program. This allowed Ms. XXXX or another DHOH teacher to monitor what part of the Student's difficulties are attributable to his hearing, and to mitigate those things when necessary. It buttresses the conclusion that, content-wise, the Student's IEP was tailored to his needs and to provide him with FAPE.

The Student does not need individual direct OT services

Occupational Therapy is so named because it relates to facilitating activities that occupy a person's time. OT can focus on facilitating various aspects of a person's needs. For example, rehabilitative or clinical OT focuses on assisting individuals who have experienced trauma, such as a closed-head injury or stroke, to re-learn activities of daily living, like using a fork to eat and other fine motor skills. School-based OT focuses on supporting the child to allow him to access his educational program. (T. XXXX)

The Parents argued that at [School 1], the Student receives OT services to address his fine motor skills and problems with executive functioning, and they assert that the April 23, 2014 IEP did not provide the Student with FAPE because it did not specifically include individual OT services.

In support of their position, the Parents presented the testimony of Ms. XXXX, [School 1] occupational therapist, who testified that she performed occupational therapy assessments of the Student in February 2012, and determined that the Student displayed difficulties in executive functioning, visual perception, and visual motor integration. Regarding visual perception, Ms. XXXX testified that the Student demonstrated difficulty with interpreting what he sees accurately. As an example, Ms. XXXX testified that the Student might be unable to discern

subtle differences in geometric angles and that he misses a lot of details. Regarding visual motor integration, Ms. XXXX testified that the Student might have trouble with eye-hand coordination, *i.e.*, when using a ruler or a protractor.

Ms. XXXX further explained that the OT goals and objectives [School 1] developed for the Student are directed at addressing his deficits in the areas of executive functioning, visual perception and visual motor integration and she detailed the methods the Student's occupational therapist use to address them. Particularly, referring to the February 19, 2014 [School 1] ILP, to improve the Student's functional skills by focusing and attending to tasks which he perceives to be challenging while adding details and self-editing, (OT Goal 1, Objective 1.1) the occupational therapist provided motor breaks for the Student. To focus on the objective of planning, initiating, and executing manageable steps for a multi-step activity with only verbal directions, (OT Goal 1, Objective 1.2) the occupational therapist would instruct the Student to write down the directions he is given, highlight them and sequentially number the directions, as necessary. To improve the Student's visual spatial perception, and/or perceptual motor skills for greater success during functional activities (OT Goal 2), the occupational therapist would place a three-by-five index card over written material to focus the Student on editing limited amounts of information the Student sees at a time.

Ms. XXXX further testified that the Student displayed most of his OT needs in the area of executive functioning, including organization, time management, and planning, but that the Student has received benefit from OT services at [School 1]. Particularly, Ms. XXXX testified that the Student came to [School 1] with little awareness of his disability, but he has learned more about himself, which, in turn, has affected his self-advocacy.

Without direct OT services,¹⁰ Ms. XXXX worried that the Student would have difficulty focusing in the classroom and being able to execute his homework assignments in a timely manner. According to Ms. XXXX, the Student better benefits from receiving individual OT services rather than having his OT needs addressed by the classroom teacher or an assistant because it allows the OT to refer to the notes from individual sessions with the Student and bring them back into the classroom.

In sum, Ms. XXXX testified that while the student may not need consistent assistance with his OT needs, he absolutely needs monitoring, and she believed the Student required individual OT to address difficulties he had with manipulating tools – particularly, a protractor and a ruler – as she observed these difficulties during her clinical assessment of the Student.

Regarding OT, the Father testified that the Student has had some difficulty using a fork and knife to the extent that use of those tools “is not the easiest thing for [the Student] to do.”

Contrary to Ms. XXXX’s testimony, Ms. XXXX testified that after reviewing [School 1] teacher reports, [School 1] OT reports, observing the Student at [School 1] and conducting an independent assessment of the Student, that she did not observe the OT needs reported by Ms. XXXX. Ms. XXXX testified that when she assessed the Student using the VMI test, which required him to integrate his visual perception with his fine motor skills by requiring him to reproduce geometric forms using a pencil, she did not observe the Student to have any difficulty manipulating a pencil, or with stabilizing the booklet he used while drawing. Indeed, the Student scored in the average range for visual motor integration. Furthermore, when Ms. XXXX observed the student in class at [School 1] in January 2014, she noted that the Student spent significant time manipulating his iPad without difficulty. In light of these results and observations, Ms. XXXX concluded that the Student did not display significant fine motor

¹⁰ All Students at [School 1] receive integrated OT services. Students can receive direct OT services for a fee additional to tuition.

deficiencies – and certainly not to the extent that he required individual OT services to teach him how to use a ruler or a protractor as Ms. XXXX stated.

