

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Office of Dispute Resolution
1050 First Street, N.E., Third Floor
Washington, D.C. 20002

OSSE
Office of Dispute Resolution
April 22, 2019

<i>Student</i> , ¹)	Case No.: 2018-0344
through <i>Parent</i> ,)	
<i>Petitioner</i> ,)	Date Issued: 4/22/19
)	
v.)	Hearing Officer: Keith L. Seat, Esq.
)	
District of Columbia Public Schools)	Hearing Dates (and Room Numbers):
("DCPS"),)	4/3/19 (112), 4/4/19 (112),
Respondent.)	4/5/19 (423) & 4/12/19 (423)
)	

HEARING OFFICER DETERMINATION

Background

Petitioner, Student’s Parent, pursued a due process complaint alleging that Student had been denied a free appropriate public education (“FAPE”) in violation of the Individuals with Disabilities Education Improvement Act (“IDEA”) because Student had not been provided an appropriate Individualized Education Program (“IEP”) and placement, was given an erroneous disability classification and was insufficiently evaluated, among other things. DCPS responded that the IEP and placement were appropriate and based on proper classification, and that it had acted properly on the other issues.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to the IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations (“D.C.M.R.”).

Procedural History

Following the filing of the due process complaint on 12/26/18, the case was assigned to the undersigned on 12/27/18. Respondent filed a response on 12/31/18, which did not challenge jurisdiction. The resolution meeting occurred on 1/17/19, but did not resolve the

¹ Personally identifiable information is provided in Appendix A, including terms initially set forth in italics.

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dispute or shorten the 30-day resolution period, which ended on 1/25/19. A final decision in this matter must be reached no later than 45 days following the end of the resolution period, as extended by continuances of 20 days (due to scheduling issues), 14 days (due to a family emergency of counsel), and 8 days (due to issues during the hearing requiring additional hearing days), which requires a Hearing Officer Determination (“HOD”) by 5/22/19.

The due process hearing took place on 4/3/19, 4/4/19, 4/5/19 and 4/12/19 and was open to the public. Petitioner was represented by *Petitioner’s counsel*. DCPS was represented by *Respondent’s counsel*. Due to issues during the hearing, Petitioner was only present for some of the first day of the hearing and testified by telephone on the second day.

Petitioner’s Disclosures, submitted on 3/11/19, contained documents P1 through P51, which were admitted into evidence without objection. Respondent’s Disclosures, submitted on 3/26/19, contained documents R1 through R81, which were admitted into evidence over certain objections, except for R19 and portions of R74 and R77 which related to settlement negotiations that the undersigned determined should remain confidential and have been redacted for the record.²

Petitioner’s counsel presented 4 witnesses in Petitioner’s case-in-chief (*see Appendix A*):

1. *Clinical Psychologist* (qualified over objection as an expert in Clinical Psychology and Autism)
2. *Educational Advocate A* (qualified over objection as an expert in Special Education Programming and Placement)
3. *Educational Advocate B* (qualified over objection as an expert in Psychology and Neuropsychology)
4. Parent

Respondent’s counsel presented 8 witnesses in Respondent’s case, all from *Public School* (*see Appendix A*):

1. *School Social Worker A* (qualified without objection as an expert in School Social Work)
2. *School Psychologist* (qualified without objection as an expert in School Psychology) – listened to the testimony of Clinical Psychologist

² References herein to Petitioner’s documents are indicated by a “P” followed by the exhibit number, a hyphen, and the exhibit page (or pages, separated by commas). By contrast, Respondent’s documents are consecutively page numbered throughout, so are referenced by an “R” followed by the exhibit number, followed immediately by a “p” (for page) and the page number(s), omitting any leading zeros.

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3. *School Social Worker B* (qualified without objection as an expert in School Social Work)
4. *Behavior Technician*
5. *LEA Representative* (qualified over objection as an expert in Special Education Programming)
6. *Special Education Teacher* (qualified over objection as an expert in Special Education Programming)
7. *Speech-Language Pathologist* (qualified without objection as an expert in Speech Language Pathology)
8. *Occupational Therapist* (qualified without objection as an expert in Occupational Therapy)

Petitioner's counsel presented Educational Advocate A as the sole rebuttal witness.

The issues to be determined in this Hearing Officer Determination are:

Issue 1: Whether DCPS denied Student a FAPE by failing to provide (a) an appropriate IEP/placement/location of service on 9/27/18; (b) an IEP that provided comparable services to Student's out-of-state IEP; and/or (c) an IEP that addressed Student's Autism diagnosis. *Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.*

Issue 2: Whether DCPS denied Student a FAPE by failing to conduct a timely comprehensive reevaluation of Student prior to changing Student's disability classification, including (a) a neuropsychological evaluation, (b) an occupational therapy evaluation, (c) a speech-language evaluation, (d) a written language assessment, (e) adaptive assessment, and/or (f) an assistive technology assessment.³ *Petitioner has the burden of persuasion on this issue.*

Issue 3: Whether DCPS denied Student a FAPE by failing to provide Parent full access to Student's education records. *Petitioner has the burden of persuasion on this issue.*

³ At the beginning of the due process hearing, Petitioner withdrew without prejudice her claims in Issue 2 for "a comprehensive psychological evaluation" and for "a functional behavior assessment." On the other hand, after discussion with counsel, the undersigned ruled that Petitioner could present evidence during the due process hearing in order to seek an "assistive technology assessment" as part of a comprehensive reevaluation sought in Issue 2 (added herein as subpart (f)), which was included in the relief request by Petitioner.

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Issue 4: Whether DCPS denied Student a FAPE by refusing to allow Parent's advocate to observe Student in the classroom setting. *Petitioner has the burden of persuasion on this issue.*

The relief requested by Petitioner is:

1. A finding that Student was denied a FAPE.
2. Within 10 business days, DCPS shall amend Student's IEP to classify Student as a child on the Autism spectrum and provide Student with the daily supports previously identified in the 4/10/18 IEP, including (a) headphones; (b) a separate or alternative location to complete assignments; (c) use of manipulatives; (d) checks for understanding; (e) review of classroom procedures and routines at the beginning of class, with reminders; (f) allowing Student to draw responses for assigned activities; (g) modified assignments; (h) positive reinforcements/supports when Student completes assignments; and (i) instruction and weekly practice in social skills training to more effectively manage peer and adult relationships.
3. Within 10 business days, DCPS shall fund or begin to conduct a full battery of assessments of Student, including (a) a neuropsychological evaluation; (b) a speech-language evaluation; (c) an occupational therapy evaluation; (d) an assistive technology evaluation; (e) an adaptive assessment; and (f) an assessment of written language.⁴
4. Upon completion of the reports for the evaluations in the previous paragraph, DCPS shall convene the IEP team to review the results of the evaluations and revise Student's IEP as appropriate.
5. DCPS shall maintain Student's current placement/location of service until the requirements of the previous paragraph are completed.
6. DCPS shall update Student's behavior intervention plan.
7. DCPS shall allow Parent's designee to conduct a classroom observation of Student.
8. DCPS shall fund a compensatory education evaluation; Student's right to compensatory education for any denials of FAPE shall be reserved pending completion of all evaluations required herein.⁵

⁴ At the beginning of the due process hearing, Petitioner withdrew without prejudice from paragraph 3(a) her request for "a comprehensive psychological evaluation." In addition, Petitioner's request in the due process complaint for a functional behavior assessment was withdrawn at the prehearing conference, as the assessment had already been completed.

⁵ At the beginning of the due process hearing, Petitioner clarified that she was seeking an award of compensatory education in this current decision and also seeking to reserve her claim of compensatory education that could not be determined at this time because of relying on evaluations/assessments to be completed in the future.

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9. DCPS shall provide access to Parent's counsel of all education records of Student.
10. Any other just and reasonable relief.

Findings of Fact

After considering all the evidence, as well as the arguments of both counsel, the Findings of Fact⁶ are as follows:

1. Student is a resident of the District of Columbia; Petitioner is Student's Parent.⁷ Student is *Age*, *Gender* and in *Grade* at Public School.⁸ Student has had homicidal and suicidal ideation, yells and threatens others and often disregards their personal space, sometimes throws objects and screams at seemingly random times.⁹ Beginning years ago, Student had seen several mental health professionals and received several diagnoses including ADHD, Combined Type; R/O Disruptive Behavior Disorder, NOS; Borderline Intellectual Functioning; Oppositional Defiant Disorder; Parent-Child Relational Problem; and Autistic Disorder, high functioning, by history.¹⁰

2. Public School Development of 9/27/18 IEP. In 2018/19, Student began at Public School 3 weeks late, on 9/10/18, after attending both Prior School MD A and Prior School DC B in 2017/18.¹¹ Parent provided Public School with an "initial" 4/10/18 IEP from Prior School MD A that classified Student's disability as Autism Spectrum Disorder ("ASD") and provided 4 hours/week of specialized instruction outside general education, 6 hours/week of specialized instruction inside general education, and no counseling/Behavioral Support Services ("BSS").¹² Once Student enrolled at Public School, another "current" IEP dated 9/29/17 (with an end date of 9/28/18) became available in the DC SEDS database from Prior School DC B; the 9/29/17 IEP classified Student with Emotional Disturbance ("ED") and provided 22.5 hours/week of specialized instruction outside general education and 480

⁶ Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

⁷ Parent.

