



“Substantial evidence” means “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971). It is “more than a mere scintilla” of evidence, *id.*, but not necessarily “a large or considerable amount of evidence,” *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). Substantial evidence review takes into account the entire record and not just the evidence cited by the ALJ. *See Universal Camera Corp. v. NLRB*, 340 U.S. 474, 487–89 (1951); *Gordon v. Schweiker*, 725 F.2d 231, 236 (4th Cir. 1984). Ultimately, this Court must affirm the ALJ’s factual findings if “conflicting evidence allows reasonable minds to differ as to whether a claimant is disabled.” *Johnson v. Barnhart*, 434 F.3d 650, 653 (4th Cir. 2005) (per curiam) (quoting *Craig v. Chater*, 76 F.3d 585, 589 (4th Cir. 1996)). “A factual finding by the ALJ is not binding if it was reached by means of an improper standard or misapplication of the law.” *Coffman v. Bowen*, 829 F.2d 514, 517 (4th Cir. 1987).

A person under the age of eighteen is “disabled” under the Act if he or she “has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.” 42 U.S.C.

§ 1382c(a)(3)(C)(i). Social Security ALJs follow a three-step process to determine whether an applicant under the age of eighteen is disabled. The ALJ asks, in sequence, whether the applicant (1) is working; (2) has a severe impairment; and (3) has an impairment that meets, medically equals, or functionally equals an impairment listed in the Act. 20 C.F.R. § 416.924. To determine whether a child’s impairment functionally equals the listings, the ALJ evaluates its effect upon six domains of functioning: (1) acquiring and using information; (2) attending and completing tasks; (3) interacting and relating with others; (4) moving about and manipulating objects; (5) caring for himself or herself; and (6) health and physical well-being. 20 C.F.R. § 416.926a(b). If

the child has “marked” limitations in two domains or an “extreme” limitation in one domain, then his or her impairment functionally equals the listings. 20 C.F.R. § 416.926a(a). The applicant bears the burden of proving the disability. *See* 42 U.S.C. § 423(d)(5)(A); 20 C.F.R. § 416.912(a).

## II. Procedural History

Varner, C.R.E.’s mother, filed for SSI on his behalf on July 31, 2011. Administrative Record (“R”) 57, ECF No. 10. He was seven years old at the time. *Id.* Varner alleged that C.R.E. was disabled because of attention deficit hyperactivity disorder (“ADHD”), multiple personalities, and possible bipolar disorder. *Id.* Disability Determination Services (“DDS”), the state agency, denied his claims initially and on reconsideration. R. 57–63, 65–73. Varner and C.R.E. appeared with an attorney at an administrative hearing on July 3, 2013. R. 38–56. Varner testified about C.R.E.’s medical conditions and the limitations those conditions caused in his daily activities, R. 43–53, and C.R.E. testified about incidents raised by his mother’s testimony, R. 53–55.

The ALJ denied Varner’s application in a written decision dated September 26, 2013. R. 18–33. He found that C.R.E. had severe impairments of ADHD and mood disorder, but determined that those impairments, alone or in combination, did not meet or medically equal the severity of one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1. The ALJ next found that C.R.E. had no limitation in health and physical wellbeing or in moving about and manipulating objects and caring for himself. C.R.E. had a less than marked limitation in acquiring and using information, attending and completing tasks, and interacting and relating with others. R. 22–32. The ALJ accordingly determined that C.R.E. did not have an impairment

that functionally equaled the listings and was not disabled under the Act. R.32. The Appeals Council declined to review that decision, R. 1–3, and this appeal followed.

### III. Relevant Evidence

#### A. *Treatment Records*

The first treatment note in the record is from April 9, 2008, when Varner reported to a nurse that C.R.E. had always had behavior problems, was hyperactive, and did not listen. R. 272. He had violent stages where he would attempt to hit and kick Varner or the wall. C.R.E. began care with Hillary G. Whonder-Genus, M.D., at Harrisonburg Community Health Center (“HCHC”) on October 21, 2009. R. 264–67. C.R.E. was in kindergarten at the time. Varner reported that he was moody and difficult at home; while at school he was impulsive, talkative, and disruptive; and he had difficulty focusing and interacting with peers. He could brush his teeth, dress himself, and play interactive games, and he had normal fine and gross motor function. Varner did not report any significant or ongoing physical health issues. Dr. Whonder-Genus wrote that he was “[d]efinitely showing signs of ADHD,” and had Varner and his teacher completed Vanderbilt questionnaires<sup>1</sup> to evaluate the appropriateness of stimulant medications.

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<sup>1</sup> The “Vanderbilt Assessment Scales were developed through the Attention Deficit Hyperactivity Disorder (ADHD) Learning Collaborative project,” and are “used by healthcare professionals to help diagnose ADHD in children.” Nat’l Inst. for Children’s Health Quality, *Resources: Vanderbilt Assessment Scales*, <http://www.nichq.org/childrens-health/adhd/resources/vanderbilt-assessment-scales> (last visited Aug. 10, 2016).

