

District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution
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OSSE
Office of Dispute Resolution
April 05, 2021

Confidential

Parent on behalf of Student¹)	Case No. 2020-0179
)	
Petitioner,)	Hearing Dates: February 16-18, 2021
)	March 5, 2021
)	
)	
)	Conducted by Video Conference
v.)	
)	Date Issued: April 5, 2021
District of Columbia Public Schools)	
)	Terry Michael Banks,
Respondent.)	Hearing Officer

HEARING OFFICER DETERMINATION

INTRODUCTION

Petitioners are the parents of a [REDACTED]-old student ("Student") attending School A. On October 13, 2020, Petitioner filed a Due Process Complaint Notice ("*Complaint*") alleging, *inter alia*, that the District of Columbia Public Schools ("DCPS") denied Student a free appropriate public education ("FAPE") by failing to provide appropriate Individual Education Programs ("IEP") and placements. On October 26, 2020, DCPS filed *District of Columbia Public Schools' Response* ("*Response*"), denying that Student had been denied FAPE in any way.

SUBJECT MATTER JURISDICTION

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the Individuals with Disabilities Education Improvement Act ("IDEIA"), 20 U.S.C. Section 1400 *et seq.*, its implementing regulations, 34 C.F.R. Sect. 300 *et seq.*, Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-E, Chapter 30.

¹ Personally identifiable information is attached in the Appendix and must be removed prior to public distribution.

PROCEDURAL HISTORY

On October 13, 2020, Petitioners filed the *Complaint* alleging, *inter alia*, that DCPS denied Student a FAPE by failing to provide appropriate Individualized Education Programs (“IEP”) and placements on June 5, 2019 and November 18, 2019. On October 26, 2020, DCPS filed its *Response* in which it refuted allegations in the *Complaint*, denying that it had denied Student a FAPE as follows: DCPS averred, *inter alia*, that (1) due to COVID-19 restrictions imposed on March 16, 2020, all instruction has been virtual, and the number of hours of specialized instruction are no longer an issue in the virtual environment, as evaluations and school attendance in person are prohibited; (2) Student’s IEPs of 20 hours per week of specialized instruction outside of general education, 180 minutes per month of speech and language services, 120 minutes per month of behavioral support services (“BSS”), 30 minutes per month of occupational therapy (“OT”) consultation services, and 30 minutes per month of speech and language consultation services were appropriate, (3) DCPS notified Petitioners on June 29, 2020 that the location of services would be at [REDACTED] at F [REDACTED] but they elected to decline the placement, (4) reimbursement for “small classes, multi-sensory instruction integrated related services, and therapeutic supports” at [REDACTED] since March 16, 2020 is unwarranted as Student has been receiving only virtual services at home since that date.

The parties participated in resolution meetings on October 27, 2020 that did not result in a settlement. A prehearing conference was conducted by telephone on November 20, 2020, and the Prehearing Order was issued that day.

The due process hearing was conducted on February 16 -18, 2021 and on March 5, 2021 by video conference. The hearing was closed to the public at Petitioner’s request. Petitioner filed Disclosures on February 8, 2021 containing a witness list of six witnesses and proposed Exhibits P1-P33. DCPS filed objections to Petitioner’s disclosures on January 21, 2021. DCPS filed objections to Petitioners’ disclosures on February 11, 2021. DCPS objected to expert testimony from [REDACTED], [REDACTED], and [REDACTED] on grounds of potential financial conflicts of interest. I deferred ruling on these objections until the witnesses’ testimony was offered. DCPS filed objections to Petitioners’ exhibits for failing to comply with the .pdf numbering ordered in the Prehearing Order. In that regard, I found Petitioners’ disclosures to be in substantial compliance with the Prehearing Order. I sustained DCPS’ objection to P2, overruled DCPS’ objections to P3-P5, P8, P13, P21-24, and P27-P30, and deferred ruling on P25 and P26 until they were presented during the hearing. At the conclusion of the testimony, I admitted P25 and P26 into evidence. Thus, Petitioners’ Exhibits P1, and P3 – P33 were admitted into evidence.

Respondent’s Disclosures, also filed on February 8, 2021, contained a witness list of sixteen witnesses and documents R-1 through R-22, including R2A. Petitioners filed objections to Respondent’s disclosures on February 11, 2021. Petitioners objected to Witnesses [REDACTED], [REDACTED] and [REDACTED] who were described by DCPS as expert witnesses, but no CV’s were included in DCPS’ Disclosures. I deferred ruling on these objections until the witnesses’ expert testimony was offered. Petitioners objected to Respondent’s proposed Exhibits R-15 through R20 on grounds of relevance. Those documents are dated from November 5, 2020 through December 9, 2020. Petitioners also objected to R22, caselaw submitted by Respondent. Respondent’s counsel offered his proposed exhibits into evidence at the beginning of Respondent’s

direct case on February 18, 2021. I sustained Petitioners' objections to R15 – R20 and R22. Accordingly, Respondent's Exhibits R-1 through R14 and R21 were admitted into evidence.

Petitioner presented as witnesses in chronological order: Witness A, Witness B, Petitioner (Father), Witness C, and Witness D. Witness B was accepted as an expert in speech and language pathology, Witness C was accepted as an expert in special education programming and placement, and Witness D was accepted as an expert in special education. Respondent presented as witnesses in chronological order: Witness E, Witness F, Witness G, Witness A, Witness H, and Witness J. Witness A was accepted as an expert in special education programming and placement, Witness E was accepted as an expert in speech and language pathology, Witness F was accepted as an expert in special education planning and placement, Witness G was accepted as an expert in special education, Witness A was accepted as an expert in special education programming and placement, Witness H was accepted as an expert in psychology and school psychology, and Witness J was accepted as an expert in special education programming and placement. Counsel for the parties provided written closing arguments March 12, 2021: *Petitioners' Memorandum of Closing Argument* and *District of Columbia Public Schools' Closing Statement*.

ISSUES

As identified in the *Complaint* and the *Prehearing Order*, the issue to be determined in this case are as follows: whether DCPS failed to provide appropriate IEPs and placements on June 5, 2019 and November 18, 2019.

FINDINGS OF FACT

1. Student is X years old and during the 2019-20 school year was in grade F at School A.²

2. On November 4, 2016, when Student was in grade C at School C, Examiner A completed a Neuropsychological Evaluation of Student.³ Petitioners referred Student for an evaluation due to signs of anxiety and irritability at school and difficulty with reading and math skill acquisition.⁴ On the Wechsler Intelligence Scale for Children ("WISC-V"), Student's full scale IQ was 74, in the Very Low range. S/he scored in the Very Low Range in Verbal Comprehension (78), Fluid Reasoning (76), and Working Memory (72), in the Low Average range in Processing Speed (83), and in the Average range in Visual Spatial (94). On the Test of Nonverbal Intelligence ("TONI-4"), Student scored in the upper end of the Low Average Range (87).⁵ On Woodcock-Johnson tests of Receptive Language and Expressive Language, Student scored in the Average range in Receptive Language, but was below average on subtests in Expressive Language. S/he was unable to say the alphabet, days of the week, or months of the year in order. Student was also below average in Phonological Awareness, scoring in the 5th percentile

² Petitioner's Exhibit ("P:") 19 at page 1 (205). The exhibit number and exhibit page numbers are followed by the electronic page number in the disclosure in parentheses, i.e., P19:1 (205).

³ P4:1 (33). This exhibit was mis-marked by Petitioner's counsel; it is the first of two exhibits marked "P-5," and no document was submitted marked "P4."

⁴ *Id.* at 2 (34).

⁵ *Id.* at 3-4 (35-36).

in Phonological Awareness.⁶ On the Wide Range Assessment of Memory and Learning (“WRAML-2”) and the Beery-Buktenica Developmental Test of Visual-Motor Integration (“VMI-6”), Student’s scores were in the Average range. However, Student had difficulty with measures of attention and executive functioning skills, scoring at less than the 1st percentile on three subtests.⁷ On the Woodcock -Johnson Tests of Achievement (“WJ-IV”), in Reading, Student had a Broad Reading score in the Very Low range (77, 5th percentile), struggled to read nonsense word efficiently, had difficulty reading enough words to complete the Passage Comprehension subtest, and was inefficient reading short, literal sentences.⁸ In Writing, Student earned a Low Average score in Broad Written Language, but scored in the 2nd percentile in Sentence Writing Fluency.⁹ In Math, Student’s score of 65 was in the Extremely Low range.¹⁰ Student’s responses on the Revised Children’s Manifest Anxiety Scale (“RCMAS”) did not result in an elevated overall score. However, Petitioner/mother’s responses “reflected some concerns in the areas of mood regulation, as there was a clinical elevation on the scale sensitive to externalizing (8th percentile), such as showing some stubbornness and inflexibility.”¹¹

Examiner A opined that “There was no evidence to suggest depression of an extremely high level of persistent anxiety... In my view, [s/he] has a sensitive nervous system that can make [him/her] easily stressed, especially in situations that are unfamiliar, unpredictable, and/or involve a low sense of control. Overall the findings are consistent with a diagnosis of Unspecified Anxiety Disorder.” Examiner A also diagnosed Student with a Language Disorder, Attention Deficit Hyperactivity Disorder, Specific Learning Disorders in Reading, Written Expression, and Math, and Unspecified Anxiety Disorder.¹² Examiner A recommended that consideration should be given to a consultation with a speech/language pathologist, to direct instruction from a tutor “who is highly skilled in teaching students with ADHD executive functioning skills and a tutor who is familiar with math strategies that are effective for students with dyslexia ADHD.”¹³ For classroom accommodations, Examiner A recommended extended time for classroom work and testing, priority seating, assignment modification, repetition of information and instructions, audio books, and access to a scribe for test taking and some writing assignments. In reading and writing, Examiner A recommended that Student “will need intensive instruction using a research-based, systematic reading and spelling program, such as Phonographix, Orton-Gillingham, Sounds in Syllables, Wilson, or Lindamood-Bell... it would be helpful to have [Student] practice some transcription skills (spelling and handwriting)... Eventually, [s/he] should also be encouraged to learn keyboarding and word processing.” For anxiety and attention, “As school assignments become more complex, [s/he] may need executive support, such as help breaking down tasks into more manageable parts.”¹⁴

3. For the 2015-16 school year at School C, Student final grades were Advanced in math, Proficient in reading, Spanish, and science, and Basic in writing and language. For the

⁶ *Id.* at 4-5 (36-37).