⁸ *Id.*

⁹ School Psychologist; P10-8; Social Worker A; LEA Representative.

¹⁰ P17-12.

¹¹ Parent; Social Worker A; R58p371.

¹² P1; R69p452; R58p371; P10-3.

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minutes/month of BSS outside general education, with a setting similar to a DCPS BES classroom.¹³

3. On 9/27/18, Student's IEP team at Public School – including Parent – convened for an eligibility/IEP meeting for Student and used past records (psychoeducational reports, Functional Behavioral Assessment (“FBA”)/Behavioral Intervention Plan (“BIP”), IEPs) and teacher and parent anecdotal reports to determine which eligibility category best described Student's academic and behavioral functioning; the team went through disability worksheets for both Autism and ED; Parent did not endorse any items on the Autism worksheet, but endorsed 2 ED items.¹⁴ Parent thought Student was misdiagnosed with Autism at Prior School MD A.¹⁵ A great deal of information was available in SEDS, including 2 past IEPs with ED classification and 22 hours/week of specialized instruction.¹⁶ School Psychologist was confident that the team had sufficient information to change Student's classification to ED and program for Student.¹⁷

4. With input from Parent at the 9/27/18 IEP meeting, a DCPS IEP was developed at Public School for 2018/19 with an ED classification, specialized instruction hours, accommodations, updated present levels, and BSS, and was fully agreed upon, including Parent who wanted a lot of behavior support again for Student (like Prior School DC B, not Prior School MD A).¹⁸ The team explained to Parent the process for finding a BES classroom, having a transition meeting and touring the classroom.¹⁹ At the IEP meeting, Parent stated that Student did much better with 22.5 hours/week of specialized instruction and wanted Student to have that level of support; change in placement was discussed with Parent and she warned DCPS staff to be careful in how they told Student about a change in schools because when Student was mad at a teacher the previous year, Student had tripped the teacher and she broke her ankle.²⁰

5. Parent was upset at the end of the 9/27/18 meeting, but promptly emailed LEA Representative in order to apologize and explain that she was frustrated by Student needing to attend another new school, but the Parent was open to meeting about the available options.²¹ A BES classroom was identified for Student on 11/6/18 at Proposed School; Parent scheduled a meeting and tour and cancelled twice, concluding that Proposed School was “not a good school.”²² At a meeting on 11/16/18, Parent (with her educational

¹³ P3; R69p452; R58p371; P10-3.

¹⁴ P10-3; R69p452; R46p328-29; R47p331-32; School Psychologist; Social Worker A (agreed not Autism).

¹⁵ School Psychologist.

¹⁶ P6-1.

¹⁷ School Psychologist.

¹⁸ P38-2; Social Worker A; R69p452.

¹⁹ P38-2; R69p452.

²⁰ P38-2; P10-4 (Student upset with teacher and tripped her, resulting in broken ankle); P2-7.

²¹ R74p511.

²² Parent; R69p452.

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advocate) sought a different BES classroom, which DCPS determined was full.²³ A third BES classroom (and tour) was offered to Parent on 11/29/18, but her counsel stated on 11/30/18 that Parent no longer agreed on a BES classroom, due to seeking evaluations that addressed Autism concerns.²⁴

6. Schools and IEPs. Student has been in numerous schools in just a few years, sometimes changing schools in order to receive needed supports, and often because Parent did not like the school or had other personal reasons for changing location; Parent explained that in 2018/19 she moved from Maryland back to DC to get out of an abusive relationship.²⁵ Student attended Prior School DC B (2012/13), Prior School MD F (2013/14), Prior School MD E (2014/15), Prior School MD D (2015/16), transferred midyear to Prior School MD C (2016/17, BES-type program), Prior School DC B (August-November 2017; BES-type program), Prior School MD A (November 2017 through 2017/18), and Public School (September 2018 to date).²⁶ It is tough for any child to get used to a new place; being moved mid-semester is an additional stressor on Student.²⁷

7. A 12/8/14 IEP at Prior School MD E classified Student with Autism and provided 2.5 hours/week of specialized instruction inside general education and 1.5 hours/week of specialized instruction outside general education, along with 120 minutes/month of BSS.²⁸ The Autism classification was based on an Autism Spectrum Rating Scale (“ASRS”) in an “initial evaluation” to which Parent consented on 11/10/14; Student transferred to Prior School MD E with a full battery of assessments from Prior School MD F.²⁹

8. A 3/16/15 IEP at Prior School MD E classified Student as ED and provided 2.0 hours/week of specialized instruction inside general education and 1.5 hours/week of specialized instruction outside general education, along with 120 minutes/month of counseling/BSS.³⁰ The change from Autism to ED within a few months was the result of an Autism specialist and the IEP team conducting detailed observations, reviewing all existing assessments and behavior logs/classroom performance and concluding that Student should be classified as ED rather than ASD.³¹

9. A 3/6/17 IEP at Prior School MD D classified Student as ED and provided 22.1 hours/week of specialized instruction outside general education, along with 120 minutes/month of counseling/BSS.³²

²³ R69p452.

²⁴ R69p452; P35-1.

²⁵ R58p371; Parent.

²⁶ P14-2; P10-2; P11-4.

²⁷ Clinical Psychologist.

²⁸ P4-1,20.

²⁹ P4-2,3.

³⁰ P5-1,22.

³¹ P5-2.

³² R21p167-69,187.

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10. Prior School DC B's 9/29/17 IEP classified Student as ED and provided 22.5 hours/week of specialized instruction outside general education and 480 minutes/month of BSS outside general education, with a setting similar to a DCPS BES classroom.³³ A Prior School DC B eligibility meeting on 9/28/17 determined that Student was ED; Parent participated and indicated her agreement.³⁴ A 9/28/17 Prior Written Notice ("PWN") on eligibility noted that the team determined that Student "continues" to be classified as ED.³⁵ Part of the intake process for Prior School DC B was a multi-page OSSE Compliance and Monitoring Review.³⁶

11. Prior School MD A's "initial" 4/10/18 IEP had a disability classification of Autism and provided 4 hours/week of specialized instruction outside general education, 6 hours/week of specialized instruction inside general education, and no counseling/BSS.³⁷ Student arrived at Prior School MD A in late 2017 from Prior School DC B; the 3/12/18 WJ-IV by Prior School MD A noted that Student had been in a self-contained special education program.³⁸ Prior School MD A's determination of Autism was primarily based on Parent's report and not on evaluation of Student.³⁹

12. DCPS's 9/27/18 IEP – which is at issue in this due process hearing – classified Student as ED and provided 22.5 hours/week of specialized instruction outside general education and 240 minutes/month of BSS outside general education.⁴⁰ The new IEP contained present levels of performance ("PLOP") information, baseline data, and goals, with much of the specifics relying on the information contained in the 4/10/18 IEP from Prior School MD A and the evaluations that were conducted early in 2018 for that IEP.⁴¹ Related academic information showed Student's Reading Inventory score on 9/18/18 was Lexile 369, which was Below Basic and a percentile rank of 13.⁴² Student's i-Ready in math on 9/21/18 indicated that Student was 3 grades behind and ranked at 7th percentile based on national norms.⁴³

13. Attendance. Student had a high number of absences and tardies in 2013/14, and refused to engage in academic tasks when in school, so had low availability for learning.⁴⁴ Attendance continued to be an area of concern.⁴⁵ This year by 4/5/19 Student had 68 absences (13 excused and including 15 days missed at the beginning of the year) and 28

³³ P3; R69p452; R58p371; P10-3.

³⁴ P28-1,2.

³⁵ R38p274.

³⁶ R33p254-58.

³⁷ P1; R69p452; R58p371; P10-3.

³⁸ P15-1.

³⁹ School Psychologist.

⁴⁰ P2-1,9.

⁴¹ P2; LEA Representative.

⁴² P20-1.

⁴³ P19-1.

⁴⁴ R58p371.

⁴⁵ P14-2 (Prior School MD A).