Records that appear to be Vanderbilt Assessment questionnaires from Varner and C.R.E.’s teacher are included in the record, but are too faded from scanning distortion to be entirely intelligible at one part of the record, *see* R. 274–77, and at all legible at another, *see* R. 317–20. Varner argues that the Commissioner failed her obligation to provide a complete record by not including comprehensible copies of these records, and Varner requests remand on that basis. Pl. Br. 6–7, ECF No. 16. The questionnaires are used to assess ADHD. From C.R.E.’s subsequent diagnosis and treatment it is clear that the answers likely indicated that he had ADHD. Though the specific categories and ratings from these questionnaires are lost, the conclusion is known and C.R.E.’s record is replete with many other categorical evaluations of his capacities and limitations from physicians, Varner, and C.R.E.’s teachers. These questionnaires were completed in 2009 before C.R.E. began treatment for his impairments. Because the information in these questionnaires concerns the period before C.R.E. began treatment and that information is likely

R. 266. Varner also completed an initial history questionnaire on October 21, where she indicated that C.R.E. had no problems and was great in school, but exhibited behavioral issues at home. R. 312–13.

On December 15, 2009, Varner told Dr. Whonder-Genus that C.R.E. had been given an in-school suspension for choking a fellow student. R. 269–70. His teachers reported his behavior of hitting, scratching, and not following directions, and Varner stated that he was aggressive and uncontrollable at home. Dr. Whonder-Genus assessed ADHD and antisocial behavior, prescribed Concerta to address the ADHD, and referred C.R.E. to a psychiatrist for evaluation. Aamir Mahmood, M.D., performed a psychiatric evaluation of C.R.E. on January 13, 2010. R. 296–98. Varner reported that he had difficulty paying attention, did not follow directions, threw tantrums, and behaved erratically. She said that the Concerta had not made a substantial difference in his symptoms. Dr. Mahmood noted that C.R.E. had been physically healthy throughout his life and did not have symptoms consistent with major depressive disorder, bipolar disorder, and psychotic disorder. C.R.E. was “obviously hyperactive” throughout the examination, constantly moving and shifting his attention. He did not appear to be responding to internal stimuli and had difficulty answering questions for lack of focus. His mood was okay, his affect was near full range, and his speech was normal. Dr. Mahmood could not assess his intelligence, insight, or judgment because of limited engagement. Dr. Mahmood assessed a Global Assessment of Functioning (“GAF”) score of 54<sup>2</sup> and diagnosed ADHD and mood disorder not otherwise

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cumulative of other statements in the record, I cannot agree that these questionnaires would have more than a de minimis impact on the outcome of this case. Furthermore, Varner’s counsel has not represented, much less shown, that legible copies of the questionnaires exist. Accordingly, I do not find this deficiency in the record warrants remand.

<sup>2</sup> GAF scores represent a “clinician’s judgment of the individual’s overall level of functioning.” Am. Psychiatric Ass’n, *Diagnostic & Statistical Manual of Mental Disorders* 32 (4th ed. 2000) (*DSM-IV*). The GAF scale is divided into ten 10-point ranges reflecting different levels of symptoms or functioning, with

specified. He increased C.R.E.'s Concerta dosage and started him on Risperdal to address his mood issues.

C.R.E. returned to Dr. Mahmood on February 4, 2010.<sup>3</sup> R. 295. Varner reported that he had been better since the increase in his medication dosage, though he still had some residual mood problems. He had no side effects from his medication. His mood was okay, and his affect had good range. Dr. Mahmood noted improvement in C.R.E.'s symptoms and increased his Risperdal dosage. On March 4, Varner reported that C.R.E.'s ADHD symptoms were much improved and he was functioning better in school, though he still had some problems at home. R. 294. His mood was okay, and his affect was baseline. Dr. Mahmood prescribed Ritalin. On May 24, C.R.E.'s symptoms were stable, he appeared less hyperactive, his mood was okay, and his affect was constricted. R. 291. On August 24, Varner reported that C.R.E. was stable on his medications, but had run out the previous month. R. 289. His mood was okay, his affect had good range, and Dr. Mahmood continued his medications. On October 25, C.R.E.'s ADHD was stable, but his mood remained a problem at home and in school, where he'd threatened to hit another child. R. 288. Dr. Mahmood started C.R.E. on Tenex to address his continued mood issues. Two months later, Varner reported that he had been doing much better in school since starting Tenex and that his mood and behavior were consistently better. R. 286. He appeared less hyperactive, his mood was okay, and his affect was baseline. Throughout 2010 and the start of

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1–10 being the most symptomatic or least functional, and 91–100 being the least symptomatic or most functional. *See id.* The ranges do not distinguish between symptoms and functional impairments. *See id.* Thus, when “the individual’s symptom severity and level of functioning are discordant, the final GAF [score] always reflects the worse of the two.” *Id.* at 32–33. A GAF score of 51–60 indicates “[m]oderate symptoms (e.g., flat affect and circumstantial speech, occasional panic attacks) OR moderate difficulty in social, occupational, or school functioning (e.g., few friends, conflicts with peers or co-workers).” *Id.* at 34.

<sup>3</sup> Most of Dr. Mahmood’s treatment notes are handwritten and partially illegible.

2011, Varner and C.R.E. also missed five appointments with Dr. Mahmood, *see* R. 293 (April 19), 292 (May 5), 290 (June 24), 287 (November 24), 285 (February 11).