⁷ *Id.* at 5 (37).

⁸ *Id.* at 5-6 (37-38).

⁹ *Id.* at 6 (38).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 7-8 (39-40).

¹³ *Id.* at 8 (40).

¹⁴ *Id.* at 8-10 (40-42).

second term of the 2016-17 school year at School C, his/her grades were Advanced in art, Proficient in math, speaking and listening, social studies, science, health and physical education, and Spanish, and Basic in reading and written language.¹⁵

4. On February 22, 2017, when Student was in grade C at School C, Examiner B completed an Initial Speech and Language Evaluation.¹⁶ On the CELF-5 Observational Rating scale, Teacher A responded to the examiner's questions about Student:

On the rating scale related to listening, there were strengths noted in [Student's] ability to look at people when talking or listening as well as with [his/her] ability to understand facial expressions, gestures, or body language. Based on the scale, [s/he] often has trouble following spoken directions, remembering what people say and understanding new ideas. [S/he] almost always has trouble paying attention. On the speaking portion of the rating scale, [Student] showed strengths in answering questions people ask, asking for help when needed and having conversations with someone. [S/he] often has trouble asking questions and putting events in the right order when talking. [Student] almost always has difficulty expanding on an answer and providing details and answering questions as quickly as other students.¹⁷

On the Expressive One-Word Picture Vocabulary Test ("EOWPVT-4") and the Receptive One-Word Picture Vocabulary Test ("ROWPVT-4"), Student scored in the Average range.¹⁸ The CELF-5 is an individually administered clinical assessment for the identification, diagnosis and follow up assessment of language and communication disorders. Student's composite standard score of 78 indicated that his/her overall language skills were in the Below Average range.¹⁹ S/he was also Below Average on the Receptive Language Index (76), the Expressive Language Index (76), the Language Context Index (79), the Language Structure Index (78). In Sentence Comprehension (Scaled Score: 7), Recalling Sentences (7), and Understanding Spoken Paragraphs (7), s/he was Below Average/At Risk. S/he scored in the Low range in Word Structure, Word Classes, Following Directions, and Formulated Sentences, and in the Average range in Linguistic Concepts.²⁰ On the Goldman-Fristoe Test of Articulation ("GFTA-3"), his/her articulation skills were in the average range.²¹ Examiner B concluded as follows:

[Student] will likely have difficulty with language based tasks that require [him/her] to understand orally presented material, especially without visual support. In addition, [s/he] will likely have difficulty following multiple step directions requiring two or more parts. [Student's] greatest weakness was demonstrated in [his/her] ability to formulate sentences that were semantically and syntactically accurate when given a single word to use. In the classroom, [Student] will likely have difficulty participating in classroom discussions. The language impairment is

¹⁵ P15:3 (136).

¹⁶ P6:1 (58).

¹⁷ *Id.* at 2 (59).

¹⁸ *Id.* at 4 (61).

¹⁹ *Id.* at 5 (62).

²⁰ *Id.* at 6 (63).

²¹ *Id.* at 7-8 (64-65).

anticipated to adversely impact [his/her] ability to access the general education curriculum.²²

Examiner B recommended a number of classroom accommodations including preferential seating, visual supports, repeating of multi-step instructions, and allowing increased processing time for orally presented information.²³

5. On February 26, 2017, Examiner C completed a Review of Independent Educational Evaluation of the independent neuropsychological evaluation conducted by Examiner A, discussed in paragraph 2 above.²⁴ After describing Examiner A's findings and conclusions, Examiner C opined as follows:

The diagnostic impressions based on informant data and observations indicate that [Student] does meet the criteria for a *Specific Learning Disability*... The results of the various measures administered reflect that [Student] has difficulty sustaining attention... As such, these ratings reflect that [Student's] academic difficulties and behaviors may be attributed to issues with attention. The diagnostic impressions based on informant data and observations indicate that [Student] does meet the criteria for an *Other Hearing Impairment* due to Attention Deficit Hyperactivity Disorder.

The combination of coexisting impairments is so severe, complex and interwoven that identification in a single category of disability cannot be determined... [S/he] has been consistently receiving instruction in reading, math and writing per the record review. However, [s/he] is performing below grade level. [S/he] demonstrates significant deficits in math. [S/he] also demonstrates fluctuating performance in reading and writing. The IEE reflects that [Student] struggles with sustaining attention, processing language and understanding math concepts. The diagnostic impressions based on testing, informant data and observations indicate that [Student's] lack of academic progress appears to be attributed to both a *Specific Learning Disability* and an *Other Health Impairment*.

....The IEE reflected [Student] struggles with cognitively sustaining attention, organizing information, and processing language, which impacts various academic tasks. The IEE noted [s/he] can be easily confused and/or overloaded by the language [s/he] hears. The IEE reflected that this impairment results in [Student] exhibiting a developmental lag in [him/her] overall cognitive performance... [t]he presence of Multiple Disabilities should be strongly considered.²⁵

Examiner C's forty-two recommendations for Student's teachers and parents included, inter alia, the following:

²² *Id.* at 8 (65).

²³ *Id.* at 9 (66).

²⁴ P7:1 (67).

²⁵ *Id.* at 18 (84).

... [Student] would benefit from small group instruction, timed/scheduled breaks and extended time for classwork, homework and formal assessments. The teacher should allow [him/her] extended time to complete tasks and in-class assignments, while providing appropriate prompts and encouragement.

Teacher proximity should continue to be used as a strategy to support [Student's] learning. [Student] should sit near [his/her] classroom teacher to assist [her/him] with sustaining focus on the lesson...

Due to cognitive deficits, explicit and systematic instruction is needed. Because of significant cognitive challenges, [Student] will often need step-by-step instruction and ongoing prompting, feedback, and support to learn new skills.

The teacher should reduce the amount of work [Student] is required to complete during independent assignments and for homework so [s/he] is more likely to complete [his/her] work at school and at home.

Word recognition strategies may help [Student] build automatic sight-word recognition...²⁶

6. On March 5, 2017, when Student was in grade C at School C, Witness C completed a Diagnostic Supplementary Testing report.²⁷ Parent's requested the testing due to concerns "about their [son/daughter's] lack of progress in school, their inability to obtain specialized education and related services for ■■■, and their fear that with each passing day, [Student] was failing further and further behind grade-level expectations."²⁸ Witness C, Petitioner's expert in special education, questioned the legitimacy of Student's first quarter grades that were Proficient, because s/he was rated Below Basic in writing, language, and math, and Basic in reading, speaking and listening, because "all subjects require reading, writing, listening and speaking, and many require math."²⁹ On the TONI– Fourth Edition Form B, Student scored in the Low Average range, two points higher than on Examiner A's TONI-4.³⁰ On the Woodcock-Johnson subtests, Student scored in the Deficient range in Oral Vocabulary, in the Low Average range for Memory for Sentences, Retrieval Fluency, Number Series, and Visual Closure, and in the Average range for Memory for Words, Memory for Sentences, Incomplete Words, General Information, Letter-Pattern Matching, Visualization, Picture Recognition, Concept Formation, and Visual-Auditory Learning.³¹ Witness C's conclusions included the following:

Based on these findings, [Student's] cognitive abilities are stronger than heretofore indicated by the WISC-V, which is very encouraging... Strengths revealed by this examiner's testing included auditory closure; short-term auditory memory for noncontextual information; visual matching; short-term visual memory; nonverbal

²⁶ *Id.* at 19 (85).

²⁷ P5:1 (48).

²⁸ *Id.*

²⁹ *Id.* at 2 (49).

³⁰ *Id.* at 2-3 (49-50).

³¹ *Id.* at 3-5 (50-52).

conceptual reasoning; visual part-whole relationships and directionality; and coding pictures with labels.

Areas in which [Student] scored near the Average range but bear watching included rapid naming and short term contextual auditory memory. Weakness revealed by [Student's] performance on these tests included the areas of visual closure; numbers in a series (clearly affected by [his/her] math disability); and oral vocabulary.