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tardies (all unexcused and many missing nearly half a day of instruction), out of about 130 school days.⁴⁶ For example, one day Student was noted as significantly tardy at 10:40 AM, but had arrived with Parent before 8:45 and was in the bathroom ever since breakfast.⁴⁷ Student was not excused when Parent sent notes saying that Parent was sick (so could not take Student to school).⁴⁸ Parent forcefully testified that Student could not go to school alone and needed Parent or aunt to take Student.⁴⁹ Public School is only 3 blocks from home and Student has an older brother.⁵⁰

14. Out-of-State IEP. Parent considered the Prior School MD A Autism program to be excellent because phone calls from the school about Student declined; Parent was shocked that the Prior School MD A IEP provided no counseling/BSS for Student.⁵¹ LEA Representative confirmed with Prior School MD A that there was no BSS for Student on its IEP.⁵² Parent's advocates did not believe the services and accommodations in the Prior School MD A IEP were sufficient for Student, although they asserted the services were more "individualized" to Student's needs identified in the IEP; Student needed BSS both inside and outside general education.⁵³ Educational Advocate A's expert opinion was that Student needed more than the 4 hours/week of specialized instruction outside general education provided by the Prior School MD A IEP on 4/10/18 and needed and would have benefited from a full-time IEP both in 2018/19 and in 2017/18.⁵⁴ Parent's advocates were concerned that accommodations on the Prior School MD A IEP should have been included in the new DCPS IEP.⁵⁵ Numerous accommodations to address Autism in the 4/10/18 IEP were removed from the 9/27/18 IEP.⁵⁶ The accommodations of repeating classroom procedures were provided to all students; Student was offered, but refused, headphones.⁵⁷

15. Past Evaluations. Student had behavioral difficulties at Prior School MD F in 2013/14 and received a full battery of assessments, including ASRS, BASC, Conners 3rd Edition, Differential Ability Scales, 2nd Edition, WJ-ACH, Oral and Written Language Scales, 2nd Edition.⁵⁸

⁴⁶ LEA Representative; P43-2 (by 1/22/19, 47 full-days and 15 part-days of instruction out of less than 100 school days).

⁴⁷ P23-1.

⁴⁸ P23-1,2.

⁴⁹ Parent.

⁵⁰ LEA Representative.

⁵¹ Parent.

⁵² LEA Representative.

⁵³ P36-1,2.

⁵⁴ Educational Advocate A.

⁵⁵ P36-2.

⁵⁶ Clinical Psychologist.

⁵⁷ LEA Representative.

⁵⁸ P16-1; R26p207; P26-1 (noting full battery of academic, adaptive and psychoeducational assessments from Prior School MD F); P5-2 (3/16/15 IEP).

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16. A 7/26/13 psychological evaluation diagnosed Student with ADHD among other things; the evaluation noted that Parent reported some developmental delays, as Student “started talking and feeding” self at age 2; learned communication skills at age 4.⁵⁹ In the 7/26/13 evaluation, despite Parent’s report of speech delays, Student’s basic language development was found typical for age.⁶⁰ In the 7/26/13 evaluation, Student had good eye contact; speech was goal oriented; thoughts were linear; Student’s FSIQ was 75.⁶¹

17. In November 2013, a social worker diagnosed Student with Oppositional Defiant Disorder, ADHD, and Autistic Disorder (by history), among other things.⁶² The social worker had not administer any standardized assessments, relying on Parent report that Student was diagnosed with ASD in February 2013 at a medical center in DC; Parent reportedly did not agree with the Autism diagnosis and sought 2 additional opinions, but reportedly the diagnosis was unchanged.⁶³ The 2013 report noted that during intake Student was observed being combative, hitting Parent, yelling at Parent and attempting to bite her; the report stated that Student’s behavior was out of control and Parent was powerless to stop it; Student was unmoved by consequences and appeared to be “running the household.”⁶⁴

18. In December 2013, due to mentioning killing self to a school staff member, Student met with a medical doctor at a psychiatric hospital who concluded that, despite Parent’s report of a previous diagnosis of Autism, the doctor and staff at the hospital did not agree with an Autism diagnosis, but saw evidence of temper tantrums.⁶⁵

19. A 5/22/14 psychological evaluation reported that Parent smoked during pregnancy (which is now disputed), that Parent had been incarcerated (now disputed), that Student witnessed domestic violence between Parent and boyfriend (now disputed), and that Student “experienced homelessness” (now disputed) when Student and Parent moved into grandmother’s apartment.⁶⁶ The 5/22/14 evaluation also noted that Student “crawled at five or nine months (records differ), spoke [Student’s] first words at eight or eleven months (records differ), walked alone at eleven months or one and a half years (records differ), spoke in sentences at one year, and was toilet trained at one and a half or two years (records differ).”⁶⁷ The evaluation reports that Parent shared that starting around 10 months Parent

⁵⁹ P17-20.

⁶⁰ P17-21.

⁶¹ P17-20,21.

⁶² P17-3.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ P17-3; P14-2; P16-1,3 (1/19/15 FBA at Prior School MD E incorporated medical history from 12/6/13, erroneously referencing Autistic Disorder as Student’s problem at the psychiatric hospital).

⁶⁶ P17-2; Parent; Educational Advocate B; School Psychologist.

⁶⁷ P17-2; Educational Advocate B; Educational Advocate A.

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could have conversations with Student, such as what people ate or did that day; Student did not experience regression in language skills.⁶⁸

20. The 5/22/14 evaluation administered the ASRS to Parent and Student's teacher and found Very Elevated ratings by teacher and Slightly Elevated ratings by Parent.⁶⁹ School Psychologist testified that ASRS ratings are not enough by themselves for determination of Autism.⁷⁰ Student demonstrated some characteristics that can be typical of students with Autism and many skills atypical of students with Autism; many oppositional and noncompliant behaviors may have resulted in some elevated scores on the ASRS rating scale.⁷¹ The 5/22/14 evaluation concluded that Student did not meet all the requirements necessary to receive special education services based on Autism at that time.⁷² The 2014 findings and conclusion were included in the Public School 1/6/19 FBA, and affirmed at hearing by School Psychologist and Special Education Teacher.⁷³

21. A PWN on 12/9/14 while at Prior School MD E noted that the IEP team agreed that Student was eligible for special education services based on Autism, but proposed an observation by an Autism specialist; the team considered change in placement from general education to an Autism placement, but this was an initial IEP meeting so the team needed time to gather more information before change of placement.⁷⁴ The psychoeducational evaluation that Public School received with the Prior School DC B IEP showed that Student was diagnosed with ED in 2015 and had an IEP for ED since 2015; and prior to Prior School DC B had been in a classroom similar to a BES classroom.⁷⁵

22. A 3/5/18 psychological evaluation was conducted while Student was at Prior School MD A as part of an "initial" assessment (the summary states that it was a reevaluation); the evaluation noted twice that Student was currently receiving special education services based on ED.⁷⁶ The 3/5/18 psychoeducational evaluation included the ABAS, Conners (CBRS) and WISC-V, but no autism evaluations or academic achievement assessments.⁷⁷ The WISC-V found Student's FSIQ to be 74, in the Very Low range.⁷⁸ Based on the Conners, the evaluation suggested that the IEP team may wish to consider Student eligible for special education services as a student with ASD.⁷⁹

⁶⁸ P17-2.

⁶⁹ P17-11.

⁷⁰ School Psychologist.

⁷¹ P17-13 (the undersigned notes that absence of a critical page in this report that should have been between P17-12 and P17-13, which is missing from both parties' disclosures).

⁷² P17-13; R58p371; P11-13.

⁷³ P11-13; School Psychologist; Special Education Teacher.

⁷⁴ P26-1.

⁷⁵ R69p452.

⁷⁶ P14-1,2,10.

⁷⁷ P14-1; LEA Representative; R69p452; R58p371 (no CARS); P43-1.

⁷⁸ P14-19.

⁷⁹ P14-9,11.

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23. After the first meeting with Parent's advocate late in 2018, Public School agreed to evaluate Student to determine Autism versus ED, with specific agreement on conducting a CAB, CARS, BASC and FBA/BIP II, which were ordered that day, 11/16/18.⁸⁰ CARS is a good assessment to screen for Autism.⁸¹ Parent's advocate insisted on specified assessments and nothing else from the psychoeducational evaluation, even though Public School sought to do more.⁸² The parties agreed to reconvene on 1/11/19 to review the assessment results and make another disability classification determination.⁸³

24. Later Parent's advocate raised additional concerns about occupational therapy ("OT"), adaptive living, assistive technology and speech, which had not been raised earlier and about which the school had no concerns; DCPS was willing to do OT and speech screeners, but not a neuropsychological evaluation.⁸⁴ An FBA was conducted; Student was absent on each of the evaluator's first 10 school visits for the assessment.⁸⁵

25. A 12/31/18 psychological triennial reevaluation conducted by School Psychologist conducted a CARS-2, as well as a BASC-3 and CAB, and concluded (based on 1 rater) that Student displayed minimal to no symptoms of ASD.⁸⁶ School Psychologist interviewed Parent, who stated that Student met all developmental milestones within normal limits including crawling, walking, speaking and toilet training.⁸⁷ The 12/31/18 reevaluation concluded that the Multi-disciplinary Team ("MDT") should consider Other Health Impairment ("OHI"), ASD and ED as the possible disability classifications for Student at Public School; School Psychologist's professional opinion was that Student met the criteria for OHI, although it was ultimately up to the MDT to decide.⁸⁸ School Psychologist credibly testified that Student didn't show Autism in CARS, which suggested emotional and behavioral concerns.⁸⁹

26. A 2/25/19 psychological evaluation sought by Parent noted various reports from Parent about Student being diagnosed with Autism and having problems related to Autism.⁹⁰ The CARS scores were not given in report, which School Psychologist considered a notable problem.⁹¹ Clinical Psychologist acknowledged lack of scores on CARS, but evaluator told

⁸⁰ P38-3; P30-1 (PWN).