Ms. XXXX further testified that while OT services within a clinical construct would address attentional and focus problems, the school-based OT model does not address those areas and it is not appropriate purpose for individual OT services. Rather, explained Ms. XXXX, those services would best be addressed by the special educator.

The Parents made much of the fact that Ms. XXXX believed the Student needed specialized OT services to address his deficits in using a ruler and a protractor. Ms. XXXX unequivocally testified that the Student displayed no such need when she evaluated him. Furthermore, the MCPS pointed out that the student excelled at Geometry during his sophomore year, the academic year following Ms. XXXX's assessment of the Student and that [School 1] did not include a goal or objective to address his alleged deficits using tools. Regardless of whether Ms. XXXX's assessment of the Student regarding his use of tools was correct, what is patent is that by the time Ms. XXXX conducted her OT assessment and observation of the Student, he no longer displayed a deficit in this area. Accordingly, I find that the MCPS IEP team did not err by omitting individualized OT services from the April 23, 2014 IEP to address the Student's manipulation of tools.

In so finding, I do not doubt that the Student received educational benefit from individual OT services at [School 1]. I am not even certain that the Student's MCPS IEP team disagrees that the Student may receive *maximum* benefit from such OT services. What the Parents have not proven, however, is that the Student cannot derive measurable academic benefit related to his OT needs addressed by his classroom and special education teachers and/or a classroom aid.

There is some question as to whether Ms. XXXX's position that school based OTs do not address executive functioning is accurate. According to the December 2008 Maryland State

Steering Committee for Occupational and Physical Therapy School Based Programs (Parents 66), one of the appropriate focus areas of school-based occupational therapy is Self-Management in the Learning Environment, which, among other self-management skills, aims at facilitating “organizational skills or strategies to manage classroom materials.” (Parents 66) On its face, it seems that executive functioning is included in those areas appropriate for school-based OT services.

Ms. XXXX explained that while executive functioning may be an area school-based OTs address, direct OT services are only warranted if the student has a physical barrier or limitation that impacts organization, such as an inability to open a binder or transporting textbooks and materials. Accordingly, Ms. XXXX maintained that the [School 1]’s provision of direct individual OT services was excessive in light of the Student’s deficits.

Regardless of whether the Student manifested OT needs, having considered the evidence in this case, I am unconvinced that the Student could not have those needs met without individual OT services. First, the Parents elicited no testimony regarding the nature and extent of the integrated OT services each student receives at [School 1]. It is certainly conceivable that the Student’s OT needs were addressed during those integrated services, and the Parents offered nothing to prove otherwise. Even accepting Ms. XXXX’s testimony that the Student particularly benefitted from *individual* OT services, other than Ms. XXXX’s opinion, the Parents offered no evidence that the Student could not receive the same benefit provided by the Student’s general and special education teachers at [School 2].

Ms. XXXX conceded that she never spoke with the Student’s MCPS teachers and, other than documents and anecdotal evidence provided by the Parents, Ms. XXXX had little knowledge of the Student’s ability to obtain meaningful educational benefit without individual OT services. Furthermore, even if the Student benefitted greatly from individual OT service,

while maximum improvement is a laudable outcome, the IDEA does not dictate that public schools greatly benefit disabled students. It does not require that the student derive the maximum benefit possible from services. Rather, it dictates that the IEP be calculated to allow the Student to achieve measurable academic benefit. The Parents have failed to prove that the April 23, 2014 IEP would leave the Student without that benefit progress vis-à-vis his OT deficits.

This is particularly so in light of the fact executive functioning skills are included throughout the April 23, 2014 IEP as skills addressed by the DHOH teacher, and the special educator.

The Student does not require counseling services provided by a clinical psychologist or mental health professional.

Both the Parents and the MCPS agree that the Student displays some social anxiety and has had considerable difficulty making friends and socializing with his peers. The Parents assert that the April 23, 2014 IEP was insufficient because it did not include psychological services. In so arguing, the Parents point out that the Student made great social strides while at [School 1], due, in great part to the psychological services he received as part of his [School 1] IEP/ILP.