In addition, based on [Student's] poor performance in school, as clearly reflected on [his/her] report card, [his/her] lack of grade-level skill development in all core areas, and throughout Dr. Hughes' report, [Student] requires specialized instruction across [his/her] school day... [S/he] needs intensive remediation in all core skill areas and the opportunities to learn context through nontraditional approaches. [S/he] needs small classes, explicit instruction to learn executive skills, and strategies to help [him/her] improve [his/her] attention. Those things must be infused throughout the day, not provided as an adjunct to a general education program that already moves too quickly for [him/her]. [Her/his] needs clearly point to a full-time program that comprehensively addresses them and can pace instruction to meet [her/his] processing and response styles.³²

7. On May 9, 2017, Student was found eligible for special education services as a student with an Other Health Impairment ("OHI") due to a diagnosis of ADHD.³³

8. When Student was at School C, s/he was anxious and frustrated; s/he was quiet in the classroom, but would express frustration and feelings of inadequacy at home. These feelings of inadequacy led [her/him] to avoid peers and to gravitate to adults. S/he was easily distracted. S/he had difficulty interacting with peers, because s/he did not understand things on their level. Petitioners enrolled Student at School A in February of 2018.³⁴

9. On May 16, 2018, School A developed an IEP for Student. School A classified Student with a Specific Learning Disability ("SLD").³⁵ The IEP had goals in Reading, Written Language, Math, Academic Behavior/Executive Functioning, and Occupational Therapy ("OT").³⁶ School A prescribed Student 34.25 hours per week of specialized instruction and 45 minutes per week of S/L therapy.³⁷

10. In the fall of the 2018-19 school year, Student was on a grade C level on the Qualitative Reading Inventory (QRI), two grades below his/her new grade level. By the end of the school year, s/he was on grade level. In May 2019, Student was administered the Word Identification and Spelling Test ("WIST"). S/he performed Below Average on the Fundamental

³² *Id.* at 8 (55).

³³ P15:3 (141).

³⁴ Testimony of Petitioner/Father; P15:3 (141). Petitioner/father testified that the tuition for School A for the 2019-20 school year was \$60,499.

³⁵ P21:1 (233).

³⁶ *Id.* at 6-14 (238-46).

³⁷ *Id.* at 1 (233).

Literacy Ability Index and the Word Identification Subtest, and s/he performed in the Poor range in Spelling and Sound-Symbol Knowledge.³⁸

For the 2018-2019 school year at School A:

The arts integration approach proved very successful for [Student] this year... Regardless of the activity – whether it be written language, visual arts, or an integrated task, [Student] was an incredibly hard worker in Language Arts, pushing [him/herself] to work independently and with focus and drive. Through the pairing of art and writing, as well as the focus on process not just product, [Student] made significant progress in Language Arts this year working with multiple materials and writing in multiple genres and really again taking ownership over [his/her] own learning.

According to the EOY [End of Year] Progress Report, [Student] initially began the year with low confidence in [her/his] writing abilities... By the end of the year... [Student] typically needed support to translate at prompt into a topic sentence; with modeling and a sentence starter for [his/her] topic sentences, [s/he] was ultimately able to complete those sentences with ease... [Student] independently developed structured detail sentences, consistently using transition word at the beginning of those sentences. With prompting, [Student] was able to write on all topics, both preferred and non-preferred, though [s/he] was more easily able to maintain a focus on the prompt with preferred topics, or those in which [s/he] had significant background knowledge... [Student's] progress this year in the area of written language was “incredibly notable and impressive.” It should be noted that despite this progress, written language continued to be an area that did not come easily to [Student]; [s/he] needed steps broken down, and prompts rephrased in multiple ways. However, [Student's] increasing confidence overall, coupled with [his/her] increasing comfort with self-advocating in this environment, pushed [him/her] to make progress in the area of written language this year.

In math, [Student] was assessed using the Measures of Academic progress (“MAP”) for grades D – F. In May 2018... [his/her] instructional level was reported as grade E [one grade above his/her grade level]... Multisensory supports with multiplication/division helped [him/her] visualize and understand multiplication properties... [S/he] worked well with [her/his] small group and benefitted from independent problem-solving opportunities. [Student] also benefitted from having tests read aloud so [her/his] pace and comprehension of story problems could be supported to help [him/her] find success.³⁹

11. On June 4, 2019, when Student was in grade E, DCPS convened an IEP Annual

³⁸ P15:26 (164).

³⁹ *Id.* at 26-28 (164-66).

Review meeting. The team classified Student as OHI.⁴⁰ Under Consideration of Special Factors, the IEP noted the following communication concerns:

Due to [his/her] language disorder, [Student] has difficulty with language based tasks that require [him/her] to understand orally presented material, especially without visual support. In addition, [s/he] has difficulty following multiple step directions requiring two or more parts. [S/he] has difficulty participating in classroom discussions. To best support [her/his] communications needs, [Student] would benefit from the following supports: 1. Provide clear, concise and short directions in the classroom setting. 2. Preferential seating in the classroom. 3. Provide visual supports as necessary to augment auditory classroom instruction. 4. Repeat multi-step, complex directions or instructions and have [Student] to repeat information back to the speaker in [his/her] own words to ensure that [s/he] is understanding. 5. Refrain from giving [Student] too many directions at once; chunk verbal directions into 1-2 steps at a time. 6. Allow increased processing time for orally presented information as well as increased time to formulate verbal responses.⁴¹

In Mathematics, the Present Levels of Academic Achievement and Functional Performance (“PLOP”) noted Student’s areas of need included math reasoning, time measurement, whole number calculation – subtraction and multiplication. Testing on October 30, 2018 placed her/him in the 15th percentile for his/her grade level. Student’s baselines were: (1) S/he is comfortable with word problems involving addition and subtraction but has difficulty with “more than or fewer than” in choosing the correct operation. S/he can solve one-step word problems, but requires scaffolding and teacher assistance to solve word problems, (2) S/he has increased his/her accuracy and speed with quick facts with addition, subtraction and multiplication facts, (3) Testing placed [him/her] in the 15th percentile, (4) S/he is able to rename from the tens place to the ones place, but needs prompting with repeated renaming into the thousands place, (5) S/he is able to model fractions and order fractions in value using the same denominator. S/he has been introduced to comparing fractions with unlike denominators, and (6) S/he struggles with subtracting time and elapsed time, especially when it is presented in a word problem. The goals were: (1) Given two-step word problems with addition or subtraction up to 20, Student will represent the problem using concrete manipulatives, draw a picture, and write the corresponding equation to solve, (2) Given multiplication problems involving one-digit numbers with sums less than 20, Student will calculate the answer from memory, (3) When shown 2-dimensional shapes and a word bank, Student will verbally state each shape’s name and provide one defining attribute, (4) S/he will complete two-digit subtraction and three-digit subtraction with regrouping, (5) Given fraction computation tasks, Student will complete them using manipulative materials and/or symbols, and (6) Given five word problems involving the subtraction of time intervals in minutes and a physical manipulative clock, Student will correctly write the new time or time interval.⁴²

⁴⁰ P10:1 (103). Witness A, a DCPS Program Specialist, testified that the IEP PLOPs were developed largely from information gleaned from School A’s Learning Plans for Student. Witness C testified that she submitted suggestions in writing prior to the IEP meeting that were incorporated into the IEP.

⁴¹ *Id.* at 3 (105).

⁴² *Id.* at 4-7 (106-09).

In Reading, the PLOP indicated that according School A's October 30, 2018 Individualized Learning Plan ("ILP") for Student, s/he was performing on a grade C level, two grades below his/her current grade.⁴³ His/her strengths were decoding sight words, print awareness, phonemic awareness, and comprehension predictions and conclusions. Her/his areas of need included reading fluency, vocabulary development, expressive language, word retrieval, comprehension – summarizing material, and decoding multi-syllabic words. The baselines were: (1) S/he is able to decode CVC and other one-syllable words; multi-syllable words and decoding are challenging for him/her, (2) Student's WCPM on a grade E level passage is 67, (3) On the QRI-6, administered in September 2018, Student was independent at the grade C level for comprehension, (4) Student needs teacher support identify the main topic of sections of texts, and difficulty summarizing the overarching idea of a text, (5) Student is able to sound out real and nonsense words up to 5 phonemes and is able to blend words up to 5 phonemes with some teacher support. The goals were: (1) When given two-syllable words comprised of predictable code, Student will decode them with 80% accuracy, (2) Given a grade level text and practice using an evidence-based fluency program, Student will increase his/her WCPM to 87, (3) When asked "wh" questions about a familiar grade-level story and given a copy of the text, Student will answer the question and show the place in the text that supports her/his answer, (4) When given a three paragraph, independent level text, Student will identify the main topic of each paragraph orally, and (5) Given an evidence-based reading intervention program, guided practice, systematic instruction, manipulatives and visual supports, Student will demonstrate improvement in phonemic awareness.⁴⁴

In Written Expression, the PLOP indicated that Student's performance level was grade C, two grades below her/his current grade. His/her strengths include simple sentence structure, brainstorming and topic sentence generation. Her/his area of needs include sentence structure without oral rehearsal prior to writing or given supports, supporting sentences and concluding sentence generation, maintaining relevance to topic, including details at sentence and paragraph level writing, vocabulary usage, and independent use of learn strategies. The baselines were: S/he is able to write 2-3 paragraphs in response to a topic prompt, but struggles to organize his/her writing into coherent paragraphs and to formulate topic sentences, (2) S/he does not consistently put events in the correct order when writing, (3) Student has difficulty with spelling, and (4) S/he inconsistently uses capital letters at the start of sentences, has occasional "floating capitals" in the middle of sentences, and was Low Average in spelling on a 2016 evaluation. The goals were: (1) When given a topic prompt, Student will use a paragraph template to write a four sentence paragraph that begins with one topic sentence answering the prompt, and includes two supporting sentences with relevant details, and one concluding sentence, (2) After reading an independent level text, Student will write a five sentence paragraph that tells about each event's details in the order in which they occurred, (3) Given a typed list of 10 grade level spelling words 3-5 days in advance, Student will correctly write 8 of 10 words when each word is read aloud, and (4) Given three sentences with capitalization errors, three with punctuation errors, and three with spelling errors, Student will correct two-thirds of each set of errors.⁴⁵

In the Cognitive Area of Concern, the PLOP reported that Students full scale IQ was 74, in the Very Low range when compared with his/her same aged peers. His/her working memory

⁴³ The ILP was not offered into evidence.