On May 5, 2011, Joseph J. Cianciolo, Ph. D., performed a psychological examination and assessment pursuant to a DDS referral. R. 324–25. Varner told Dr. Cianciolo that C.R.E. was attending first grade in a mainstream classroom, though he had very poor academic performance the past year and the school was considering retaining him in first grade. He had recently failed a school-administered hearing test. Varner reported that he had significant attention and behavioral problems when he did not take his medications, but had quite a favorable response to medication, with teachers noting the difference. Varner said that he had not taken medication the morning of the examination. Dr. Cianciolo found that C.R.E.'s gross and fine motor control were age-appropriate. He was very physically active, in constant motion throughout the assessment. His mood was euthymic with a broad and congruent affect. Dr. Cianciolo informally assessed intellectual functioning within the low average range and found C.R.E. had age-appropriate insight and judgment. He assessed ADHD with a GAF score of 60. He recommended continuing outpatient psychiatric treatment and offered a guarded prognosis for significant change.

C.R.E. returned to Dr. Mahmood on October 7, 2011. Varner reported that his hyperactivity and impulsivity were improved since starting Intuniv. R. 411. His mood was okay, and Dr. Mahmood continued his medications. On November 28, C.R.E.'s ADHD and mood were stable, at home and in school. R. 410. His mood was okay and his affect was baseline.

Dr. Whonder-Genus performed a well-child examination for C.R.E. on January 4, 2012. R. 392–95. She noted that he dressed without supervision, did chores, had good peer interaction, and enjoyed outdoor activities. School was going well, he did his homework, he read for fun, and he had recently improved to reading at his grade level. His eyesight and hearing were fine, and

he had no reported health issues. Varner reported some continued behavioral issues at school. Dr. Whonder-Genus found C.R.E. to be in general good health and diagnosed ADHD. His listed medications were Concerta, Intuniv, and Risperdal.

On January 25, 2012, Varner reported to Dr. Mahmood that C.R.E. had been out of control in school with worsening ADHD and behavioral issues. R. 409. Dr. Mahmood replaced C.R.E.'s Concerta prescription with Adderall and continued his other medications unchanged. By February 14, he was doing much better, and his teachers had noticed a substantial change since he began Adderall. R. 408. His mood was ok, and his affect had improved range. His ADHD symptoms continued to be better a month later, and Dr. Mahmood discussed techniques to improve his behavior with Varner. R. 407. On May 8, Varner reported that he continued to do "really well" at home and in school, with no repeat of his previous emotional meltdown. R. 431.

On August 1, 2012, Varner reported that C.R.E. was again out of control. R. 430. He was hitting his siblings and not listening. Varner did not think the Adderall was working to curb his symptoms. Dr. Mahmood found that C.R.E. had an okay mood and unpredictable affect and replaced his Adderall prescription with Vyvanse. Varner noticed no change in his behavior by August 31. R. 429. During an appointment that day, Dr. Mahmood noted that C.R.E. appeared "a little hyper" with an okay mood, and he increased C.R.E.'s Vyvanse dosage. On October 16, C.R.E. still did not show improvement and was struggling with his academics, mood, and behavior in school. R. 428. He appeared hyperactive, with an okay mood and baseline affect. Dr. Mahmood increased his Risperdal dosage. When C.R.E. still did not show improvement on November 12, Dr. Mahmood switched his Vyvanse prescription to Focalin. R. 427. Varner reported on November 28 that she could not get the new medication because of insurance issues, R. 426, and on January 11, 2013, that he was taking Focalin, but she had not noticed much

improvement, R. 425. Dr. Mahmood noted that C.R.E. was hyperactive, impulsive, and did not listen during the January appointment. R. 425. He increased C.R.E.'s Focalin dosage. C.R.E. remained hyperactive on February 12 and Varner reported that she received "almost daily complaints from school." R. 424. Dr. Mahmood switched C.R.E.'s Focalin prescription to Daytrana.

On March 12, 2013, C.R.E. had a psychiatric evaluation with James Styron, M.D., after he stabbed a classmate in the shoulder with a pair of scissors. R. 468–73. Varner reported that he was defiant at home and school, pushed his brother around, made his sister cry, and had severe mood swings.<sup>4</sup> She also stated that his impulsivity and difficulty concentrating became more pronounced after lunch. C.R.E. was in normal second grade classes and had repeated first grade "because of losing about ½ a year of school during a transition after moving." R. 470. He overall got along well with his peers. He had poor judgment, age-appropriate insight, poor attention and concentration, a euthymic mood, and a restricted affect. Dr. Styron diagnosed ADHD, mood disorder not otherwise specified, and conduct disorder, childhood onset type. His current medications were listed as Risperdal, Concerta, and Intuniv. Dr. Styron split the Concerta dose between morning and lunchtime to address C.R.E.'s afternoon ADHD symptoms and recommended therapy and counseling.