The Student's Father testified that the Student first began receiving psychology services at [School 1] during his sophomore year. The Student receives psychological services in a classroom with other students. According to the Father, Dr. XXXX groups kids together who she believes will be supportive of each other and they work together through issues. Dr. XXXX and perhaps one other individual oversee the class. The Father explained that he liked the model provided at [School 1] because it helps to build the students' self-esteem and they learn social skills. The Father explained that the Parents sought psychological services for the Student because they thought it would be good for him, emotionally, and would provide him with a little help managing social situations and making friends.

The Father also testified that the Student did not have any friends at [School 3] and that this fact was not lost on the Student. Although he had friends on social media, like Facebook, he did not have a consistent group of friends who would invite him out or to events. To the contrary, the Father testified that the Student was subject to bullying while at [School 3], and surmised it may have been partly due to the fact that the Student is XXXX and wears a XXXX. Only at [School 1], testified the Father, did the Student appear to make friends and to begin to socialize with other students.

Dr. XXXX testified that to facilitate the Student's involvement in his psychological group, she creates a space for him – she involves him specifically in the conversation to engage him. According to Dr. XXXX, when the Student first started at [School 1], he did not participate in school dances or extracurricular activities, but since he began working with Dr. XXXX, he has joined the XXXX group and displayed real enthusiasm when talking about his religion and his faith. He has a group of friends and he seems much more socially-related.

XXXX XXXX, Associate Head of [School 1], testified that the Student has classified himself as somewhat of an introvert, but that he has shown improvement, socially, at [School 1]. To that end, Mr. XXXX also pointed to the fact that the Student participated in the XXXX Club during his junior year, and gave a presentation on XXXX. The Student also participated in the intern program at [School 1], through which he worked as a teacher aide at another school, working with five-and-six-year old students. According to Mr. XXXX, the Student seems happier and he has gotten more comfortable each year he attends [School 1]. To get to that point, offered Mr. XXXX, the Student required small classes, direct instruction, direct coaching and help with his social pragmatic skills.

Contrary to Dr. XXXX's testimony, Ms. XXXX testified that a clinical psychologist is not required to provide the types of services the Student needs to address his social anxieties,

behavior and transition to post-secondary education. Rather, opined Ms. XXXX, guidance counselors are educated to deal with social issues, anxiety, separation issues and crisis counseling. While Ms. XXXX believes that the services Dr. XXXX has provided the Student are excellent, those services could also be provided by a guidance counselor.

First, the extent of the Student's social deficits are unclear – at least as it pertains to his friendships. According to the Student's Father, he did not have any friends at [School 3]. However, according to Dr. XXXX, during her interview of the Student during psycho-educational testing, the Student reported that he was sad to leave his friends at [School 3], but glad to not have as much homework. (Parents 5) Accordingly, it is reasonable to conclude that the Student was able to establish at least a friend or two at [School 3].

The Student's Father testified that any friendships the Student developed at [School 3] were surface friendships, at best, and the Student was not included in any social gatherings or outings. Accepting the Student's Father's testimony as true, there is also no evidence that the Student developed any significant social connections at [School 1].

Furthermore, it is clear that the population is different and the environment at [School 2] is considerably larger than the population and environment at [School 1]. I have already determined that the Parents have failed to prove that the Student's educational difficulties require small, self-contained classes to allow him to make meaningful educational progress. I similarly find that the Student does not require clinical psychological services in a small special education school to make meaningful social progress.

In so finding, I note that, Ms. XXXX, testified that [School 2] is very diverse, and it is unlikely that the Student would be singled out for his ethnicity or religion. Further, she testified that [School 2] provides numerous opportunities for the Student to participate in smaller group settings geared toward enhancing self-advocacy and social skills. Particularly, she testified that

[School 2] has social groups for learning disabled children, including the Best Buddies program, within which general education students take on a “buddy” to assist in different aspects of educational and social life; a lunch bunch, where special education students may visit with a teacher during lunch to receive educational support and to interact socially; and, a program that partners members of the regional business community with students to assist them with achieving their goals and providing guidance regarding social, academic, and career matters.