⁴⁴ P10:7-10 (109-112).

⁴⁵ *Id.* at 10-12 (112-14).

(72) was also in the Very Low range. It also reported Examiner A's findings of Low Average Processing Speed and difficulty with tasks requiring visual scanning. Student had average ability in visual-spatial reasoning, but low abilities in verbal comprehension abstract thinking, fluid reasoning, and working memory. S/he had difficulty with attention and executive functioning skills. The baselines were: (1) Student needs teacher prompting and reminders to complete multi-step tasks, (2) Student often requires teacher reminders and prompting to begin a task after directions have been given, (3) S/he is frequently distracted away from assigned tasks, (4) It is often difficult for Student to maintain focus and attention during whole-group teacher instruction, and (5) Student is not independently using strategies to re-alert him/herself after becoming distracted. The goals were: (1) Given adult modeling, visual cues, and a self-monitoring checklist, Student will plan and complete a multi-step independent task, (2) Given task directions for work at his/her independent level, adult proximity, and visual cues, Student will start the task when directions are given with one opportunity to clarify, (3) Given visual cues, Student will complete assigned work within designated time frames, (4) Given adult modeling, preferential seating, and up to two non-verbal prompts, Student will demonstrate active listening skills during whole-group teacher instruction, and (5) Given visual supports including a bank of possible strategies, direct strategy instruction, adult modeling and proximity, Student will choose and use a strategy to re-alert to task after becoming distracted.⁴⁶

In Communication, the PLOP noted that Student had relative weaknesses in her/his contextual oral language, expressive oral language, language organizational skills, word retrieval skills, aspects of syntax, and semantics. S/he is able to provide a category and at least two salient details in 40% of opportunities and to correctly answer factual questions about single-paragraph material in 55% of opportunities. Student demonstrates difficulty conveying ideas in a clear, concise manner. "[Student's] expressive and receptive language deficits negatively affect his/her ability to access the general education curriculum in the following areas: comprehending complex information, participating in classroom discussions, determining main ideas, expressing his/her thoughts and ideas, completing grade level language-laden assignments, and difficulty interacting with peers." The baselines were: (1) Student has difficulty with serial order orientation, left/right, sequencing and inclusion/exclusion tasks, (2) Student is able to define words with at least two salient details in 40% of opportunities; s/he has difficulty determining semantic relationships between words, (3) Student has difficulty with formulating completed sentences, (4) Student struggles with linguistic concepts, (5) Student has difficulty determining the main idea in oral passages, (6) S/he does not use strategies to enhance word retrieval skills, and (7) S/he does not provide concise directions or explanations. The goals were: (1) Student will follow 2-3 step directions that include linguistic terms for left/right orientation serial order orientation, temporal, and inclusion/exclusion, (2) Student will demonstrate understanding of, and use of, semantic concepts, synonyms and antonyms, single word meanings, multiple word meanings, and figurative language via dynamic responses, (3) After hearing a passage or short story, Student will produce at least four complete sentences to retell in sequence the main events in the story and then summarize, (4) During a structured task, Student will demonstrate use of irregular plurals, possessive nouns, irregular/regular past tense and future tense, (5) Given a short passage and visual supports provided orally or in writing, Student will identify the main idea and answer factual questions, (6) Given direct instruction in retrieval strategies and a bank of possible strategies for

⁴⁶ *Id.* at 12-14 (114-16).

use, Student will choose an use a strategy to enhance word retrieval, (7) S/he will provide concise directions and explanations in 80% of opportunities.⁴⁷

In Motor Skills/Physical Development (“Motor Skills”), the PLOP indicated that Student’s October 30, 2018 ILP indicated that his/her needs were poor visual perceptual skills, poor motor coordination, weak hand/finger strength, poor endurance for writing tasks, immature, inefficient grasp, inefficient gross motor planning skills, inefficient ocular motor skills, poor cursive handwriting skills, poor endurance, poor manuscript skills, poor visual motor integration, tactile defensiveness, and weak visual spatial skills. Nevertheless, on May 9, 2019, School A terminated OT services as Student was “performing well with the built in supports of [School A].” The DCPS IEP included no baselines, but did have two goals: (1) By June 4, 2020, Student will demonstrate functional written communication skills for participation in school tasks, and (2) by June 4, 2020 s/he will demonstrate functional visual perceptual motor skills and ocular motor control for participation in school related tasks.⁴⁸

The IEP team prescribed 10 hours per week of specialized instruction outside general education, five hours per week inside general education, and three hours each per month of OT and S/L services outside general education. “Other Classroom Aids and Services” included additional think time, clear and concise directions, visual supports to orally presented information, concrete manipulatives in mathematics, blank scratch paper.⁴⁹ The IEP also included a number of classroom accommodations including, *inter alia*, repetition of directions, read-aloud for assessments, preferential seating, small group testing, and extended time for testing.⁵⁰

The parties agreed on virtually all aspects of the PLOPs, baselines, and goals.⁵¹ However, the meeting notes indicate that Petitioners’ counsel “would like for DCPS to note that the family and [School A] are in disagreement with the recommended service hours based on [Student’s] current performance. He states that [Student] was previously performing 1 grade level below, and now is performing 2 to 2.5 yrs. below grade level.” The team set a tentative date for an Analysis of Existing Data meeting on July 10, 2019.⁵²

12. On July 19, 2019, Petitioner’s counsel notified DCPS by email that “we are not in agreement with the proposed IEP irrespective of the clerical issue that needs to be fixed. The proposed special education service hours are massively insufficient given the extent of [Student’s] dyslexia and co-existing ADHD.”⁵³ Witness A responded eight minutes later, “At this time, DCPS is locked in to the hours and education setting proposed at our last IEP meeting.”⁵⁴ On August 8, 2019, Petitioner’s counsel notified DCPS that as a result over the disagreement at to Student’s need for a full-time day school program, Petitioners would maintain Student’s placement at School A for the 2019-20 school year. “We expect DCPS to fund the [School A] placement until such

⁴⁷ *Id.* at 14-16 (116-18)

⁴⁸ *Id.* at 17-18 (119-20).

⁴⁹ *Id.* at 19 (121).

⁵⁰ *Id.* at 21-22 (122-24).

⁵¹ P11:2-6 (127-131); Testimony of Witness A.

⁵² *Id.* at 11 (132). A typographical error was corrected in P12 (133).

⁵³ P13:2 (136).

⁵⁴ *Id.* at 1 (135).

time as a FAPE is made available.”⁵⁵ DCPS denied responsibility for funding the unilateral placement by letter on August 14, 2019.⁵⁶

13. On September 21, 2019, when Student was in grade F at School A, Witness H completed a Comprehensive Psychological Re-Evaluation of Student at the request of the MDT.⁵⁷ In conducting the evaluation, Witness H interviewed Teacher B, Teacher C, Petitioners, Student,⁵⁸ and observed Student in two classes for a total of 80 minutes.⁵⁹ On the Wechsler Abbreviated Scale of Intelligence (“WASI-II”), Student had a full scale IQ of 85, in the Low Average range. On the subtests, s/he was Average (92) in Perceptual Reasoning (“PRI”) and Low Average (82) in Verbal Comprehension (“VCI”). “[Student’s] performance on the VCI indicates that in the classroom, [s/he] may struggle with age appropriate word knowledge acquisition, effective information retrieval, and effective communication of knowledge... The PRI measures [Student’s] fluid reasoning ability as well as spatial processing and visual-motor integration... The Matrix Reasoning subtest measures visual processing and abstract, spatial perception and may be influenced by concentration, attention, and persistence. [Student] performed within the Below Average range on this subtest. [Student’s] difficulties with abstract spatial perception can negatively affect his/her math performance and mastery of math concepts.”⁶⁰ The Comprehensive Test of Nonverbal Intelligence (CTONI-2) is a language-reduced test, which requires the examinee to respond by pointing, manipulating blocks, solving puzzles, and arranging picture sequences. His/her full-scale composite score (85) was Below Average (80-89); on subtests s/he was Average in Pictorial Analogies, Pictorial Categories, Geometric Categories, Pictorial Sequences, and Geometric Sequences, and Below Average in Geometric Analogies. On the WJ-IV, Student’s scored in the Low range in Broad Reading (79) and Broad Written Language (77), and Very Low (69 and below) in Broad Math (59). Witness H also administered the Gray Oral Reading Tests (“GORT-5”), a norm-referenced assessment that tests oral reading rate, accuracy, fluency and comprehension. Student’s composite score on the Oral Reading Index was 78, within the Poor range at the 7th percentile. S/he scored in the Poor range in Rate, and Below Average in Accuracy, Fluency, and Comprehension.