C.R.E. returned to Dr. Styron on April 16, 2013. R. 463–66. Varner reported that he was refusing to do work in school and she did not think the Concerta was working. On examination, his judgment, insight, attention, and constitution were age-appropriate, his mood was euthymic, and his affect was congruent with full range. Dr. Styron switched C.R.E.'s Concerta prescription to Metadate. On May 21, Varner told Dr. Styron that C.R.E. was paying attention and doing

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<sup>4</sup> She also stated that Dr. Mahmood diagnosed him as bipolar, though Dr. Mahmood did not find his symptoms to be consistent with bipolar disorder in his initial examination, R. 296, and there are no treatment notes indicating he reversed that assessment.

better in school, but still had problems at home. R. 476–78. He had age-appropriate judgment, insight, attention, and concentration, a euthymic mood, and a congruent affect with full range. Dr. Styron increased the Metadate dosage to address residual ADHD symptoms and wrote that “likely some [of C.R.E.’s] behavioral issues will not be addressed by ADHD med[ications].” R. 477.

*B. School Records*

During the 2010–2011 school year, C.R.E. was in first grade and attended two schools. He began at Waterman Elementary School, where reading specialist Shelia Shields said that he has difficulty staying focused at times. R. 243–44. His homeroom teacher, Lori Copley, stated that some days C.R.E. is very good and tries hard to follow directions and listen, but other days he has trouble focusing and following rules. He was below grade level in reading and had difficulty at lunch because of unmannered eating habits. C.R.E. attended John C. Myers Elementary for the second half of the school year. R. 235–37. Homeroom teacher Holly Bazzle said he was a hard worker and she was impressed with the progress he made throughout the year, but she wanted to retain him in first grade because he was still below grade level in reading and math. Ms. Bazzle evaluated C.R.E.’s personal growth and work habits on a four-point scale of Outstanding, Satisfactory, Progressing, and Needs Improvement. She rated him Outstanding or Satisfactory in obeying class rules, staying on task, respecting and getting along with others, working for neatness, working independently, completing class work on time, and returning homework on time. On following directions, she rated him Progressing for one quarter and Outstanding for the other two.

On March 14, 2011, John C. Myers conducted a disability eligibility review for C.R.E.

because he had failed a hearing test in his right ear,<sup>5</sup> R. 174, and the new student speech screening indicated the need for further testing of speech sounds, R. 455. R. 166–74. The review found that he was difficult to understand at times, had difficulty sounding out words, communicated well with his teacher, was distracted during a classroom observation, had mild articulation errors, scored average language tests, and demonstrated mild dysfluency. The committee concluded that his “mild speech errors” were not a disability, though speech intervention might be appropriate.

In the 2011–2012 school year, C.R.E. attended first grade with Candice Ray. R. 238–40. Ms. Ray wrote that he was very bright and wanted to do well academically, but sometimes had difficulty focusing and became too concerned with what other students were doing. She stated that he was a determined, hard worker and though new things did not always come easy to him, he never gave up. She concluded that he grew a great deal both academically and socially over the course of the year. Ms. Ray rated C.R.E. in the same personal and work habits as Ms. Bazzle had the year before and found him Satisfactory or Progressing in all categories.

For the 2012–2013 school year, C.R.E. took second grade with Ms. Payne, who wrote that C.R.E. was a determined student who learned quickly. R. 446. Often his behavior hindered his learning, but other times he was focused and completed his work on time. She noted that he read on a third-grade level, though his words correct per minute and fluency were low. She rated his work habits and conduct on a three-point scale of Excellent, Good, and Needs Improvement. R. 234. She rated C.R.E. as Excellent or Good for all four quarters in working well independently, showing effort, using time wisely, participating, showing respect to people and property, and interacting well with peers. She rated him Needs Improvement for one quarter out

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<sup>5</sup> The school nurse administering the test observed wax accumulation in his ears, and there is no further indication of hearing problems in the record. C.R.E. had unremarkable hearing examinations elsewhere in the record, *see, e.g.*, R. 313, 393, and Varner does not argue a hearing impairment.

of four in listening attentively, following directions, and accepting responsibility for work and behavior, and she rated him Needs Improvement for two quarters out of four in showing self control.

*C. Reported Activities*

On April 5, 2012, Varner completed a function report for C.R.E, who was 8 years old at the time. R. 203–12. She reported that he had no difficulties seeing or hearing, could talk clearly, and was able to be understood most of the time. He could deliver telephone messages, repeat stories, tell jokes and riddles accurately, explain why he did something, talk with family and friends, and use sentences with “because,” “what if,” and “should have been.” She did not think his learning progress was limited, but noted that he could not write in script, write simple stories of six to seven sentences, add and subtract numbers over 10, make correct change, or tell time. She was not sure if C.R.E.’s physical abilities were limited, indicating that he could walk, run, throw a ball, ride a bike, use scissors, work video game controls, and dress and undress dolls or action figures, but could not jump rope, swim, or use roller skates or roller blades. She thought that his impairments affected his behavior with other people, but indicated that while he could not play team sports, he had friends, could make new friends, and generally got along with adults and school teachers. His impairments did not affect his ability to handle his own personal care, but he did not do what he was told most of the time or accept criticism or correction. He could complete homework and work on arts and crafts projects, but could not keep busy on his own, finish things he started, or complete chores most of the time. Varner wrote that he did not listen to her and was always fighting with his brother and other children.

#### IV. Discussion

On appeal, Varner argues that the ALJ erred in concluding that C.R.E.'s impairments did not functionally equal the listings, Pl. Br. 12–14, and in weighing Dr. Mahmood's opinion, *id.* at 7–12.