⁸¹ Clinical Psychologist.

⁸² LEA Representative; School Psychologist; R53p355.

⁸³ P35-2.

⁸⁴ P38-3; R10p102 (DCPS attempted to be collaborative).

⁸⁵ R10p105.

⁸⁶ P10-1,15,16 (School Psychologist acknowledged in his testimony that it was a mistake to use Parent as a rater due to lack of experience, so her ratings have been disregarded by the undersigned; Clinical Psychologist stated that experienced testers required).

⁸⁷ P10-2.

⁸⁸ P10-16.

⁸⁹ School Psychologist.

⁹⁰ P9-1; Clinical Psychologist (spoke to evaluator who stated that Student's Autism in his report was based on history from Parent).

⁹¹ School Psychologist.

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Clinical Psychologist it was corroborated with Student's history (from Parent).⁹² The 2/25/19 evaluation found that Student's profile presented clinically significant symptoms of ASD, relying heavily on Parent's reports of banging head, flipping hands, covering ears, not responding when spoken to, early symptoms at age 2 or 3, requiring more time to develop friendships than typical, violating personal space, and very rigid routines, including putting on clothes in a particular manner and lining up toys in a specific order; what the evaluator actually observed was limited to some speech articulation difficulties and avoidance of eye contact for most of the assessment.⁹³ The 2/25/19 evaluation noted that Student's teachers also reported Student doing strange things, seeming out of touch with reality, picking at hair and clothing, and babbling or saying things that made no sense.⁹⁴ The evaluation concluded by referring to evaluations of several medical and mental health professionals who documented symptoms and formally diagnosed Student with ASD, but all were based on Parent's reports or have no documentary support.⁹⁵ Student's assessment profile indicated that Student presented with inattentive and hyperactive/impulsive symptoms characteristic of a child with ADHD; the evaluation diagnosed Student with both ASD and ADHD.⁹⁶ Based on the WISC-V, Student's FSIQ was found to be 73, in the Very Low range.⁹⁷

27. Additional Evaluations. School Psychologist noted the importance of not putting Student through testing that is not needed.⁹⁸ School Psychologist agreed that ADOS is the "gold standard" for Autism, but that at some point there needs to be an end to testing.⁹⁹

28. Speech-Language. Speech-Language Pathologist conducted an "in-depth" speech-language screener and called Parent to hear her concerns, as Public School did not have any; Parent didn't have any concerns and referred Speech-Language Pathologist to her counsel, who did not identify any specific concerns.¹⁰⁰ Parent's advocate sought a speech-language evaluation to address deficits with phonemic awareness; Speech-Language Pathologist persuasively testified that phonemic awareness is addressed in the classroom and not by a speech-language pathologist.¹⁰¹

29. Student's overall expressive and receptive language skills were within normal limits and did not negatively impact education; overall communication skills were within normal limits.¹⁰² A comprehensive speech-language evaluation was not warranted based on the screener and Speech-Language Pathologist did not recommend speech-language services, as

⁹² Clinical Psychologist.

⁹³ P9-7,8.

⁹⁴ P9-8.

⁹⁵ P9-1,8; School Psychologist.

⁹⁶ P9-5,9.

⁹⁷ P9-2.

⁹⁸ School Psychologist.

⁹⁹ *Id.*

¹⁰⁰ R58p373.

¹⁰¹ R1p14; Speech-Language Pathologist; P2-4,5 ("Phonemic Awareness" included in IEP).

¹⁰² R58p373; Speech-Language Pathologist (Student had age appropriate language skills and there were no areas of concern).

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there were no areas of weakness.¹⁰³ DCPS agreed to do a full speech-language evaluation anyway, but Parent refused to consent.¹⁰⁴

30. Occupational Therapy. Occupational Therapist conducted an “in-depth” OT screener and determined that Student’s overall sensory processing skills and behavioral responses to sensory information were in the typical range and no further information was needed to determine that Student continues not to need OT services.¹⁰⁵ OT services were not recommended, although the team agreed Student needed some support.¹⁰⁶ DCPS agreed to do a full OT evaluations anyway; Parent refused to consent to the evaluation.¹⁰⁷

31. Other Evaluations. Student had some history of seizures at an early age, so Educational Advocate B sought a neuropsychological evaluation.¹⁰⁸ School Psychologist and LEA Representative testified that a neuropsychological evaluation was not needed for Student’s education.¹⁰⁹

32. No assistive technology concerns were raised in any prior IEPs for Student; the IEPs stated no assistive technology was needed.¹¹⁰ Specifically, the 4/10/18 Prior School MD A IEP stated that Student’s access to general education curriculum is not impacted by not having access to assistive technology.¹¹¹

33. School Psychologist asserted that Student’s FSIQ needed to be below 70 – 2 standard deviations – before adaptive testing would be required; Educational Advocate B asserted that adaptive testing is needed whenever a child’s FSIQ scores is below 80.¹¹² Based on the adaptive component of the BASC-3, no adaptive deficits were identified, as Student was just a bit low and basically average.¹¹³

34. In response to the due process complaint, DCPS offered to conduct a comprehensive psychoeducational, along with a comprehensive OT evaluation and a comprehensive speech-language evaluation; Parent had not consented as of 3/11/19.¹¹⁴ DCPS had sought to do a broader psychoeducational than Parent’s advocate would allow.¹¹⁵ Petitioner’s counsel stated that Petitioner had already given DCPS an opportunity to comprehensively evaluate

¹⁰³ Speech-Language Pathologist; R58p373; P7-2; R63p420-22.

¹⁰⁴ LEA Representative; R74p471-72,479.

¹⁰⁵ R58p373; R62p413-17 (report).

¹⁰⁶ P7-2; Occupational Therapist.

¹⁰⁷ LEA Representative; R74p471-72,479.

¹⁰⁸ Educational Advocate B; P16-2; P17-2,20; P9-1.

¹⁰⁹ School Psychologist; LEA Representative.

¹¹⁰ LEA Representative.

¹¹¹ P1-10.

¹¹² School Psychologist; Educational Advocate B.

¹¹³ School Psychologist; P14-9,10,11 (3/5/18 evaluation found adaptive between Low to Average range).

¹¹⁴ R69p451.

¹¹⁵ LEA Representative.

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and it failed to do so, so Petitioner is seeking independent evaluations.¹¹⁶ By the 1/11/19 team meeting, the Public School team believed it had enough information to again determine Student's disability classification and was considering OHI, ASD, and ED; Petitioner's counsel did not think there was enough information yet, so the team did not proceed with a determination.¹¹⁷

35. Evidence Relating to Autism and/or ED. ASD is a social relationship disorder.¹¹⁸ Autism is diagnosed based on persistent deficits in social communication and social interaction across multiple contexts and requires some restricted, repetitive patterns of behavior, interests or activities.¹¹⁹

36. Autism and ED have overlapping behaviors.¹²⁰ DCPS's Autism disability worksheet screens out those with ED, asking whether the "adverse impact on student's educational performance is not primarily due to the student having an emotional disturbance."¹²¹

37. Social Communication and Interactions. Student can communicate effectively and is articulate.¹²² Student hangs out with peers and can manipulate them to get them into trouble, based on Student's acute social awareness.¹²³ Student has a lot to say and engages with peer group.¹²⁴ Student has used peer mediation a couple of times and does a good job of articulating own perspective.¹²⁵ Student can communicate very well and is very talkative; Student has lunch at a table of 15, rather than with a smaller group.¹²⁶ In a one-on-one or small group setting, Student can voice wants and needs in a respectful manner.¹²⁷ Once other people get added, Student has great difficulty with positively interacting with peers and adults.¹²⁸ The 5/22/14 evaluation found that Student does not have difficulties with communication, but understands others and can discuss a topic they choose.¹²⁹

38. Student exhibited many skills atypical of children with Autism.¹³⁰ Student is socially aware of other students and teachers and can change behavior based on others; those with Autism tend to be in their own world and lack social awareness.¹³¹ School Psychologist

¹¹⁶ P44-1.

¹¹⁷ R10p106.

¹¹⁸ Clinical Psychologist.

¹¹⁹ P46-5.

¹²⁰ School Psychologist.

¹²¹ P32-2.

¹²² School Psychologist.

¹²³ *Id.*

¹²⁴ Social Worker B.

¹²⁵ Behavior Technician.

¹²⁶ LEA Representative.

¹²⁷ P10-5.

¹²⁸ P10-5.

¹²⁹ P17-4.

¹³⁰ R58p371.

¹³¹ School Psychologist.