In Social-Emotional Functioning, Teacher B and Petitioner/mother were interviewed for the Conners-Third Edition. Both rated Student in the elevated or very elevated in the areas of Inattention, Hyperactivity/Impulsivity, Learning Problems and Executive Functioning subscales. “Results of the Conners-3 forms indicate that [Student] demonstrates significant difficulties with maintaining concentration and attention, impulsivity, executive functioning that are significantly impacting [his/her] academic progress. Reports by [his/her] teachers and mother appear consistent with [his/her] diagnosis of Attention Deficit Hyperactivity Disorder (ADHD).”⁶¹ The Behavior Rating Inventory of Executive Function (BRIEF-2) was also administered to Teacher B and Petitioner/mother. The responses of both interviewees placed Student in the Clinically Elevated range in Inhibit, which assesses inhibitory control and impulsivity. Both rated Student Potentially

⁵⁵ *Id.*

⁵⁶ P14:1 (138).

⁵⁷ P15:1 (139).

⁵⁸ *Id.* at 7-9 (145-47).

⁵⁹ *Id.* at 9-10 (147-48).

⁶⁰ *Id.* at 12 (150).

⁶¹ *Id.* at 20 (158).

Clinically Elevated or Clinically Elevated on the Behavior Regulation Index, Working Memory and the Global Executive Composite.⁶²

... [Student] exhibits difficulty with some aspects of executive function. Concerns are noted with [his/her] ability to resist impulses, be aware of [his/her] functioning in social setting, get going on tasks, activities, and problem-solving approaches, sustain working memory, plan and organize [her/his] approach to problem solving appropriately and be appropriately cautious in [her/his] approach to tasks and check for mistakes. This suggests more global difficulties with self-regulation, including the fundamental ability to inhibit impulses and monitor the impact of behaviors on others. These global difficulties extend to cognitive aspect of executive function, including the ability to sustain working memory and to initiate, plan, organize, and monitor problem-solving approaches.⁶³

Witness H concluded that Student remained eligible for services as OHI:

[Student] has made significant academic progress in all areas, however, [s/he] continues to perform below grade level based on curriculum based measures. [Student] scored a MAP score of 191 placing [him/her] at the 6th percentile for [his/her] grade level in reading. [Student] scored a MAP score of 190 placing [her/him] at the 6th percentile for [her/his] grade level in math...Results from the Conners teacher and parent forms reported elevated or very elevated in the areas of Inattention, Hyperactivity/Impulsivity, Learning Problems and Executive Functioning subscales. Parent and teacher ratings from the BRIEF-2 forms also indicate that [Student] struggles with executive functioning which includes inhibitory control, self-monitoring, emotion regulation, flexibility, and cognitive regulatory functions including ability to sustain working memory and to initiate, plan, organize, and monitor problem solving. [Student] has no significant behavior concerns at school and [her/his] relationships with peers are not impacting [his/her] access to learning in the classroom.

The test results indicate [Student] meets criteria 1 for eligibility in that [s/he] has a medical condition, (*i.e.*, Attention Deficit Hyperactivity Disorder) which significantly impacts [his/her] educational performance (criteria 2). Thus, [Student] continues to meet the criteria for an Other Health Impairment.⁶⁴

Witness H offered twenty-nine recommendations, including the following directed towards Student's teachers:

Given [Student's] cognitive profile, [s/he] would benefit from a multisensory approach and the use of visual and tactile supports along with verbal instruction would be the best way to approach instruction with [him/her]... Providing

⁶² *Id.* at 21-25 (159-63).

⁶³ *Id.* at 22 (160).

⁶⁴ *Id.* at 28-29 (166-67).

opportunities for visually based learning may help [Student] understand and remember new ideas.

[Student] will benefit from step-by-step instruction and breaking down information into easy steps as [s/he] learns new skills. [S/he] would also benefit from repeated and extra instructions and frequent check-ins.

Provide [Student] with extra time to process information as well as extra time to formulate oral and written responses.

[Student] may benefit from word recognition strategies such as word walls, flow lists, word banks, flash cards, and games. Use high-frequency words when implementing these strategies because this may enhance [Student's] ability to read independently...

The use of graphic organizers would be helpful in improving [Student's] reading and writing skills...

The five-step spelling strategy is an effective, multisensory approach to improving spelling performance. The strategy should be taught explicitly to insure that [Student] understands the strategy and can implement it independently...

Repeated reading is a fluency-building intervention. [Student] would read a short passage several times until [s/he] can read the passage with ease. Select material that is at [Student's] instructional reading level...

The phrase drill error correction procedure may be helpful for developing [Student's] reading fluency. In this procedure, immediate corrective feedback is combined with rehearsal of the corrected error...

Use of manipulatives is essential for building conceptual understanding of math operations...

Use a sequential system to teach [Student] how to complete various computations. Teaching the fact in a particular sequence will help [Student] organize the information for retention and recall...

Ensure that all math instruction is systematic and explicit. Provide numerous clear models of easy and difficult problems accompanied by verbalization of the thought processes involved in solving the problem...

Repetition is an important factor in building speed. Repeated and extensive practice may enable [Student] to perform some tasks in a more automatic fashion to increase performance speed...

Limit distractions: Often it is important to limit distractions that are problematic for students with attention difficulties... Open classroom settings often have too many distractions and too many opportunities for impulsive behaviors.

Strategic seating: Students like [Student] often benefit from careful placement in the classroom... Placement in proximity to the teacher can facilitate greater interaction without disturbing other students...⁶⁵

14. On September 22, 2019, Witness E completed a Comprehensive Speech Language Evaluation.⁶⁶ Student was administered the Goldman-Fristoe Test of Articulation (“GFTA-3”), on which s/he scored in the average range, “indicating average single word articulation functioning in English.” His/her intelligibility was 100% in noted utterances, and achieved an average score on the Sounds-in-Sentences test. Witness E administered the Comprehensive Receptive Expressive Vocabulary Test (“CREVT-3”). S/he scored in the average range (96) on the receptive vocabulary subtest, and below average range (64) on the expressive vocabulary subtest. “This was an outlying score and significantly different from other measures of speaking vocabulary administered within this evaluation and should be interpreted with a degree of caution. During this subtest, [Student] became very playful and engaged in some playfully creative responses. This appeared to be a task avoidance strategy, as [s/he] seemed to have some difficulty adequately orally defining words.”⁶⁷ On the Comprehensive Assessment of Spoken Language (“CASL-2”), Student scored in the average range on the General Language Ability Index, indicating average spoken language skills.⁶⁸ His/her receptive vocabulary score was also in the average range.⁶⁹ His/her below average score in Antonyms (78) indicates that his/her retrieval skills, as they relate to his/her knowledge of the perceptual relationship between words, are below her/his same aged peers, but her/his score on Synonyms and Expressive Vocabulary were in the average range.⁷⁰ Her/his below average score (70) in Idiomatic Language indicates that s/he will have difficulty interpreting meaning from idioms used in the classroom.⁷¹ Student earned average scores in Sentence Expression (104), Grammatical Morphemes (86), Sentence Comprehension (98), and Grammatical Judgment (96), indicating that Student should be able to understand teacher explanations and directions, as well as processing language constructions used by teachers and peers.⁷² S/he also was average in Nonliteral Language (93), Meaning from Context (90), Inference (94), Double Meaning (91), and Pragmatic Language (112).⁷³ Witness E opined as follows:

In order for a student to meet eligibility recommendations for a student with a Speech Language impairment with the District of Columbia Public School system, he or she must (1) demonstrate a disabling *oral* communication and (2) that disorder must negatively impact that student’s ability to access or gain benefit from the general education curriculum. Given the data from this evaluation, (1) while the

⁶⁵ *Id.* at 30-33 (168-171).

⁶⁶ P16:1 (173).

⁶⁷ *Id.* at 6-10 (178-82).

⁶⁸ *Id.* at 12 (184).

⁶⁹ *Id.* at 13 (185).

⁷⁰ *Id.* at 14 (186).

⁷¹ *Id.* at 15 (187).

⁷² *Id.* at 15-17 (187-89).

⁷³ *Id.* at 17-19 (189-91).

majority of [his/her] language system is intact and available for classroom communication, [s/he] demonstrates specific weaknesses in [his/her] lexical/semantic system and (2) [her/his] specific oral communication skills weaknesses would limit to access the curriculum without modifications and accommodations. Although [s/he] demonstrates specific weakness in [his/her] oral communication system, this does not appear to be the primary source of academic difficulty. Etiologies for primary sources of academic difficulty, if any, should be explored with the cognitive, academic, or behavioral domains.⁷⁴

Witness E testified that Student's deficits required "direct intervention."

15. On October 17, 2019, DCPS convened an IEP team meeting to review recent evaluations and determine Student's continued eligibility.⁷⁵ There were no questions regarding Witness E's Speech and Language Evaluation. DCPS agreed with School A staff that Student did not require OT services.⁷⁶ Witness H reiterated her opinion that Student continued to qualify as OHI.⁷⁷ At the suggestion of Petitioner's counsel, the team changed Student's classification to SLD. The team also agreed that Student required S/L services.⁷⁸

16. On November 6, 2019, School A developed an IEP for Student; it classified Student with an SLD.⁷⁹ The School A IEP team prescribed 34.25 hours per week of specialized instruction and 45 minutes per week of S/L therapy.⁸⁰

17. On November 18, 2019, DCPS convened an IEP Annual Review meeting. The team classified Student with a Specific Learning Disability ("SLD")⁸¹ at the urging of Petitioner/mother.⁸² Under Consideration of Special Factors, the IEP noted the following communication concerns:

[Student's] weaknesses in understanding idiomatic language and orally defining words impact [his/her] ability to demonstrate lexical variety in [her/his] classroom discussions and discourse. Weaknesses in these areas negatively affect [her/his] ability to be specific and make appropriate lexical choices to clearly convey information in discourse. As classroom discourse and conversational demands increase, [s/he] may not be able to follow more varied conversations.⁸³

In Mathematics, the PLOP reported on the math achievement scores in Witness H's September 2019 evaluation discussed in paragraph 13 above. The six baselines and the first five

⁷⁴ *Id.* at 21 (193).