##### A. *Listings Functional Equivalence*

The ALJ's listings functional equivalency analysis is divided into four sections: recounting the medical evidence, evaluating the general severity of C.R.E.'s symptoms in light of that evidence, analyzing the medical opinions, and finally making discrete findings for each of the six functional domains, with reference to C.R.E.'s function report and teachers' comments in support. R. 22–32. In reviewing the sufficiency of the ALJ's reasoning for each individual domain, the Court considers his references to C.R.E.'s function report and teachers' comments as well as his earlier analysis of the medical evidence and opinions.

A child functionally equals the listings if his or her impairment causes “marked” limitations in two domains of functioning or an “extreme” limitation in one domain. 20 C.F.R. § 416.926a(a). A limitation is “marked” when an “impairment interferes seriously with [a child's] ability to independently initiate, sustain, or complete activities. . . . [It] means a limitation that is ‘more than moderate’ but ‘less than extreme.’” 20 C.F.R. § 416.926a(e)(2). A limitation is “extreme” when an “impairment interferes very seriously with [a child's] ability to independently initiate, sustain, or complete activities. . . . [It] means a limitation that is ‘more than marked.’ [It] is the rating we give to the worst limitations. . . . [but] does not necessarily mean a total lack or loss of ability to function. 20 C.F.R. § 416.926a(e)(2). The ALJ must consider the “whole child,” and evaluate the child's functional capabilities in all settings

compared to other children the same age who do not have impairments. SSR 09-1P, 2009 WL 396031, at \*1–2 (Feb. 17, 2009).

In this case, the ALJ determined that C.R.E. had less than marked limitations in acquiring and using information, attending and completing tasks, and interacting and relating with others, and no limitation in his health and physical well-being or in moving about and manipulating objects or caring for himself. R. 26–32. Varner contends that substantial evidence does not support these conclusions. As explained further below, substantial evidence supports the ALJ’s given reasons and resulting conclusions.

Acquiring and using information concerns a child’s ability to learn and apply new information in all settings, including in school, at home, and in the community. *See* 20 C.F.R. § 416.926a(g); SSR 09-3P, 2009 WL 396025, at \*1–2 (Feb. 17, 2009). The Social Security Administration has issued guidance indicating that a child between the ages of six and twelve should generally be able to learn to read, write, and do simple arithmetic; become interested in new subjects and activities; demonstrate learning through oral and written projects, solving arithmetic problems, taking tests, doing group work, and engaging in class discussions; apply learning to daily activities at home; and use increasingly complex language to express himself or herself. 20 C.F.R. § 416.926a(g); SSR 09-3p, 2009 WL 396025, at \*5. Some nonexclusive examples of limitations in this domain include failing to understand words about space, size, or time; inability to rhyme words or sounds; difficulty recalling important things learned the day before; difficulty solving mathematical questions; or difficulty explaining oneself or using complex sentences. 20 C.F.R. § 416.926a(g).

Substantial evidence supports the ALJ’s decision that C.R.E. has less than marked limitation in this domain. Although the record indicates that C.R.E.’s ADHD interfered with his

ability to perform well at school, the record also shows overall academic achievement. “Poor grades or inconsistent academic performance are among the more obvious indicators of a limitation in this domain provided they result from a medically determinable mental or physical impairment(s).” SSR 09-3p, 2009 WL 396025, at \*2. C.R.E. was below grade level in math and reading during his 2010–2011 school year and consequently retained in first grade. Varner indicated that his struggles in first grade were in part because of moving halfway through the year, R. 470, and his teacher’s comments support that assessment. Ms. Bazzle, his second teacher from that year, said that although she recommended retaining him, she was impressed with his progress since starting in the middle of the year.

In the following year, Ms. Ray said that he was bright and, though things did not always come easily to him, over the course of the year she thought he grew a great deal academically. While C.R.E. received almost exclusively Needs Improvement marks in reading, writing, and math in 2010–2011, he received exclusively Progressing or Satisfactory marks in those subjects in 2011–2012. By the 2012–2013 school year, his teacher stated that he learned quickly, and he earned Excellent or Good ratings in every academic subject, except for his second quarter of Spanish, and he was reading at a third-grade level. R. 234.

Treatment records support the ALJ’s finding that he does not have a marked limitation in this domain. Dr. Whonder-Genus found during C.R.E.’s well-child examination that his school and home work were going well, he could tell time, he knew the days of the week, and he read for pleasure. R. 392. Dr. Cianciolo examined C.R.E. when he had not taken his medication and informally assessed intellectual functioning within the low average range, with age-appropriate insight and judgment. Furthermore, though it is not determinative, “[t]he kind, level, and frequency of special education, related services, or other accommodations a child receives can

provide helpful information about the severity of the child's impairment(s).” SSR 09-3p, 2009 WL 396025, at \*3. A review committee at John C. Myers Elementary concluded that C.R.E. was not eligible for special education services, noting that all his language testing was in the normal range.

Finally, Varner indicated in the April 2012 function report that she did not think C.R.E.’s learning progress was limited. She specifically marked that he could read and understand simple sentences and stories, print some letters, spell most three to four letter words, and remember the days of the week and months of the year. R. 207. Accordingly, the ALJ did not err in finding C.R.E.’s functioning in this domain to be less than marked.