It is also unclear whether [School 1] employs guidance counselors or whether *all* of the social and self-advocacy-based services at [School 1] are provided by a clinical psychologist. Regardless, the Parents did not offer sufficient evidence to prove that social skills, social appropriateness, and self-advocacy could not be addressed by a [School 2] guidance counselor. This is particularly so in light of the fact that [School 2]’s Best Buddies, lunch bunch, and community partnership programs, which allow students opportunities to work on such skills in conjunction with any services provided by the guidance counselor.

I have no reason to question the testimony of Dr. XXXX, the Father, and Mr. XXXX, that the Student has made social progress at [School 1]. I believe that he is much more involved, socially, and even enthusiastic about some aspects of social interaction. I also have no reason to doubt that the Student’s participation in Dr. XXXX’s therapy groups has played a role in his social development. It is also reasonable to conclude that the Student’s social strides occurred over time, and what Dr. XXXX and the Student’s Parents are seeing is the Student’s maturity.

Furthermore, as the Student has become even more social after beginning to take XXXX, it is unclear whether a source of the Student’s social anxiety is chemical in nature.

Regardless of the reason for the improvement, the Parents have not proven, through Dr. XXXX’s testimony or otherwise, that the Student can only receive appropriate counseling regarding social issues via a psychological professional. Certainly, the Parents have offered no

literature or other objective evidence that the Student could not benefit socially from counseling by a guidance counselor. This is particularly so in light of the fact that in addition to guidance counseling, [School 2] offers groups and opportunities for the Student to improve his social interactions.

Certainly, it is reasonable to assume that the Student would, initially, have social difficulty at [School 2], as would any other child who spent the previous three years acclimating to a different educational setting, but I cannot attribute that difficulty to the MCPS. Ultimately, the Parents have failed to prove that Student cannot continue to make social strides under the April 23, 2014 MCPS IEP.¹¹

The April 23, 2014 IEP and Placement at [School 2] constitutes the LRE for the Student

As I have stated, under the IDEA, in addition to crafting an IEP that is calculated to provide the child with educational benefit, the MCPS must focus on placing the child in the LRE. That is, it must, to the extent appropriate, place the child in an educational setting with non-disabled peers.

I have already determined that the Student's IEP was calculated to provide him with educational benefit and extensively considered and rejected the Parents' contention that the Student will not be able to derive educational benefit from instruction in general education

¹¹ The Parents assert that pursuant to *Steffey v. Anne Arundel County Public Schools*, Civil Action No. AMD 05-253 (January 13, 2006) and other authority, the MCPS must consider the needs of the child and any negative impact its placement will have on the Student's ability to access educational content. In *Steffey*, the student had significant anxiety issues associated with transitions and academic performance to the extent that the IEP at a small, self-contained school included an objective to address his difficulty with transitions. The IDEA dictates, at 34 C.F.R. § 300.116 dictates that MCPS must give consideration to any potential harmful effect on the Student or on the quality of services he needs when selecting the LRE. The Parents have presented no evidence to indicate that the Student's anxiety would *prevent* him from accessing the educational content at [School 2] with the supports and services offered by [School 2] and in his IEP. It is also clear from the evidence that MCPS a) was familiar with the Student as he had received his middle school education in MCPS schools; and b) extensively considered the Student's strengths and deficits, including his anxiety, via review of school records, observation of the student, input from the parents and Dr. XXXX, and [School 1] educators. After consideration of the full Student, to the extent possible, MCPS made the determination that the Student's placement at [School 2] to receive special education services commensurate with the April 23, 2014 IEP was appropriate. For reasons stated in this decision, I agree with that determination.

classes in a large high school. The placement of the Student to receive special education services at [School 2] accomplishes a paramount goal of the IDEA – to provide appropriate special education services for the child while exposing him to his non-disabled peers. I do not find, as the Parents’ argue, that the Student will be unable to make meaningful academic and social progress at [School 2], as the evidence presented does not support such a conclusion.