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sees Student at recess and Student exhibits leadership and definitely has social skills.¹³² Student greets School Psychologist in the hallway, which is atypical for children with Autism.¹³³

39. Student has a very close friend at Public School.¹³⁴ Student was not making friends; hits and kisses other children; manipulates others to get what Student wants.¹³⁵ Student began playing a game that needed a partner, but preferred to play alone, which is typical of children with Autism.¹³⁶

40. Imagination. Student with Autism typically have difficulty with imaginative play; Student does not.¹³⁷ Parent noted Student playing make-believe with dolls at home.¹³⁸ The 2014 examiner witnessed imaginative play many times.¹³⁹

41. Rigidity. Students with ASD want things the same and have a limited ability to understand their environment and how to engage in it.¹⁴⁰ Student does not like when routines are changed.¹⁴¹ Student does not have an issue with change and will go wherever Student is told to go, including on field trips; Student has shifted among 3 social workers.¹⁴² Student was very sensitive about backpack and would check it regularly.¹⁴³ Student was very attached to a teddy bear and upset when it was washed due to the change in smell.¹⁴⁴

42. Sensory. Parent reported that Student doesn't like being touched and is bothered by loud noises.¹⁴⁵ Clinical Psychologist testified that Student needed headphones to shield from noise.¹⁴⁶ Headphones were available at Public School for Student, but Student didn't want them and refused them, sometimes throwing them, so the Public School team removed them from Student's IEP.¹⁴⁷

¹³² *Id.*

¹³³ *Id.*

¹³⁴ R60p398; P10-5.

¹³⁵ P17-3.

¹³⁶ Educational Advocate A.

¹³⁷ R58p371; School Psychologist; Special Education Teacher.

¹³⁸ R58p371; P7-4.

¹³⁹ P17-13; R58p371.

¹⁴⁰ Clinical Psychologist.

¹⁴¹ P17-3.

¹⁴² LEA Representative.

¹⁴³ Educational Advocate A; Educational Advocate B.

¹⁴⁴ Educational Advocate A.

¹⁴⁵ Parent.

¹⁴⁶ Clinical Psychologist.

¹⁴⁷ LEA Representative.

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43. Eye Contact. Those with ASD often have difficulty with eye contact.¹⁴⁸ Parent stated that Student had little eye contact when younger.¹⁴⁹ The 7/26/13 psychological evaluation noted that Student's eye contact was good.¹⁵⁰

44. Control over Self. Student reportedly demonstrated attention-seeking behaviors, but when adults ignored the behaviors, they decreased; for instance screaming if ignored might stop within 30 seconds.¹⁵¹ Parent reported that ignoring Student's misbehavior "works," which is what Parent does at home.¹⁵² A Prior School DC B related services provider informally observed Student acting out in the classroom and noted that Student stops the behavior when ignored; the provider saw Student looking to see whether the teacher was looking before acting up.¹⁵³

45. Sarcasm. Even high functioning students with ASD find sarcasm very difficult, while Student has been using it from at least 2013/14.¹⁵⁴ Student understands and uses a lot of sarcasm.¹⁵⁵

46. Behavior. In 2013/14 Student was disciplined for behaviors such as threatening to kill other students, biting and scratching the teacher, and throwing objects.¹⁵⁶ Student's behaviors were gradually improving, so by March 2014 Student was only removed from the classroom about 3 times a week for 2-3 minutes before returning.¹⁵⁷ Student has moments of lacking fear and when upset will yell at or threaten others, even when much bigger than Student, and may run at the other person ready to collide with no evident concern over personal injury.¹⁵⁸ Student often claps aggressively in front of the faces of peers and teachers to get their attention.¹⁵⁹

47. Conclusion. School Psychologist testified that it would be harmful, even "disastrous," for Student to be in an Autism classroom if that is not Student's actual disability and that the disruption would also impact other students in the classroom.¹⁶⁰ School Psychologist considered the conclusion of ED rather than Autism to be very clear on the facts.¹⁶¹ Social Worker B has worked with many children with Autism and ED and

¹⁴⁸ Clinical Psychologist.

¹⁴⁹ Parent.

¹⁵⁰ P17-20.

¹⁵¹ P17-3,4.

¹⁵² P28-8.

¹⁵³ *Id.*

¹⁵⁴ School Psychologist.

¹⁵⁵ P17-3; Special Education Teacher.

¹⁵⁶ P17-3.

¹⁵⁷ P17-3,4.

¹⁵⁸ P10-8.

¹⁵⁹ Social Worker A; LEA Representative.

¹⁶⁰ School Psychologist.

¹⁶¹ *Id.*

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concluded that Student is “definitely” ED and not ASD, as Student says “no” to authority, and has aggressive outbursts, which are typical of ED.¹⁶²

48. Placement. DCPS’s Special Education Programs & Resources Guide for 2018/19 explained that BES is a full-time DCPS program that supports students identified with an emotional disability or who have challenging behaviors and require a more therapeutic environment.¹⁶³ Some students in BES classrooms have ASD.¹⁶⁴ BES classrooms have no more than 10 children and are staffed with 5 adults – teacher, social worker, behavior tech and 2 assistants.¹⁶⁵ Public School focused on BES for Student despite Parent’s concerns; a BES classroom was needed for Student’s behaviors.¹⁶⁶ CES is a full-time DCPS program that supports students who have been identified with Autism or other learning needs and require an ABA environment.¹⁶⁷ LEA Representative testified that Student would fall behind if placed in a CES classroom; CES classrooms are for those with limited communications abilities.¹⁶⁸

49. Education Records. Petitioner’s counsel sought education records for Student from DCPS informally on 11/21/18 and formally by letter dated 11/27/18.¹⁶⁹ DCPS provided documents on 11/30/18 and at other times over several weeks, indicating that anything missing was inadvertent and would be sent separately.¹⁷⁰ DCPS continued to send documents, including on 12/10/18 a letter that had been sent home the prior week that LEA Representative forwarded to Petitioner’s counsel in “an effort to keep your firm updated with all records...”¹⁷¹ As of 1/22/19, DCPS had provided all documents in Student’s cumulative file, but had not yet received the cumulative file from Prior School MD A; LEA Representative called Prior School MD A seeking Student’s education records and also sent 2 emails and 3 faxes.¹⁷²

50. Observation. Educational Advocate A, a special education advocate at Petitioner’s counsel’s law firm, sought to observe Student, but was told on 12/7/18 by Public School that DCPS’s policy was that “attorneys and their staff may not conduct observations.”¹⁷³ Educational Advocate A is paid regardless of outcome by clients, so has no financial interest.¹⁷⁴

¹⁶² Social Worker B.

¹⁶³ P45-17.

¹⁶⁴ LEA Representative.

¹⁶⁵ Special Education Teacher.

¹⁶⁶ LEA Representative.

¹⁶⁷ P45-17.

¹⁶⁸ LEA Representative.

¹⁶⁹ P33-1; P34.

¹⁷⁰ P35-1,2 (sent “everything that we have” for Student); P41-2,3; P38-1.

¹⁷¹ R74p496.

¹⁷² LEA Representative; P43-2.

¹⁷³ P39-2.

¹⁷⁴ P8-2,3.

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51. Credibility. Clinical Psychologist is a very experienced Autism expert, but never talked to or assessed Student or talked to or met Parent, relying on reports of interviews.¹⁷⁵ Clinical Psychologist had reviewed the record, but concluded that Autism could not be ruled in or out with the testing done of Student to date.¹⁷⁶ School Psychologist is at the beginning of his career; School Psychologist had a great deal of experience with Student as an evaluator and team member, as well as informally observing Student around Public School in the halls and at recess, and was very knowledgeable of the record and issues at play.¹⁷⁷

52. The evaluations are full of inconsistencies where Parent was reported to have said one thing earlier and another thing later about her situation, about Student's developmental milestones, which are significant for determining Autism, and about other facts in the case.¹⁷⁸ Parent has stated that Student was misdiagnosed with Autism; more often Parent has sought classification of Student with ASD, reporting that Student was medically diagnosed with Autism, but no school has ever received solid records that are not based on Parent reporting.¹⁷⁹

Conclusions of Law

Based on the Findings of Fact above, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law are as follows:

The overall purpose of the IDEA is to ensure that "all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). *See Boose v. Dist. of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (the IDEA "aims to ensure that every child has a meaningful opportunity to benefit from public education").

"The IEP is 'the centerpiece of the statute's education delivery system for disabled children.'" *Andrew F. ex rel. Joseph F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017), *quoting Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L.Ed.2d 686 (1988). "The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Andrew F.*, 137 S. Ct. at 994, *quoting Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982).

Once a child who may need special education services is identified and found eligible, Respondent must devise an IEP, mapping out specific educational goals and requirements in light of the child's disabilities and matching the child with a school capable of fulfilling those needs. *See* 20 U.S.C. §§ 1412(a)(4), 1414(d), 1401(a)(14); *Andrew F.*,

¹⁷⁵ Clinical Psychologist.

¹⁷⁶ *Id.*

¹⁷⁷ School Psychologist.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

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137 S. Ct. at 994; *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385 (1985); *Jenkins v. Squillacote*, 935 F.2d 303, 304 (D.C. Cir. 1991); *Dist. of Columbia v. Doe*, 611 F.3d 888, 892 n.5 (D.C. Cir. 2010).

The IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F.*, 137 S. Ct. at 1001. The Act’s FAPE requirement is satisfied “by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” *Smith v. Dist. of Columbia*, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), *citing Rowley*, 458 U.S. at 203. The IDEA imposes no additional requirement that the services so provided be sufficient to maximize each child’s potential. *Rowley*, 458 U.S. at 198. In its decision, the Supreme Court made very clear that the standard is well above *de minimis*, however, stating that “[w]hen all is said and done, a student offered an educational program providing ‘merely more than *de minimis*’ progress from year to year can hardly be said to have been offered an education at all.” *Andrew F.*, 137 S. Ct. at 1001.

In addition, the LEA must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114; *Andrew F.*, 137 S. Ct. at 1000 (children with disabilities should receive education in the regular classroom to the extent possible); *Montuori ex rel. A.M. v. Dist. of Columbia*, 2018 WL 4623572, at *3 (D.D.C. 9/26/18).

A Hearing Officer’s determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a Hearing Officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child’s right to a FAPE; (ii) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a). In other words, an IDEA claim is viable only if those procedural violations affected the child’s *substantive* rights. *Brown v. Dist. of Columbia*, 179 F. Supp. 3d 15, 25-26 (D.D.C. 2016), *quoting N.S. ex rel. Stein v. Dist. of Columbia*, 709 F. Supp. 2d 57, 67 (D.D.C. 2010).

Petitioner carries the burden of production and persuasion, except on issues of the appropriateness of an IEP or placement on which Respondent has the burden of persuasion, if Petitioner establishes a prima facie case. D.C. Code Ann. § 38-2571.03(6); *Z.B. v. Dist. of Columbia*, 888 F.3d 515, 523 (D.C. Cir. 2018) (party seeking relief bears the burden of proof); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005). “Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether . . . sufficient evidence [was presented] to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE.” 5-E D.C.M.R. § 3030.3.

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Issue 1: *Whether DCPS denied Student a FAPE by failing to provide (a) an appropriate IEP/placement/location of service on 9/27/18; (b) an IEP that provided comparable services to Student's out-of-state IEP; and/or (c) an IEP that addressed Student's Autism diagnosis. (Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)*

Petitioner established a prima facie case on this issue, shifting the burden to Respondent, which met its burden of persuasion, as discussed below.

(a) IEP/Placement/Location of Service. The applicable legal standard for analyzing the appropriateness of the IEP at issue in this case was articulated by Chief Justice Roberts for a unanimous Supreme Court as whether it was “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S. Ct. at 1001. As the Court of Appeals for the District of Columbia emphasized in *Z.B.*, 888 F.3d at 517, *Endrew F.* “raised the bar on what counts as an adequate education under the IDEA,” requiring more than “merely some” educational benefit. *See also Damarcus S.*, 190 F. Supp. 3d at 51 (IEP must be “reasonably calculated to produce meaningful educational benefit”).

The measure and adequacy of the IEP is determined as of the time it was offered to Student, rather than with the benefit of hindsight. *See Z.B.*, 888 F.3d at 524; *S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 66 (D.D.C. 2008). Moreover, the analysis is not about achieving a perfect IEP, but one reasonably calculated to enable Student to make appropriate progress. *Endrew F.*, 137 S. Ct. at 1001; *Z.B.*, 888 F.3d at 519 (the IDEA “stops short of requiring public schools to provide the best possible education”). *See also Hill*, 2016 WL 4506972, at *21, *quoting Leggett v. Dist. of Columbia*, 793 F.3d 59, 70 (D.C. Cir. 2015). The appropriateness of Student’s IEP is analyzed by considering the specific concerns raised by Petitioner, which are considered below.¹⁸⁰ *See* 34 C.F.R. § 300.320(a); *Honig*, 484 U.S. at 311.

Here, Student began at Public School on 9/10/18, after attending both Prior School MD A and Prior School DC B in 2017/18. Parent provided Public School with an “initial” 4/10/18 IEP from Prior School MD A that classified Student as ASD and provided 4 hours/week of specialized instruction outside general education, 6 hours/week of specialized instruction inside general education, and no counseling/BSS. But once Student enrolled at Public School, another IEP with an end date of 9/28/18 became available in the SEDS database from Prior School DC B in DC, which classified Student as ED and provided 22.5 hours/week of specialized instruction outside general education and 480 minutes/month of BSS outside general education, with a setting similar to a DCPS BES classroom. Given the

¹⁸⁰ A Hearing Officer must also determine whether “the State complied with the procedures” set forth in the IDEA. *A.M. v. Dist. of Columbia*, 933 F. Supp. 2d 193, 204 (D.D.C. 2013), *quoting Rowley*, 458 U.S. at 206-07. Procedural violations were alleged in subparts (b) and (c) in Issue 1, along with Issues 2, 3 and 4.

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2 very different IEPs, the Public School team did not simply provide services comparable to the more recent out-of-state IEP (as Petitioner's counsel asserts should have occurred in subpart (b) below), but convened an IEP team meeting with Parent to determine which of the very different IEP approaches would be best for Student.

The IEP team at Public School – including Parent – convened on 9/27/18 for an eligibility/IEP meeting for Student and relied on past records (psychoeducational reports, FBA/BIP, IEPs) and teacher and parent anecdotal reports to determine which eligibility category best described Student's academic and behavioral functioning. The team went through disability worksheets for both Autism and ED. School Psychologist was confident that the team had sufficient information to change the classification to ED and program for Student. With input from Parent, a DCPS IEP was developed at Public School for 2018/19 with an ED classification, specialized instruction hours, accommodations, updated present levels, and BSS. The entire Public School team agreed with the IEP, including Parent. Parent was clear about wanting a lot of behavior support for Student, which was like Prior School DC B and unlike Prior School MD A. Parent also stated that Student did much better with 22.5 hours of specialized instruction and wanted Student to have that level of support, which again was like Prior School DC B and unlike Prior School MD A.

Parent was upset at the end of the 9/27/18 meeting due to the need to find a different location for Student in a BES classroom, which was not available at Public School, but Parent apologized and was open to available options. A BES classroom was identified for Student on 11/6/18 at Proposed School, but Parent scheduled and cancelled tours twice, concluding that Proposed School was not a good school and seeking a different location. By the end of November, Petitioner's counsel stated that Parent no longer agreed to a BES classroom, due to concerns over Autism.

Close analysis of Student's many evaluations and IEPs over the last several years has persuaded the undersigned that the Public School IEP team did not err in determining Student's disability classification to be ED rather than Autism. As an initial matter, while multiple IEPs have found Student to be ED, Student has only been found to have an ASD twice – in the 12/8/14 IEP at Prior School MD E and the recent 4/10/18 IEP at Prior School MD A. Yet at Prior School MD E the classification changed from Autism to ED within a few months, on 3/16/15, which was the result of an Autism specialist and the IEP team conducting detailed observations, reviewing all existing assessments and behavior logs/classroom performance and concluding that Student should be classified as ED rather than ASD. More recently, Prior School MD A's determination of Autism was primarily based on Parent's report and not on evaluation of Student. The 3/5/18 psychological evaluation conducted a CARS, but did not provide the scores and the evaluator simply stated that CARS was corroborated by Parent.

The evaluations of Student are full of inconsistencies where Parent was reported to have said one thing earlier and another thing later about her situation, Student's developmental milestones, and other facts in the case. There are also other inaccuracies,

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such as the 7/26/13 psychological evaluation which noted that Parent reported some developmental delays, as Student started talking and feeding self at age 2 and learned communication skills at age 4; but despite Parent's report of speech delays, Student's basic language development was found typical for age. While Parent has stated that Student was misdiagnosed with Autism, more often Parent sought classification of Student with ASD, reporting that Student was medically diagnosed with Autism, even though no school has ever received solid records that are not based on Parent reporting.

The difficulties in determining the facts in this case are illustrated by the 5/22/14 psychological evaluation that reported that Parent smoked during pregnancy (which is now disputed), that Parent had been incarcerated (now disputed), that Student witnessed domestic violence between Parent and boyfriend (now disputed), and that Student "experienced homelessness" (now disputed) when Student and Parent moved into grandmother's apartment. Important developmental milestones were summarized in the 5/22/14 evaluation, noting that Student "crawled at five or nine months (records differ), spoke [Student's] first words at eight or eleven months (records differ), walked alone at eleven months or one and a half years (records differ), spoke in sentences at one year, and was toilet trained at one and a half or two years (records differ)." P17-2. Much more recently, Parent told School Psychologist for the 12/31/18 reevaluation that Student met all developmental milestones within normal limits, including crawling, walking, speaking and toilet training.

Not surprisingly, there are also greatly differing views on more subjective questions of Student's social and communications skills, and other indicators of Autism and ED. This Hearing Officer is persuaded by the evidence that Student can communicate effectively and is articulate; that Student hangs out with peers and can manipulate them to get them into trouble, based on Student's acute social awareness; that Student is socially aware of other students and teachers and can change behavior based on others; that Student exhibits leadership and has social skills; and that Student has a very close friend at Public School. Student does not have difficulty with imaginative play; the 2014 examiner witnessed imaginative play many times. Student does not have an issue with change and will go wherever told to, including field trips. Parent stated that Student had little eye contact when younger, but the 7/26/13 psychological evaluation noted that Student's eye contact was good. Student demonstrated attention-seeking behaviors, but when adults ignored the behaviors they decreased; a provider reported Student looking to see whether the teacher was looking before Student acted up. Student has been using sarcasm from at least 2013/14, and now uses it a lot.