Attending and completing tasks concerns a child’s ability to focus and maintain attention, and to begin, carry out, and finish activities and tasks. 20 C.F.R. § 416.926a(h); SSR 09-4P, 2009 WL 396033, at \*2 (Feb. 18, 2009). The Social Security Administration indicates that a child between the ages of six and twelve should be able to focus long enough to complete class work and homework, remember and follow directions, and change activities without distracting himself or herself or others. 20 C.F.R. § 416.926a(h); SSR 09-4P, 2009 WL 396033, at \*3. Some nonexclusive examples of limitations in this domain include getting easily startled or distracted by sounds, sights, movements, or touch; being slow to focus on, or fail to complete activities of interest; repeatedly becoming sidetracked or interrupting others; getting easily frustrated and giving up on tasks; and requiring extra supervision. 20 C.F.R. § 416.926a(h).

The record demonstrates that C.R.E.’s ADHD affected his ability to concentrate and stay on task, but it also demonstrates that he overall responded well to medication and was generally able to maintain enough concentration to succeed in school. Within a month after C.R.E. began treatment with Dr. Mahmood, Varner reported that his ADHD symptoms were much improved

and he was doing better in school. Throughout 2010 and 2011, his ADHD conditions were reported and observed to be stable. *See, e.g.*, R. 295 (February 4, 2010), 286 (December 13, 2010), 411 (October 7, 2011). In January 2012, Varner reported worsening ADHD symptoms, R. 409, but they improved with medication by February, R. 408, and remained improved until August. From August 2012 through April 2013, Varner consistently reported uncontrolled ADHD symptoms, and C.R.E.'s physicians tried multiple medication regimes before finding one that worked. On May 21, Varner reported that he was once again paying attention and doing well in school. R. 476. While C.R.E. had some periods of increased symptoms, he overall responded well to medication and did not experience a twelve-month period of increased symptoms despite medication.

Varner reported that C.R.E. could complete homework and work on arts and crafts projects, but could not keep busy on his own, finish things he started, or complete chores most of the time. Ms. Bazzle rated him Outstanding or Satisfactory in staying on task, working independently, completing class work on time, and returning homework on time. Ms. Ray rated him Satisfactory or Progressing in all categories. Ms. Payne rated him as Excellent or Good for all four quarters in working independently and for three out of four quarters in listening attentively. All of his teachers stated that he was a determined student who worked hard and did not give up.

Overall, the record indicates that C.R.E.'s ADHD affected his ability to concentrate and stay on task, but considering his response to medication and consistent ability to perform adequately in school, the ALJ reasonably found that C.R.E.'s impairment did not cause marked limitation in this domain. *See, e.g., Gross v. Heckler*, 785 F.3d 1163, 1165–66 (4th Cir. 1986)

(finding that conditions reasonably controlled by medication are not disabling); *Ratliff v. Barnhart*, 580 F. Supp. 2d 504, 517 (W.D. Va. 2006) (same).

Interacting and relating with others concerns a child's ability to initiate and sustain emotional connections with others, develop and use language in the community, cooperate, comply with rules, respond to criticism, and respect and take care of others' possessions. 20 C.F.R. § 416.926a(i); SSR 09-5P, 2009 WL 396033, at \*2 (Feb. 17, 2009). The Social Security Administration indicates that a child between the ages of six and twelve should be able to develop lasting friendships with peers, understand how to work in groups, understand another's point of view, form relationships with adults other than parents, and share ideas and stories with others. 20 C.F.R. § 416.926a(i); SSR 09-5P, 2009 WL 396033, at \*6. Some nonexclusive examples of limitations in this domain include having no close friends; avoiding known people or feeling anxious about meeting new people; difficulty playing games or sports with rules; difficulty communicating to others; and difficulty speaking intelligibly or with adequate fluency. 20 C.F.R. § 416.926a(i).

As with attention and concentration, the record indicates that C.R.E.'s mental impairments affected his ability to interact with others, but he responded to treatment and maintained reasonable function in this domain. In December 2009, Dr. Whonder-Genus assessed C.R.E. with antisocial disorder after Varner reported that he had been suspended for choking another student. R. 264. In February and March 2010, his symptoms were improved on medication and he was functioning better in school, though he still had problems at home. In October 2010, he threatened to hit another student, and Dr. Mahmood prescribed Tenex. R. 288. Varner reported in December 2010 that he had been doing much better in school since starting Tenex and that his mood and behavior was consistently better. R. 286.

In October and November 2011, Varner reported that he continued to do better on medication and was relatively stable at home and school. R. 410–11. Dr. Whonder-Genus noted during her well-child examination that he had good peer interaction, but also some disciplinary issues at school. R. 392–93. His symptoms were stable in March and May 2012, R. 407, 431, but Varner said in August that his behavior was out of control and he had hit his brother and sister, R. 430. In February 2013, Varner reported getting almost daily complaints from school. R. 424. C.R.E. began seeing Dr. Styron in March 2013 after he stabbed another student in the shoulder with scissors. R. 468. Dr. Styron noted anger and fits, but also recorded that he got along well with his peers and was consistently cooperative and engaging during examinations.