⁷⁵ Respondent's Exhibit ("R:") 6 at page 1 (83). The exhibit number and exhibit page numbers are followed by the electronic page number in the disclosure in parentheses, i.e., R6:1 (83).

⁷⁶ *Id.* at 2 (84).

⁷⁷ *Id.* at 3 (85).

⁷⁸ *Id.* at 4 (86).

⁷⁹ P24:1 (253).

⁸⁰ *Id.*

⁸¹ P19:1 (205).

⁸² Testimony of Witness A.

⁸³ P19: 2 (206).

goals from the June 2019 IEP were virtually unchanged. Four new goals were added: (6) Given a starting and ending time, [Student] will compute length/duration in 8 out of 10 word problems, (7) Given explicit instruction, use of manipulatives/models, and visual supports, [Student] will solve fractions computation problems in four out of five trials, (8) [Student] will correctly add whole numbers, and (9) [Student] will correctly divide whole numbers.⁸⁴ In Reading, the PLOP reported the achievement findings from Witness H's September 2019 evaluation and repeated the PLOP from the June 2019 IEP. The five baselines from the June 2019 were repeated, and a sixth was added: (6) The following patterns are currently being targeted for Student: VCCV, r-controlled vowels, VCV, VV, soft c/g, stable find syllable, VCE, and silent letters. The second goal was updated to have Student increase his/her WCPM to 120, the fourth to: Given text at his/her independent level, Student will use effective skills and strategies to understand the text in 8 out of 10 trials, and a sixth goal was added: Student will read independent level sight words with 8 out of 10 correct. The remaining goals were unchanged from the June 2019 IEP.⁸⁵ In Written Expression, the PLOP reported the achievement findings in Writing from Witness H's September 2019 evaluation and repeated the PLOP from the June 2019 IEP. The four baselines from the June 2019 IEP were unchanged. The first two and the fourth goals from the June IEP were unchanged. The third goal was changed to: given direct instruction in phonemic awareness, orthographic patterns, and structural analysis, Student will spell targeted words correctly 80% of the time.⁸⁶ The Cognitive section from the June 2019 IEP was eliminated. In Communication, the PLOP reported the findings and conclusions from Witness E's September 2019 Speech and Language Evaluation. The first two baselines were scores from selected subtests. The second goal from the June IEP was the new first goal. The four other goals were new: (2) When given common idioms, Student will verbally describe the meaning, (3) S/he will use an organized system to plan and produce an oral narrative with fading cues by the clinician, (4) S/he will combine personal knowledge and/or given information to make inferences, and (5) S/he will identify and explain connections from orally presented information.⁸⁷

The IEP added an Area of Concern: Emotional, Social, and Behavioral Development. The PLOP reported the results of the Conners-3 assessment from Witness H's September 2019 evaluation and behavior comments from School A's 2019 ILP. The ILP comment included, "[Student] is easily distracted by peers or [his/her] own off-topic thoughts. [S/he] often times will try and initiate an off-topic conversation with a peer or a teacher during instructional time. [Student] is easily redirected, but usually has to be redirected to stay on task multiple times during one class period... Right now, [Student] has a structured time during the week to clean out both [her/his] desk and [his/her] locker. [Student] is able to independently organize [her/his] desk and locker according to the teacher expectations. Without the structured time to clean out [his/her] work space, [Student] would not independently initiate this task... [Student] is incredibly friendly and engaging with both peers and [his/her] teachers. [Student] is understanding with [his/her] group mates during small group instruction and is very kind to them when [s/he] notices that they may be struggling or if they make a mistake. Although uncommon, when [Student] does have a social problem with peers, [s/he] is able to appropriately express [him/herself], apologize for mistakes that [s/he] has made, and ask an adult for help if needed. [Student] has been active this

⁸⁴ *Id.* at 3-9 (207-13).

⁸⁵ *Id.* at 9-14 (213-18).

⁸⁶ *Id.* at 14-16 (218-20).

⁸⁷ *Id.* at 16-18 (220-22).

year in expressing [his/her] understanding of the things that [s/he] need to ‘work hard to get better at.’ Often times, [Student] will engage in negative self-talk and becomes discouraged quickly...”⁸⁸ The baselines were: (1) S/he struggles organizing his/her learning spaces, (2) Student has difficulty participating in group discussions and understanding the dynamics of a group, (3) S/he has difficulty using positive self-talk consistently. The goals were: (1) Given direct instruction, visual reminder, and fading adult support, Student will demonstrate effective organizational skills, (2) S/he will participate in group discussions and activities following established classroom procedures, (3) S/he will use word and body language that reflects a positive self-concept.⁸⁹ The Motor Skills section of the June IEP was eliminated.

The IEP team prescribed 20 hours per week of specialized instruction outside general education, two hours per month of behavioral support services (“BSS”) and three hours per month of S/L services outside general education, and 45 minutes per month of S/L consultation services. Other Classroom Aids and Services were: “Additional think time, clear and concise directions, visual supports too orally presented information, concrete manipulatives in mathematics, blank scratch paper, chunk text, repeated readings, graphic/semantic organizers, multisensory approach to instruction and materials, step-by-step instruction graph paper for computation, extra processing time, self monitoring checklists.”⁹⁰ The Classroom Accommodations from the June 2019 IEP were unchanged.⁹¹ DCPS doubled the number of hours of specialized instruction due to having additional information since the June IEP; the recent psychological evaluation, discussions with his/her teachers, observations, and her/his upcoming transition to intermediate school. Student’s core subjects (Reading, Math, Written Expression, Science, and Social Studies) would be taught in a self-contained class, while the “specials” (Music, Art, Physical Education, lunch, and recess) would be with general education classes.⁹²

18. Petitioners’ only objection to the IEP was the number of specialized instruction hours outside general education. “[Witness C] feels that [Student] needs a full-time placement.”⁹³ Petitioner/father attended the meeting and testified that he agreed that 20 hours per week of specialized instruction outside of general education was insufficient; he believed that Student would be ‘left behind’ in the specials classes.

19. On December 12, 2019, DCPS notified Petitioners that School B would be Student’s location of services for the 2019-20 school year.⁹⁴ The self-contained class at School B would have a maximum of 12 students, with a certified special education teacher and a teacher’s assistant.⁹⁵ The assistant follows the class to all specials with the general education population. The specials classes may have 20-25 students.⁹⁶

20. On June 29, 2020, DCPS notified Petitioners that School D would be the location

⁸⁸ *Id.* at 20 (224).

⁸⁹ *Id.* at 18-21 (222-25).

⁹⁰ *Id.* at 22 (226).

⁹¹ *Id.* at 24-25 (228-29).

⁹² Testimony of Witness A and Witness F.

⁹³ R11:3 (119). Witness A also testified that Petitioners objected only to the amount of specialized instruction hours.

⁹⁴ R13:1 (123).

⁹⁵ Testimony of Witness G and Witness J.

⁹⁶ *Id.*

of services for Student for the 2020-21 school year.⁹⁷

21. School A has a Certificate of Approval from the District of Columbia Office of the State Superintendent of Education (“OSSE”).⁹⁸

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, and this Hearing Officer’s own legal research, the Conclusions of Law of this Hearing Officer are as follows: The burden of proof in District of Columbia special education cases was changed by the local legislature through the District of Columbia Special Education Student Rights Act of 2014. That burden is expressed in statute as the following:

Where there is a dispute about the appropriateness of the child’s individual educational program or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided, that the party requesting the due process hearing shall retain the burden of production and shall establish a prima facie case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence.⁹⁹

In this case, the only issues involve the appropriateness of IEPs and placement. Therefore, under District of Columbia law, Respondent bears the burden of persuasion on all issues.

Whether DCPS failed to provide appropriate IEPs and placements on June 5, 2019 and November 18, 2019.

The Supreme Court’s first opportunity to interpret the predecessor to IDEA, The Education of the Handicapped Act (“EHA”), came in *Board of Education of the Hendrick Hudson Central School District v. Rowley*.¹⁰⁰ The Court noted that the EHA did not require that states “maximize the potential of handicapped children ‘commensurate with the opportunity provided to other children.’”¹⁰¹ Rather, the Court ruled that “Implicit in the congressional purpose of providing access to a ‘free appropriate public education’ is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child...”¹⁰² Insofar as a State is required to provide a handicapped child with a ‘free appropriate public education,’ we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction... In addition, the IEP, and therefore the personalized instruction should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of

⁹⁷ R5:1 (82).

⁹⁸ Testimony of Witness D; P30:2 (303).

⁹⁹ D.C. Code §38-2571.03(6)(A)(i).

¹⁰⁰ 458 U.S. 176, 187 (1982).