Accordingly, I find that the Student does not require placement in the most restrictive segregated environment on the continuum of placements under IDEA and the IEP’s proposed placement to receive special education services delineated in the April 23, 2014 IEP at [School 2], constituted placement in the LRE. It is clear to me that the Parents have worked diligently to find the best program to address the Student’s educational needs. To be sure, however, it is also clear that the Parents have been frustrated not only with the education the Student received at [School 3], but also at [School 4], where the Student attended first grade; [School 5], a private school, where the student attended second and third grade, at [School 7], where the Student attended fourth grade; and, at [School 3], for his middle school years. Indeed, according to the Father, the Parents transferred the Student so often because they were seeking a program that would result in better academic and social benefits for the Student. To that end, regarding the movement of the Student to multiple schools, the Father testified as follows: “You know, we’ve moved him so many times . . . You know, certainly not my first choice, but we’ve moved him every time because we wanted what was best for him, and if – if that’s what was best then we would have done it.” (T. Father, Tr. 461-462)

Later, the Father testified that he was interested in finding “what is the best solution for my son, absolutely - I didn’t say anything about getting the best education. I think I specifically said I wasn’t looking for this fabulous campus and trying to find this great place, it was – it was the best education for him – that we could get him.” (T. Father, Tr. 473).

While [School 1] may possess certain qualities that render it more appealing to the Parents than [School 2], case law provides an apt analogy when comparing programs available to students who qualify for special education. In *Doe v. Board of Education of Tullahoma City Schools*, 9 F.3d 455 (6th Cir. 1993), the Court found:

The Act requires that the Tullahoma schools provide the educational equivalent of a serviceable Chevrolet to every handicapped student. Appellant, however, demands that the Tullahoma school system provide a Cadillac solely for appellant's use. We suspect that the Chevrolet offered to appellant is in fact a much nicer model than that offered to the average Tullahoma student. Be that as it may, we hold that the Board is not required to provide a Cadillac, and that the proposed IEP is reasonably calculated to provide educational benefits to the appellant, and is therefore in compliance with the requirements of the IDEA.

Id. at 459-460.

For all the above reasons, I find that the April 23, 2014 IEP did not deny the Student a FAPE and the Parents are not entitled to reimbursement for [School 1] tuition for the 2013-2014 and 2014-2015 academic years or placement at [School 1] for the balance of the 2014-2015 school year. Additionally, when a FAPE has been offered that meets the special education and related services needs of a student with a disability, and the parents elect not to accept the program offered to their child by the public agency and instead choose to enroll their child in an independent school facility or residential setting, the public agency is not required to pay for that student's education. 34 C.F.R. § 300.148(a).

Finally, both parties argued regarding the appropriateness of [School 1] as a private placement for the Student. Pursuant to *Carter*, 510 U.S. 7, the appropriateness of the Parent's private placement choice is analyzed only if the IEP results in a denial of a FAPE. *Burlington*, 471 U.S. 359. In this matter, I have concluded that the IEP and placement offered by the public agency offers the Student a FAPE. Accordingly, an analysis pursuant *Burlington* and *Carter* is

inapplicable and the issue of whether the Parent's proposed placement is appropriate does not need to be addressed in this decision.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law April 23, 2014 IEP was appropriate and was reasonably calculated to meet the Student's unique needs and to enable the Student to receive educational benefit in the least restrictive environment. *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982); *Doe v. Board of Education of Tullahoma City Schools*, 9 F.3d 455 (6th Cir. 1993). I further find that the Student's Individualized Educational Program team fully considered the harmful effects of the educational placement recommendation in its determination that [School 2] constituted the least restrictive environment and an appropriate placement for the Student. 34 C.F.R. § 300.116.

Finally, I conclude that the Parents are not entitled to reimbursement for the cost of the Student's private school tuition at [School 1] because the IEP developed by MCPS on April 21, 2014 was designed to provide the student with a FAPE in the least restrictive environment. 34 C.F.R. § 300.148(a).

ORDER

I **ORDER** that the Due Process Complaint filed by the Parents on May 30, 2014 is **DISMISSED**.

January 2, 2015
Date Decision Mailed

JCJ/emh

Jennifer M. Carter Jones
Administrative Law Judge

REVIEW RIGHTS

Within 120 calendar days of the issuance of the hearing decision, any party to the hearing may file an appeal from a final decision of the Office of Administrative Hearings to the federal District Court for Maryland or to the circuit court for the county in which the Student resides. Md. Code Ann., Educ. §8-413(j) (2014). Should a party file an appeal of the hearing decision, that party 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 court action. The written notification of the filing of the court action must include the Office of Administrative Hearings case name and number, the date of the decision, and the county circuit or federal district court case name and docket number. The Office of Administrative Hearings is not a party to any review process.