Varner reported that C.R.E. could talk clearly and was understandable most of the time; could repeat stories, tell jokes and riddles accurately, and explain why he did something; and had friends, could make new friends, and generally could get along with adults and school teachers. R. 206, 209. Ms. Bazzle rated him Outstanding or Satisfactory in obeying class rules and respecting and getting along with others. R. 236. Ms. Ray wrote that he “want[ed] to be a good friend to others” and grew a great deal socially over the course of the 2011–2012 school year, and she rated him the same as Ms. Bazzle did. R. 239–40. Ms. Payne rated him as Excellent or Good for all four quarters in participating, showing respect to people and property, and interacting well with peers; rated him Needs Improvement for one quarter out of four in following directions and accepting responsibility for work and behavior; and rated him Needs Improvement for two quarters out of four in showing self control. R. 234.

This record shows that C.R.E. has had regular behavioral issues and bouts of anger and aggression. It does not establish, however, that he has been unable to initiate and sustain emotional connections, develop and use language, cooperate, comply with rules, and respect

others' possessions. Providers consistently noted that despite his outbursts, C.R.E. had good relationships with his peers, made friends, interacted with adults, and used language effectively. His teachers consistently rated him highly in skills related to communication and interpersonal interactions. Further, treatment records indicate that medication, while not completely resolving his behavioral issues, did help to curb his aggressive behavior. Based on his treatment record and continued largely successful social interactions at school, the ALJ reasonably determined that C.R.E.'s impairment did not interfere with this domain to the degree of marked limitation.

The final three functional domains concern physical and general health activities: moving about and manipulating objects, ability to care for oneself, and health and physical well-being. The ALJ found that C.R.E. had no limitations in these domains, and the record universally supports his determination. There are no records showing that C.R.E. had any motor control issues, difficulty handling personal care, or any ongoing illnesses or physical ailments. At C.R.E.'s first appointment with Dr. Whonder-Genus in October 2009, he was noted to brush his teeth, dress himself, play interactive games, and have normal fine and gross motor function. R. 264–65. Varner told Dr. Mahmood in January 2010 that C.R.E. had been “healthy throughout his life.” R. 296. Dr. Cianciolo found that C.R.E.'s gross and fine motor control were age-appropriate in May 2011, R. 324, and in January 2012, Dr. Whonder-Genus noted that he had normal muscle tone and motor development, dressed without supervision, did chores, enjoyed outdoor activities, and had no ongoing health issues. R. 392–93. Additionally, Varner indicated that C.R.E. could walk, run, throw a ball, ride a bike, use scissors, work video game controls, and dress and undress dolls or action figures, though he could not jump rope, swim, or use roller skates or roller blades. C.R.E. also consistently received excellent marks in physical education. *See* R. 234, 236, 239. Considering the one-sided nature of the record, the ALJ did not err in

concluding that he had no limitations in the last three functional domains.

Accordingly, I find that substantial evidence supports the ALJ's analysis and conclusion that C.R.E. does not have a marked limitation in any of the six functional domains.

*B. Opinion Analysis*

“Medical opinions” are statements from “acceptable medical sources,” such as physicians, that reflect judgments about the nature and severity of the claimant’s impairment, including his symptoms, diagnosis and prognosis, functional limitations, and remaining abilities. 20 C.F.R. § 416.927(a)(2). The regulations classify medical opinions by their source: those from treating sources and those from non-treating sources, such as examining physicians and state-agency medical consultants. *See* 20 C.F.R. § 416.927(c). A treating-source medical opinion is entitled to controlling weight if it is “well-supported by medically acceptable clinical and laboratory diagnostic techniques” and “not inconsistent with the other substantial evidence in the record.” *Mastro v. Apfel*, 270 F.3d 171, 178 (4th Cir.2001); 20 C.F.R. § 416.927(c)(2). If the ALJ finds that a treating-source medical opinion is not entitled to controlling weight, then he must weigh the opinion in light of certain factors including the source’s medical specialty and familiarity with the claimant, the weight of the evidence supporting the opinion, and the opinion’s consistency with other relevant evidence in the record. *Burch v. Apfel*, 9 F. App’x 255, 259 (4th Cir.2001) (per curiam); 20 C.F.R. § 416.927(c)(2). The ALJ must consider the same factors when weighing medical opinions from non-treating sources. 20 C.F.R. §§ 416.927(c), 416.927(e)(2).

The ALJ must explain the weight given to all medical opinions, *Radford v. Colvin*, 734 F.3d 288, 295–96 (4th Cir. 2013), and he must give “good reasons” for the weight assigned to any treating-source medical opinion, 20 C.F.R. § 416.927(c)(2); *see Mastro*, 270 F.3d at 178 (the

ALJ may reject a treating-source medical opinion “in the face of persuasive contrary evidence” only if he gives “specific and legitimate reasons” for doing so). His “decision ‘must be sufficiently specific to make clear to any subsequent reviewers the weight [he] gave’ to the opinion and ‘the reasons for that weight.’” *Harder v. Comm’r of Soc. Sec.*, No. 6:12cv69, 2014 WL 534020, at \*4 (W.D. Va. Feb. 10, 2014) (citing SSR 96–8p, at \*5).

On June 5, 2012, Dr. Mahmood completed a Childhood Disability Evaluation Form, which listed the six functional domains for functional equivalency and provided boxes that a care provider could check to indicate a level of severity. R. 420–21. Dr. Mahmood indicated that C.R.E. had less than marked limitation in moving about and manipulating objects and extreme limitation in acquiring and using information, attending and completing tasks, interacting and relating with others, caring for himself, and health and physical well-being. The form also provided space to cite evidence in support of the findings, but Dr. Mahmood left this section blank.