¹⁰¹ *Id.* at 189-90, 200

¹⁰² *Id.* at 200.

the public school system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.”¹⁰³

More recently, the Court considered the case of an autistic child under IDEA who, unlike the student in *Rowley*, was not in a general education setting.¹⁰⁴ The Tenth Circuit had denied relief, interpreting *Rowley* “to mean that a child’s IEP is adequate as long as it is calculated to confer an ‘educational benefit [that is] merely... more than *de minimis*.”¹⁰⁵ The Court rejected the Tenth Circuit’s interpretation of the state’s obligation under IDEA. Even if it is not reasonable to expect a child to achieve grade level performance,

... [h]is educational program must be appropriately ambitious in light of [his/her] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives... It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom, but is satisfied with barely more than *de minimis* progress for those who cannot.¹⁰⁶

The June 4, 2019 IEP

Prior to the convening the June 4, 2019 IEP meeting, there were three significant evaluations in Student’s record. In Examiner A’s November 4, 2016 Neuropsychological Evaluation, Student’s FSIQ was 74, in the Very Low range (74) on the WISC-IV and in the Low Average range (87) on the TONI-4. On achievement tests, S/he was Very Low in Broad Reading (77), Low Average in Broad Written Language, and Extremely Low in Broad Math (65). Examiner A diagnosed Student with a Language Disorder, Attention Deficit Hyperactivity Disorder, Specific Learning Disorders in Reading, Written Expression, and Math, and Unspecified Anxiety Disorder. Examiner A recommended, *inter alia*, direct instruction from a tutor, extended time for classroom work and testing, priority seating, assignment modification, repetition of information and instructions, audio books, and access to a scribe for test taking and some writing assignments. In reading and writing, Examiner A recommended that Student “will need intensive instruction using a research-based, systematic reading and spelling program, such as Phonographix, Orton-Gillingham, Sounds in Syllables, Wilson, or Lindamood-Bell...”

On February 26, 2017, Examiner C reviewed Examiner A’s evaluation for DCPS. Examiner C concluded that Student’s “lack of academic progress” was due to both OHI and SLD and recommended consideration of a Multiple Disabilities classification. Examiner offered forty-two recommendations including, but not limited to, small group instruction, extended time to complete tasks and in-class assignments, seating near the teacher, step-by-step instruction and ongoing prompting, and word recognition strategies. On March 5, 2017, Witness C completed her Diagnostic Supplementary Testing report. The TONI-4 score mirrored that in Examiner A’s evaluation, but Student’s WJ subtest scores were in the Low Average and Average range. Witness

¹⁰³ *Id.* at 203-04.

¹⁰⁴ *Endrew F. ex rel. Joseph F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (2017).

¹⁰⁵ *Id.* at 997.

¹⁰⁶ *Id.* at 1000-01 (citations omitted).

C opined that due to Student's lack of grade level skill development and "poor performance in school," s/he "requires specialized instruction across [his/her] school day... [His/her] needs clearly point to a full-time program that comprehensively addresses them and can pace instruction to meet [his/her] processing and response styles."

According to Witness H's September 2019 Psychological Reevaluation, Student was found eligible for services in May 2017,¹⁰⁷ but no documentation of the initial eligibility determination was offered into evidence. For the remainder of the 2016-17 school year at School C, Student earned grades of Advanced in art, Proficient in math, speaking and listening, social studies, science, health and physical education, and Spanish, and Basic in reading and written language. Petitioner/father testified that they ultimately enrolled Student at School A in February 2018, because at School C, s/he was anxious and frustrated, was easily distracted, and had difficulty interacting with peers.

At the IEP meeting on June 4, 2019, the parties agreed on all aspects of the IEP except the amount of specialized instruction outside of general education. The team prescribed 10 hours inside general education and five hours inside general education, but Petitioner's insisted that Student not be required to interact with non-disabled peers during any aspect of the school day. Petitioners notified DCPS that they would not accept the proposed IEP and would maintain Student's placement at School A. Petitioners also notified DCPS on August 8, 2019 that they expected DCPS to reimburse them for the cost of services for Student at School A for the 2019-20 school year, an expectation DCPS rejected on August 14, 2019. While DCPS did not notify Petitioners of a proposed location for services to be provided to Student, such notice would have been moot in light of Petitioners' rejection of DCPS proposed program wherever service would be implemented.

The November 18, 2019 IEP

The differences between the June and November 2019 IEPs are set forth in paragraph 17 above. As was the case with the June IEP, the only area of disagreement was the amount of specialized instruction outside general education. DCPS proposed 20 hours, with specials classes, lunch, and recess to be conducted in general education. Petitioners again declined to accept the IEP proposed by DCPS. On June 29, 2020, DCPS offered Student a placement at School D for the 2020-21 school year.

The issue with respect to both IEPs is whether the record supports Student's need to be instructed completely out of the presence of non-disabled peers. In both IEPs, Petitioners were completely satisfied with all PLOPs, baselines, and goals. The only disagreement was the amount of specialized instruction proposed by DCPS outside general education. In June, DCPS proposed 15 hours of specialized education, 10 of which would be outside general education. In November, DCPS proposed 20 hours outside general education. On both occasions, Petitioners rejected any formulation that included interaction with non-disabled peers.

In her evaluation of Student, Witness C opined that placement at School A was necessary because Student was falling further and further behind, needs small group environment due to

¹⁰⁷ P15:3 (141).

his/her distractibility, more one-on-one attention, slower classroom pace, and familiarity with his/her daily environment. While Student may need additional services and accommodations to make academic progress, it does not follow that s/he requires a highly restrictive environment to succeed. In her evaluation of Student, Witness C based the need for segregation from general education students, in part, “based on [Student’s] poor performance in school, as clearly reflected on [his/her] report card...” In fact, Student’s report card for the school year in which Witness C conducted her evaluation, reflected grades that were Advanced in art, Proficient in math, speaking and listening, social studies, science, health and physical education, and Spanish, and Basic in reading and written language. In the hearing, Witness C was skeptical of the legitimacy of these grades, because standardized testing suggests to Witness C that Student was not capable of performing that well. However, the record is anything but conclusive that Student was performing significantly below grade level at the time the June IEP was developed. The record reveals that in May 2019, Student was at grade level on the QRI in reading and above grade level on the MAP math assessment.¹⁰⁸

There is no dispute that assessments reveal Student’s weaknesses in a number of areas. However, the issue is whether the record supports a highly restrictive placement to address these weaknesses. The QRI and MAP data undermine the argument that Student was so far behind his/her peers that only a highly restrictive environment could bring her/him to parity with her/his peers; these two measures already had her/him at or above grade level. Petitioners’ obvious counter is that any improvement in test scores by mid-July is attributable to the services provided by School A since February 2018. That may be true, but the student presented to the IEP team in June 2019 was demonstrating the capability of producing grade level work. Under these circumstances, what else justifies a highly restrictive placement? Petitioner/father testified that they removed Student from the general education classes at School C because of anxiety, lack of self-esteem, feelings of inadequacy, and not understanding some of what is being discussed around him/her by more mature peers. Witness B, Student’s speech and language service provider at School A, said that as class size increases, Student’s participation and ability to focus on teachers will diminish. However, he did not say that Student required being shielded from non-disabled peers. Witness D, the Head of School A’s Intermediate School, testified that Student needs support because s/he is performing two grades below grade level in Reading and Written Expression, and 3 grades in Math, is inattentive, has deficits in executive functioning, and would have trouble keeping up in a general education classroom. This 2021 testimony conflicts with the 2019 QRI and MAP data cited above that was available to the parties when the June 2019 IEP was developed. Second, the fact that a student is performing two grades below grade level does not necessarily suggest the need for a highly restrictive environment.

Petitioners emphasized the need for evidence-based intervention programs and argued that DCPS’ IEPs would not accommodate those programs. Witness C testified that Student needed 90 minutes per day of evidence-based intervention in reading, 20 minutes per day in reading fluency, 30-45 minutes per day in written language, and 45 minutes per day in math, and DCPS’ IEP does not allow enough time for these programs. However, Witness C testified, and the IEP meeting notes substantiate, that Witness C had a substantial role in the development of the June and November IEPs. Significantly, there was no dispute to DCPS’ contention that Petitioners agreed to all of the goals in the June 2019 IEP. The only goals in the June IEP referencing evidence-based

¹⁰⁸ P15:26-28 (164-66).

intervention programs were the second Reading goal, requiring a fluency program, and the fifth Reading goal, requiring a reading intervention program. There were no Math or Written Expression goals that mentioned intervention programs. In the November 2019 IEP, only the reading intervention program from the June IEP was carried over.¹⁰⁹ It is not apparent that the two intervention programs prescribed in the June IEP could be conducted within the 15 hours of specialized instruction in the June IEP, or that the one program prescribed in the November IEP could not be provided in the 20 hours of specialized instruction provided in the November IEP.