School Psychologist credibly considered the conclusion of ED rather than Autism to be very clear on the facts. Social Worker B has worked with many children with Autism and ED and also concluded that Student is "definitely" ED and not Autism. The undersigned agrees.

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Other Challenges to IEP. The due process complaint challenged the 9/27/18 IEP for failing to contain appropriate PLOP information, baseline data, and goals, but a review of the IEP convinced the undersigned that there was no violation here, as suitable information, data and goals were included, despite the occasional omission. Perfection is not the standard.

Placement/Location of Services. As for educational placement/location of services, the applicable legal standard is that the IDEA requires “school districts to offer placement in a school and in programming that can fulfill the requirements set forth in the student’s IEP.” *Middleton*, 312 F. Supp. 3d at 143, citing *O.O. ex rel. Pabo v. Dist. of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008). See also *Johnson v. Dist. of Columbia*, 962 F. Supp. 2d 263, 267 (D.D.C. 2013) (DCPS “must place the student in a setting that is capable of fulfilling the student’s IEP”). Here, DCPS reasonably found that Student needed a BES classroom which would address Student’s ED classification. DCPS offered more than 1 location that Parent could have visited and selected. The undersigned concludes that DCPS met its burden on placement/location of services.

(b) Comparable Services to Out-of-State IEP. The IDEA regulations make clear what must occur when a child arrives at DCPS with an IEP from another jurisdiction. When a child transfers from another state within the school year, as occurred here in September 2018, 34 C.F.R. § 300.323(f) provides that the new public agency – DCPS here – must provide the child with FAPE, including services comparable to those described in the Student’s prior IEP until that new public agency (1) conducts an evaluation (if necessary) and (2) develops, adopts and implements a new IEP (if appropriate).

Comparable services were not provided here because Public School moved directly to a new IEP in just a couple of weeks. To the surprise of Public School educators, Student popped up in SEDS with an IEP from Prior School DC B (in DC) that on its face – apart from the there being a subsequent IEP at Prior School MD A – was still current and in effect. While the regulations provide no option for reverting to an earlier IEP, Public School did not reflexively adopt the Prior School DC B IEP here, despite it being a DC IEP with consideration of OSSE requirements, but Public School carefully considered it along with the Prior School MD A IEP to determine what would be best for Student in terms of disability classification and each aspect of Student’s IEP, as described above.

Moreover, Parent was shocked to learn that the Prior School MD A 4/10/18 IEP contained no counseling/BSS. Further, Educational Advocate A’s expert opinion was that Student needed more than the 4 hours/week of specialized instruction outside general education provided by the Prior School MD A IEP, but needed and would have benefited from a full-time IEP both in 2018/19 and in 2017/18. Thus, Petitioner is not actually seeking implementation at Public School of services comparable to the Prior School MD A IEP, but merely trying to bootstrap the disability classification, which has been discussed at length in subpart (a) above.

In sum, the undersigned is persuaded that Public School took appropriate steps to determine how best to proceed with the 2 IEPs from 2017/18 and gathered sufficient

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information to be able to develop an appropriate IEP on 9/27/18. If there was any failure to failure to follow the requirements of 34 C.F.R. § 300.323(f), it was a procedural violation that did not rise to the level of a denial of FAPE.

(c) Autism Diagnosis. The heart of this dispute is whether Student should properly be classified with ASD or ED. In theory, LEAs are not required to classify children by their disability as long as they have been found eligible to receive the special education and related services they need. *See* 20 U.S.C. § 1412(a)(3)(B); 34 C.F.R. § 300.111(d). It is a student's identified needs, not the disability category, that determine the services that must be provided to the child. 34 C.F.R. § 300.320(a)(2)(i); *Letter to Anonymous*, 48 IDELR 16 (OSEP 2006); *Heather S. v. State of Wis.*, 125 F.3d 1045, 1055 (7th Cir. 1997) (the "IDEA charges the school with the responsibility of developing an appropriate education, not with coming up with a proper label").

In practice, the disability category can be very significant to the education the child receives, as here, where Public School was clear that with a proper ED classification Student should be placed in a BES classroom, while an Autism determination would have pointed to a CES classroom. Indeed, *Smith v. Dist. of Columbia*, 2018 WL 4680208 (D.D.C. 9/28/18), highlights the importance of proper disability classification when needed to provide for the unique needs of each student. In *Smith*, the Court held that placing a student in a Specific Learning Support ("SLS") classroom if the child was known to be classified as having an ED was a denial of FAPE, for the classroom needed to be tailored to the student's needs. *Smith*, 2018 WL 4680208 at *6-7, *citing Z.B.*, 888 F.3d at 523.

Here, there was extensive testimony from both sides about whether Student should be found to have an ASD or ED, as set forth in the findings and subpart (a) above. In fact, the Public School 9/27/18 IEP did address the Autism diagnosis by carefully considering the evidence available and coming down on the ED side. As School Psychologist convincingly testified, there was no independent medical diagnosis of Autism that was not simply based on Parent report.

In sum, the undersigned concludes that as of the time it was developed the 9/27/18 IEP was reasonably calculated to enable Student to make appropriate progress in Student's circumstances as a student with ED, rather than ASD. Further, the undersigned is convinced that there was no lack of evaluation or other information for determining the 9/27/18 IEP, and that the outcome would have been no different had the decision awaited School Psychologist's 12/31/18 reevaluation or Petitioner's 2/25/19 evaluation.

Issue 2: *Whether DCPS denied Student a FAPE by failing to conduct a timely comprehensive reevaluation of Student prior to changing Student's disability classification, including (a) a neuropsychological evaluation, (b) an occupational therapy evaluation, (c) a speech-language evaluation, (d) a written language assessment, (e) adaptive assessment, and/or (f) an assistive technology assessment. (Petitioner has the burden of persuasion on this issue.)*

Petitioner did not meet her burden on the issue of reevaluation of Student. Petitioner notes that 34 C.F.R. § 300.301(a) states that "each public agency" must conduct an initial

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evaluation before providing special education and related services to a child, but evaluations always begin with an analysis of existing data and do not immediately roll out a full battery of assessments, which would be a tremendous burden on a young child who has changed schools every year and sometimes twice a year, often shifting jurisdictions (and public agencies) as well. See 34 C.F.R. § 300.305.

Petitioner's counsel also asserts without adequate support that a full reevaluation must occur before changing disability classification. The IDEA does provide that before determining that a child receiving special education services is no longer eligible, the local educational agency must first reevaluate the child. See 34 C.F.R. 300.305(e); *Dist. of Columbia v. West*, 699 F. Supp. 2d 273, 279 (D.D.C. 2010). But this provision does not apply here, where Public School developed a new IEP that provides well more than double the special education services that Student was provided by the Prior School MD A IEP.

The importance of assessing children in all areas of suspected disability was emphasized in *Z.B. v. Dist. of Columbia*, 888 F.3d 515, 518 (D.C. Cir. 2018), quoting 20 U.S.C. § 1414(b)(3)(B). The Appellate Court explained in *Z.B.*, 888 F.3d at 524, that failing to conduct adequate assessments was a procedural violation that could have substantive effects by preventing the IEP team from obtaining necessary information about the student. See also *Long v. Dist. of Columbia*, 780 F. Supp. 2d 49, 60-61 (D.D.C. 2011) ("in the absence of necessary and appropriate evaluations the district cannot develop a program that is tailored to the student's unique needs and reasonably calculated to enable [the student] to receive educational benefits" (citation omitted)); *Hill v. Dist. of Columbia*, 2016 WL 4506972, at *18 (D.D.C. 2016); 34 C.F.R. 300.304(c)(4).

Yet at some point, assessment needs to give priority to education, so decisions on the areas to be assessed must be made based on the suspected needs of the child. *Z.B.*, 888 F.2d at 518; Office of Special Education and Rehabilitative Services, U.S. Department of Education, *Analysis of Comments and Changes*, 71 Fed. Reg. 46643 (2006). The IDEA does not require a public agency to administer every test requested by a parent or recommended in an evaluation, as the public agency has the prerogative to choose assessment tools and strategies to gather relevant information. Cf. *James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 143 (D.D.C. 2016). The specific evaluations sought by Petitioner are considered in turn.

(a) Neuropsychological Evaluation. While Student had some history of seizures years ago, School Psychologist and LEA Representative persuasively testified that a neuropsychological evaluation was not needed for Student's education. The undersigned agrees.

(b) Occupational Therapy Evaluation. The OT screener determined that Student's overall sensory processing skills and behavioral responses to sensory information were in the typical range, so no further information was needed to determine that Student continues not to need OT services. DCPS agreed to do a full OT evaluations anyway, but Parent refused to consent. The undersigned finds no violation here.

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(c) Speech-Language Evaluation. The speech-language screener found that Student had age appropriate language skills and there were no areas of concern, so a comprehensive speech-language evaluation was not warranted and Speech-Language Pathologist did not recommend speech-language services. DCPS agreed to do a full speech-language evaluation anyway, but Parent refused to consent. The undersigned finds no violation here.

