

**District of Columbia
Office of the State Superintendent of Education**

Office of Dispute Resolution
1050 First Street, N.E., Washington, DC 20002
(202) 698-3819 www.osse.dc.gov

OSSE
Office of Dispute Resolution
April 09, 2021

Parents, on behalf of Student,¹)	
Petitioners,)	
)	Hearing Dates: 1/27/21; 2/1/21; 2/24/21;
v.)	3/10/21; 3/19/21
)	Hearing Officer: Michael Lazan
District of Columbia Public Schools,)	Case No. 2020-0196
Respondent.)	

HEARING OFFICER DETERMINATION

I. Introduction

This is a case involving an X-year-old student who is currently eligible for services as a student with Multiple Disabilities (Speech-Language Impairment, Vision Impaired, including blindness) (the “Student”). A due process complaint (“Complaint”) was received by District of Columbia Public Schools (“DCPS” or “Respondent”) pursuant to the Individuals with Disabilities Education Act (“IDEA”) on November 3, 2020. The Complaint was filed by the Student’s parents (“Petitioners”). On November 12, 2020, Respondent filed a response. The resolution period expired on December 3, 2020.

II. Subject Matter Jurisdiction

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the IDEA, 20 U.S.C. 1400 et seq., its implementing regulations, 34 C.F.R.

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

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.

III. Procedural History

A prehearing conference was held on January 8, 2021, and January 19, 2021. Attorney A, Esq., counsel for Petitioners, appeared. Attorney B, Esq., counsel for Respondent, appeared. A prehearing conference order was issued on January 20, 2021, summarizing the rules to be applied in the hearing and identifying the issues in the case. The hearing was conducted through the Microsoft Teams videoconferencing platform, without objection. Petitioners were again represented by Attorney A, Esq., together with Attorney C, Esq. Respondent was again represented by Attorney B, Esq. This was a closed proceeding.

Respondent moved to dismiss on November 25, 2020. On January 20, 2021, the motion was denied. On January 15, 2021, Petitioners moved to extend the Hearing Officer Determination (“HOD”) due date from January 17, 2021, to February 22, 2021, to allow sufficient time for the hearings. On January 16, 2021, the motion to extend the HOD due date to February 22, 2021, was granted. Hearings were held on January 27, 2021, and February 1, 2021, but the matter was not concluded. On February 18, 2021, Petitioners moved to extend the HOD due date to March 10, 2021. The motion was granted on February 19, 2021. A hearing was held on February 24, 2021. Again, the matter was not concluded. Petitioners filed another motion to extend the timelines on February 25, 2021. The motion was granted on March 9, 2021, extending the HOD due date to April 8, 2021.

Additional hearings were held on March 10, 2021, and March 19, 2021, when the matter concluded. The parties elected to submit closing briefs instead of presenting closing oral statements. On March 29, 2021, the parties filed their briefs. On March 30, 2021, Respondent sent a supplemental email on a legal issue raised in the briefs. Petitioners did not object and submitted their own email in response on March 31, 2021. Respondent sent a second email on the issue, on consent, on April 2, 2021.

During the proceeding, Petitioners moved into evidence exhibits P-1 through P-41, P-43, P-44, and P-46 without objection. Respondent moved into evidence exhibits R-1 through R-19 without objection. Petitioners presented as witnesses, in the following order: Witness A, a project coordinator at Center B (expert in special education and deaf education for young students); the Student's mother ("Mother"); and Witness B, a board-certified assistant behavior analyst (expert in Applied Behavioral Analysis ("ABA")). Respondent called as witnesses, in the following order: Witness C, an occupational therapist (expert in special education-related services); Witness D, a vision specialist (expert in special education programming and placement with an emphasis on students with visual impairment); Witness E, an assistive technology specialist (expert in speech-language pathology, augmentative and alternative communication, assistive technology, and corresponding evaluations related to special education programming and placement); Witness F, a behavior specialist and board-certified behavior analyst ("BCBA") (expert in special education programming and placement in the area of ABA); Witness G, a speech-language pathologist (expert in speech-language pathology as it relates to programming, placement, and deaf education); and Witness H, an assistant principal at

School B PCS (expert in special education programming and placement, and speech-language pathology).