Finally, Student's behavioral issues are not so severe as to warrant a highly restrictive placement. While Student is distractible and inattentive, the Behavior PLOP from his/her November 2019 IEP reveals that s/he does not present an unmanageable distraction in the classroom; s/he is described as easily redirected. That PLOP also reports that Student "is *incredibly friendly* and engaging with both [his/her] peers and [his/her] teachers." Student having social problems with peers is "uncommon... and when [Student] does have a social problem with peers, [s/he] is able to appropriately express [him/herself], apologize for mistakes that [s/he] has made, and ask an adult for help if needed."¹¹⁰

While Petitioners argue that the benefits of mainstreaming are speculative, they concede that it is at least a preference under IDEA.¹¹¹ In fact, it was *the* primary motivation for IDEA's predecessor, the EHA, and the statute requires mainstreaming in the absence of proof that the child cannot make satisfactory progress in that environment:

*To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.*¹¹²

Petitioners' reliance on *Hartmann v. Loudoun County Board of Education*¹¹³ is misplaced. In *Hartmann*, the petitioner refused to accept an IEP because the student would not be adequately mainstreamed. When the student did not make progress in a general education class, the county prescribed a self-contained class of five for core subjects, but the student would be in general education classes for "specials," art, music, physical education, library, and recess. The county initiated due process proceedings to support its IEP. The Hearing Officer ruled that the student's disruptive behavior prevented his ability to receive academic benefit in the general education classroom. On the appeal to the district court, the court reversed the Hearing Officer's decision, in large part, because "[g]iven the strong presumption for inclusion, under the IDEA, disruptive

¹⁰⁹ P19:13 (217).

¹¹⁰ *Id.* at 20 (224), emphasis added.

¹¹¹ *Petitioners' Memorandum of Closing Argument* at 12.

¹¹² 20 U.S.C. §1412(a)(5)(A), emphasis added.

¹¹³ 118 F.3d 996 (1997).

behavior should not be a significant factor in determining the appropriate educational placement for a disabled child.”¹¹⁴

Reversing, the Fourth Circuit cited its decision in *DeVries v. Fairfax County School Board*,¹¹⁵ for establishing that Circuit’s standard in determining the least restrictive environment (“LRE”):

In *DeVries*, we held that mainstreaming is not required where (1) the disabled child would not receive an educational benefit from mainstreaming into a regular class; (2) any marginal benefit from mainstreaming would be significantly outweighed by benefits which could feasibly be obtained only in a separate instructional setting; or (3) the disabled child is a disruptive force in a regular classroom setting.¹¹⁶

As to the first pillar, the appellate court found that the district court disregarded the Hearing Officer’s well documented findings that the student had made “no academic progress” in general education. “In light of [REDACTED] failure to progress in the regular classroom, the officer drew the only reasonable inference from this evidence, namely that separate instruction was precisely what [REDACTED] needed to make educational progress.”¹¹⁷ As for the second pillar, despite perceived improvement in social skills due to interaction with non-disabled peers, “Any such benefits, however, cannot outweigh his failure to progress academically in the regular classroom.”¹¹⁸ Finally, the court ruled that the district court gave insufficient weight to the Hearing Officer’s findings that the student had a significant history of disruptive behavior in the classroom.

Hartmann is either distinguishable or not beneficial to Petitioners in a number of respects: (1) There is no history that Student is unable to make academic progress in a general education class. In fact, at School C in school years 2015-16 and 2016-17, the majority of Student’s grades were Advanced or Proficient, (2) While Student is distractible and inattentive, the Behavior PLOP from [his/her] November 2019 IEP reveals that s/he does not present an unmanageable distraction in the classroom and is easily redirected, (3) The IEP that the 4th Circuit upheld in *Hartmann* mirrors the IEP proposed by DCPS: “[t]he May IEP would have placed [REDACTED] in the self-contained class for his academic subjects, while including him with his non-disabled peers for all other school activities such as art, music, and physical education. . . Loudoun County properly proposed to place [REDACTED] in a partially mainstreamed program which would have addressed the academic deficiencies of his full inclusion program while permitting him to interact with nonhandicapped students to the greatest extent possible.”¹¹⁹ (4) The Hearing Officer in *Hartmann* ordered an aide or teacher to accompany the student to his “specials;” Witness J testified that that is the practice in her classroom in School B.

Reliance on *Clyde K. v. Puyallup School District, No. 3*¹²⁰ is similarly unavailing. The Ninth Circuit’s four-part test to determine the LRE is as follows: (1) the academic benefits of

¹¹⁴ *Id.* at 1000.

¹¹⁵ 882 F.2d 876 (4th Cir. 1989).

¹¹⁶ *Id.* at 879.

¹¹⁷ *Id.* at 1002.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 1005.

¹²⁰ 35 F.3d 1396 (9th Cir. 1994).

placement in a mainstream setting, with any supplementary aides and services that might be appropriate; (2) the non-academic benefits of mainstream placement, such as language and behavior models provided by non-disabled students; (3) the negative effects the student's presence may have on the teacher and other students; and (4) the cost of educating the student in a mainstream environment.¹²¹ As in *Hartmann*, the parents in *Clyde K.* challenged a placement into a self-contained classroom. The court found that the record demonstrated that (1) the student had derived no academic benefit in general education, due in large part to behavior that had become "dangerously aggressive," (2) the student had derived minimal benefits from being with non-disabled peers, (3) his presence in the class had a negative effect on teachers and other students; he regularly disrupted class with profanity, taunting, insulting remarks to teachers, and finally attacked two students. "Disruptive behavior that significantly impairs the education of other students strongly suggests a mainstream placement is no longer appropriate."¹²² As noted above, the Student herein has not been shown to be incapable of benefitting in general education, and s/he has exhibited none of the behaviors that prevented the student in *Clyde K.* from learning and that caused his presence in general education to become untenable.

The parents in *M.R. by R.R. v. Lincolnwood Board of Education*,¹²³ also relied upon by Petitioners, objected to their child's placement in a therapeutic day school. The court upheld the Hearing Officer's affirmation of the placement. As in the previous cases, the student had a history of making no progress in general education, "over a period of years when his conduct was very disruptive to others."¹²⁴ In addition, the student's extreme behavior warranted a restrictive environment. Among many other things, he barked and acted like a dog including licking his hands like paws, exhibiting physically threatening conduct, getting into fights, and threatening and assaulting school staff.¹²⁵ In sum, the authorities cited by Petitioners support placement in even partial mainstreaming, as in *Hartmann*, only when a student's behavior is a demonstrably inhibiting factor in the student's ability to learn, and is uncontrollably disruptive to others.

Petitioner's counsel criticizes the November 2019 IEP as "a generic 20 hours per week [IEP], and kicking it to the school team to figure out, is a far cry from "reasonably calculated," nor was it tailored to the unique needs of the student."¹²⁶ However, on the previous page, counsel conceded that the June 2019 IEP was developed largely from contributions from School A staff and Witness C. Consequently, the only disagreement Petitioners had with the IEP was the number of hours DCPS proposed for specialized instruction; there was no disagreement with any PLOP, baseline, or goal in the IEP. The only significant changes from the June 2019 to the November 2019 IEP were updated PLOPs due to recent evaluations, four additional Math goals, an additional Reading baseline and goal, an additional Written Expression goal, elimination of the Cognitive and Motor Skills Areas of Concern, four new Communications goals, the addition of an Emotional, Social, and Behavioral Development Area of Concern with PLOP, baselines and goals, specialized instruction outside general education doubled to 20 hours per week, the addition of two hours per month of behavioral support services ("BSS"), the elimination of OT services, and 45 minutes per

¹²¹ *Id.* at 1401.

¹²² *Id.* at 1402.

¹²³ 843 F.Supp. 1236 (N.D. Ill. 1994).

¹²⁴ *Id.* at 1239.

¹²⁵ *Id.* at 1238.

¹²⁶ *Petitioners' Memorandum of Closing Argument* at 14.

month of S/L consultation services. As with the June 2019 IEP, Petitioners objected to no PLOP, baseline, or goal; noted by Petitioner's counsel, these provisions were significantly influenced by School A staff and Petitioners' consultant, Witness C. The only disagreement Petitioners had with the November 2019 IEP is that Student's "specials," lunch, and recess were with general education peers, as was the case in the IEP approved in *Hartmann*, a case relied upon by Petitioners. If each and every PLOP, baseline, and goal were acceptable to Petitioners, arguing that the IEP terms were "a far cry from 'reasonably calculated'" and not tailored to the student's needs is patently disingenuous.

I conclude that DCPS has met its burden of proving that it provided appropriate IEPs in June and November 2019. Its failure to offer a location of services for the 2019-20 school year is moot as Petitioners, who had already unilaterally placed Student at School A since the 2017-18 school year, notified DCPS on August 8, 2019 that it would not accept the June 2019 IEP and would maintain Student's placement at School A. Petitioners agreed with every substantive aspect of both IEPs except the amount of specialized instruction outside general education. The record does not support that Student's cognitive or academic deficits, even in the presence of his/her social/emotional traits such as anxiety and distractibility, require a highly restrictive environment for her/him to make academic progress.

RELIEF

For relief, Petitioner requested *inter alia*, (1) reimbursement for tuition and related services at [REDACTED] School for the 2019-20 school year, and (2) maintenance of Student's placement at [REDACTED] School ([REDACTED]) until such time as DCPS makes an appropriate placement available.

ORDER

Upon consideration of the *Complaint*, DCPS' *Response*, the exhibits from the parties' disclosures that were admitted into evidence, the testimony presented during the hearing, *Petitioners' Memorandum of Closing Argument*, and *District of Columbia Public Schools' Closing Statement*, it is hereby

ORDERED, that the *Complaint* is hereby **DISMISSED**.

APPEAL RIGHTS

This decision is final except that either party aggrieved by the decision of the Impartial Hearing Officer shall have ninety (90) days from the date this decision is issued to file a civil action, with respect to the issues presented in the due process hearing, in a district court of the United States or the Superior Court of the District of Columbia as provided in 34 C.F.R. §303.448 (b).

Terry Michael Banks

Terry Michael Banks
Hearing Officer

Date: April 5, 2021

Copies to: Attorney A, Esquire
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