(d) Written Language Assessment. Petitioner did not provide convincing information that a written language assessment was needed. The undersigned finds no violation here.

(e) Adaptive Assessment. School Psychologist persuasively asserted that Student's FSIQ needed to be below 70 – 2 standard deviations – before adaptive testing would be required, while Student's FSIQ has consistently been above 70. Further, Prior School MD A's 3/5/18 evaluation found adaptive between Low to Average range based on the adaptive component of the BASC-3, with no adaptive deficits identified. The undersigned finds no violation here.

(f) Assistive Technology Assessment. Finally, as with other assessments, there should be no assistive technology assessment required unless something indicates that it was needed. But no assistive technology concerns were raised in any prior IEPs for Student. The IEPs in fact stated no assistive technology was needed, such as the 4/10/18 Prior School MD A IEP which stated that Student's access to the general education curriculum is not impacted by not having access to assistive technology. The undersigned finds no violation here.

In sum, this Hearing Officer was not persuaded that the evaluations sought by Petitioner were required prior to the 9/27/19 IEP, which is the focus of this issue, or need to be ordered at this stage. Petitioner did not meet her burden of persuasion that there was a need for the assessments sought or show any harm from not conducting the assessments. *See Smith v. Dist. of Columbia*, 2010 WL 4861757, at *4,5 (D.D.C. 2010) (no relief warranted where petitioner “has not shown that DCPS’ failure to conduct the reevaluations here sooner affected substantive rights” or that the child’s “education would have been different” but for the violation).

Issue 3: *Whether DCPS denied Student a FAPE by failing to provide Parent full access to Student's education records. (Petitioner has the burden of persuasion on this issue.)*

Parent did not meet her burden on the issue of education records. As a general matter, parents of a child with a disability have the right to examine all education records that pertain to the identification, evaluation, and educational placement of the child, and provision of a FAPE. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(a); 34 C.F.R. § 300.613(a) (parents must be permitted to inspect and review any education records relating to their child that are collected, maintained, or used by an agency); *Jalloh ex rel. R.H. v. Dist. of Columbia*, 535 F. Supp. 2d 13, 21 (D.D.C. 2008) (“parents have the right to examine records and [the LEA] must give parents the opportunity to inspect, review, and copy records”).

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Petitioner's counsel raised concerns about not receiving work samples, although the evidence in this record was that Student produced very little work at Public School due to absences and refusal to do work when Student was in school. The undersigned is persuaded from the evidence that DCPS did seek to provide all of Student's education records available to it and made more than a good faith effort to obtain education records from Prior School MD A with at least a half dozen attempts by telephone, fax and email to obtain the education records that DCPS did not physically possess. Petitioner's counsel did not demonstrate that there were any education records for Student that DCPS had but did not provide. Nor did Petitioner's counsel attempt to prove how any allegedly missing documents would have been a denial of a FAPE to Student.

Issue 4: *Whether DCPS denied Student a FAPE by refusing to allow Parent's advocate to observe Student in the classroom setting. (Petitioner has the burden of persuasion on this issue.)*

Parent met her burden on this issue, for the law has now been clear for several years in the District of Columbia that parents and their designees have the right to observe students in their educational settings, pursuant to the Special Education Student Rights Act of 2014, D.C. Code §38-2571.03.¹⁸¹ In this case, Parent sought to designate Educational Advocate A to observe Student at Public School, but was blocked by Public School for reasons the undersigned does not find persuasive.

On 12/7/18 DCPS refused observation based on its policy was that "attorneys and their staff may not conduct observations." This policy was apparently based on the statutory limitation preventing observation if the designee is representing the child at issue in litigation. Here, however, there was no litigation between the parties at that time, as the due process complaint was not filed until 12/26/18, so there was no way that Educational Advocate A could have been representing Student in litigation (or had a financial interest in litigation, which was not raised as a concern by DCPS), for there was no litigation at that time. But beyond that, even if litigation had been pending, Educational Advocate A is not a lawyer so could not have "represented" Student in litigation. Limitations on the designee's

¹⁸¹ D.C. Code § 38-2571.03 provides in relevant part:

(5)(A) Upon request, an LEA shall provide timely access, either together or separately, to the following for observing a child's current or proposed special educational program:

(i) The parent of a child with a disability; or

(ii) A designee appointed by the parent of a child with a disability who has professional expertise in the area of special education being observed or is necessary to facilitate an observation for a parent with a disability or to provide language translation assistance to a parent; provided, that the designee is neither representing the parent's child in litigation related to the provision of free and appropriate public education for that child nor has a financial interest in the outcome of such litigation.

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employer are not found in the statute, although the statute does state that the “LEA shall not impose any conditions or restrictions on such observation” that are not stated in the statute, which DCPS is attempting to do here. Pursuant to the plain statutory language, Educational Advocate A, who was qualified at the due process hearing as an expert in Special Education Programming and Placement, was and is entitled to observe Student’s program at Public School.

This case is very similar to *Middleton v. Dist. of Columbia*, 312 F. Supp. 3d 113, 147-48 (D.D.C. 2018), in which the Court found a denial of FAPE due to DCPS not permitting the educational advocate of a law firm to observe the student, without any analysis of whether or not litigation was pending. *See also N.W. v. Dist. of Columbia*, 253 F. Supp. 3d 5, 20 (D.D.C. 2017) (educational advocate should not have been excluded from observation of proposed placement at public school).

Thus, this Hearing Officer concludes that Petitioner met her burden of proving that DCPS improperly prevented her designee from observing Student’s educational program as permitted by statute. While not being able to observe Student in the school setting is a procedural violation, in this case it significantly impeded Parent’s ability to participate in decision-making relating to Student’s IEP and special education services and may have impeded Student’s right to a FAPE pursuant to 34 C.F.R. § 300.513(a)(2). *See Middleton*, 312 F. Supp. 3d at 148 (unlawful conditioning of educational advocate’s observation significantly impeded parent’s opportunity to participate in the decision-making process, so denied student a FAPE).

Observation of Student at Public School may have allowed Parent and her advocates to see the communication skills and other capabilities at school that Public School teachers and professionals saw to help determine whether Student was properly classified as a child with ED. Indeed, this may have helped reduce or minimize the conflict and central disagreement in this case. Or, alternatively, observation might have helped Parent to articulate her concerns more clearly to DCPS to help the two sides understand each other better and move toward a common understanding of the classification and special education services needed by Student. In these circumstances where there is a significant possibility that actions and outcomes might have been different with the observation, this Hearing Officer not only orders observation in the future, if desired, but provides compensatory education based on the denial of the observation, as discussed below. *See Letter to Kohn*, 17 IDELR 522 (OSERS 1991) (“OSEP’s position is that, based upon the facts and circumstances of each individual case, an impartial hearing officer has the authority to grant any relief he/she deems necessary, inclusive of compensatory education, to ensure that a child receives the FAPE to which he/she is entitled”).

Remedy

In determining compensatory education for denials of FAPE, there is often “difficulty inherent in figuring out both what position a student would be in absent a FAPE denial and how to get the student to that position,” *B.D. v. Dist. of Columbia*, 817 F.3d 792, 799 (D.C. Cir. 2016), but that does not permit the effort to be avoided. *See Henry v. Dist. of*

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Columbia, 750 F. Supp. 2d 94, 98 (D.D.C. 2010) (a disabled student who has been denied special education services is entitled to a tailored compensatory education award and limitations of the record are no excuse). Moreover, a student is not required “to have a perfect case to be entitled to compensatory education.” *Cousins v. Dist. of Columbia*, 880 F. Supp. 2d 142, 148 (D.D.C. 2012) (citations omitted).

Here, Educational Advocate A’s Compensatory Education Proposal suggested remedies that are significantly adjusted by this Hearing Officer to take into account the specific denial of FAPE found herein and the need to provide some remedy. Based on all the evidence and the various factors discussed in this case, this Hearing Officer has determined that 50 hours of academic tutoring with independent tutor(s) chosen by Parent (with input from her advocates) would be an appropriate remedy, as “hearing officers are reminded that ‘[t]he essence of equity jurisdiction’ is ‘to do equity and to mould each decree to the necessities of the particular case.’” *Lopez-Young v. Dist. of Columbia*, 211 F. Supp. 3d 42, 55 (D.D.C. 2016), quoting *Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 523-24 (D.C. Cir. 2005).

ORDER

Petitioner has prevailed on a single claim in this case, as set forth above. Accordingly, **it is hereby ordered that:**

1. DCPS shall permit an educational advocate or other designee of Petitioner’s choice with suitable professional expertise to observe Student in the classroom.
2. DCPS shall provide letter(s) of authorization within 10 business days after Petitioner’s request(s) for a total of 50 hours of academic tutoring from independent providers chosen by Petitioner.

Any and all other claims and requests for relief are **dismissed with prejudice**.

IT IS SO ORDERED.

Dated in Caption

/s/ *Keith Seat*

Keith L. Seat, Esq.
Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. § 1415(i).

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