The ALJ summarized Dr. Mahmood’s opinion, then stated,

While Dr. Mahmood is a treating physician with a longitudinal treating relationship with the claimant, his findings and opinion are not consistent with the broad overview of objective medical records and the objective findings stated therein, and it is completely inconsistent with the statements of the claimant’s teachers in the school records filed post-hearing. Accordingly, the undersigned grants the opinion of Dr. Mahmood little weight.

R. 26.

The ALJ provided broad and conclusory reasons why he lent little weight to Dr. Mahmood’s opinion, and the “narrative discussion describing how the evidence supports” this particular part of his analysis should have been more substantive. *Mascio v. Colvin*, 780 F.3d 632, 636 (4th Cir. 2015) (quoting SSR 96-8p, 1996 WL 374184, at \*7). The ALJ’s analysis, nevertheless, adequately allows for judicial review, given the evidence of record. Though the

ALJ listed two broad categories in support of his opinion analysis, both were analyzed in greater detail—and with ample citation to the record—in other parts of his opinion. The ALJ stated that Dr. Mahmood’s conclusions were at odds with the medical records and objective findings therein. In the pages preceding this statement, the ALJ summarizes the medical evidence, R. 22–25, then provided an analysis of that evidence, concluding that C.R.E.’s treatment had been relatively conservative and he had responded well to medication. As discussed in the previous section, the record supports this conclusion.

The ALJ also said he discounted Dr. Mahmood’s opinion because it was at odds with the statements of C.R.E.’s teachers. As part of his functional equivalency analysis, the ALJ cited and discussed C.R.E.’s educational records as they related to each individual functional domain, which are the same domains Dr. Mahmood addressed. As demonstrated by the previous section, substantial evidence supports the ALJ’s conclusion that those records do not support finding a marked or extreme limitation in any functional domain. Though the ALJ gave conclusory reasons for his analysis of Dr. Mahmood’s opinion, those reasons were explicated and well supported with detailed analysis and citation to the record in other parts of his opinion.

Additionally, Dr. Mahmood’s own treatment notes prior to his opinion indicate that C.R.E.’s symptoms were adequately controlled through medication. Since adjusting C.R.E.’s medications in January 2010 shortly after beginning to treat him, Dr. Mahmood consistently recorded that his symptoms were improved or stable through the end of 2011. *See, e.g.*, R. 295 (February 4, 2010), 286 (December 13, 2010), 411 (October 7, 2011). In January 2012, C.R.E. had an increase in symptoms, R. 409, but he was much better in February after starting new medications, R. 208, his ADHD symptoms were improved in March, R. 407, and he was doing well in school and at home in May, R. 431. The fact that Dr. Mahmood’s own records leading up

to his opinion are at odds with his finding of extreme impairments in five functional domains discredits his opinion. *See Craig v. Chater*, 76 F.3d 585, 590 (4th Cir. 1996) (substantial evidence supported ALJ's decision to reject treating physician's conclusory opinion where the opinion was not supported by the physician's own treatment notes and was inconsistent with other evidence in the record); *Kersey v. Astrue*, 614 F. Supp. 2d 679, 693 (W.D. Va. 2009) (noting that the ALJ may assign little or no weight to a treating-source opinion "if he sufficiently explains his rationale and if the record supports his findings").

Furthermore, the record does not contain persuasive contrary evidence to support Dr. Mahmood's opinion. Thus, this case does not present the situation that the Fourth Circuit addressed in *Mascio* where the ALJ had failed to discuss conflicting evidence or explain why it did not affect the claimant's RFC. *See Mascio*, 780 F.3d at 636-37. Here, the evidence was largely consistent, and the ALJ discussed the relevant evidence, analyzed C.R.E.'s functional domains, and provided reasonable grounds for discrediting Dr. Mahmood's opinion. Accordingly, I find that substantial evidence supports his assessment of Dr. Mahmood's opinion.

#### V. Conclusion

The Court must affirm the Commissioner's final decision that C.R.E. is not disabled if that decision is consistent with the law and supported by substantial evidence in the record. The Commissioner has met both requirements. Accordingly, I recommend that the presiding District Judge **DENY** Varner's motion for summary judgment, ECF No. 15, **GRANT** the Commissioner's motion for summary judgment, ECF No. 17, **AFFIRM** the Commissioner's final decision, and **DISMISS** this case from the docket.

#### Notice to Parties

Notice is hereby given to the parties of the provisions of 28 U.S.C. § 636(b)(1)(C):

Within fourteen days after being served with a copy [of this Report and Recommendation,] any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

Failure to file timely written objections to these proposed findings and recommendations within 14 days could waive appellate review. At the conclusion of the 14 day period, the Clerk is directed to transmit the record in this matter to the Honorable Michael F. Urbanski, United States District Judge.

The Clerk shall send certified copies of this Report and Recommendation to all counsel of record.

ENTER: August 16, 2016

A handwritten signature in black ink that reads "Joel C. Hoppe". The signature is written in a cursive, slightly slanted style.

Joel C. Hoppe  
United States Magistrate Judge