IV. Issues

As identified in the revised Prehearing Order and in the Complaint, the issues to be determined in this case are as follows:

1. Did Respondent fail to provide the Student with an appropriate Individualized Education Program (“IEP”) on October 15, 2020? If so, did Respondent act in contravention of 34 C.F.R. 300.320, Endrew F. v. Douglas County School District, 137 U.S. 988 (2017), Hendrick Hudson Bd. of Educ. v. Rowley, 458 U.S. 176 (1982), and related authority? If so, did Respondent deny the Student a Free Appropriate Public Education (“FAPE”)?

Petitioners contended that the Student’s IEP should have required the use of American Sign Language (“ASL”), that the IEP had deficient goals relating to reading, vision, and speech, and that the IEP improperly required the use of a speech-generating device for the Student.

2. Did Respondent fail to provide the Student with an appropriate placement for the 2020-2021 school year? If so, did Respondent act in contravention of 34 C.F.R. 300.320, Endrew F. v. Douglas County School District, 137 U.S. 988 (2017), Hendrick Hudson Bd. of Educ. v. Rowley, 458 U.S. 176 (1982), and related authority? If so, did Respondent deny the Student a FAPE?

Petitioners contended that School B PCS failed to provide services with sufficient intensity for the Student given his/her significant impairments, failed to employ expert staff sufficiently familiar with the Student’s needs, failed to provide instruction through ASL, and failed to provide sufficient ABA services.

As relief, Petitioners seek tuition reimbursement/prospective relief for Program A for the 2020-2021 school year.

V. Findings of Fact

1. The Student was born with a cleft palate, profound hearing loss in both ears, and other health issues. Cochlear implants were surgically inserted in the Student's ears in March, 2015. P-2-4. The Student has also been diagnosed with cortical vision impairment ("CVI") and autism spectrum disorder. The Student is at "detection level" in hearing, meaning that s/he cannot understand spoken words but can hear some sounds. Testimony of Witness A; Testimony of Mother; P-11. If you talk to the Student and make a few signs, s/he might move his/her lips, gesture, smile, and look in your direction. The Student can follow directions, such as to sit down. The Student may communicate his/her wants and needs by taking someone's hand and leading them to an object.

Testimony of Witness F.

2. The Student has emerging academic skills. S/he is beginning to match shapes, engage in counting, and turn the pages of a book. The Student has age-appropriate gross and fine motor skills. Testimony of Witness A. The Student's CVI issues have been slowly improving and should continue to improve slowly going forward. Testimony of Witness D.

3. For at least part of the 2015-2016 school year, the Student was placed in an American Sign Language ("ASL") "immersion" program at Special School A, but the program did not include tactile ASL. Once Special School A became more aware of the Student's vision issues, it pressured Petitioners to withdraw the Student from the school. Testimony of Mother.

4. A speech and language assessment of the Student by Witness E, dated November 11, 2016, assessed the Student's communication issues. The report stated that

children with CVI have underdeveloped visual representations of information that typically-sighted children receive incidentally. The report indicated that the Student's CVI issues were factors to consider in determining the appropriateness of Augmentative and Alternative Communication ("AAC") devices for the Student. Further to the report, Witness E conducted an observation of the Student, during which the Student showed interest in a speech-generating device ("SGD") called an Accent 1000, as well as in an iPad. In February, 2017, Witness E "trialed" assistive technology for the Student in four sessions and determined that the Student did "fairly well" with the equipment. P-5; Testimony of Witness E.

5. During the 2016-2017 and 2017-2018 school years, the Student attended Center A five days per week, eight hours per day. Center A focused on increasing the Student's feeding and swallowing skills, overall mobility, and communication skills. The Student was exposed to a "Total Communication" method, and trialed the use of the Accent 1000, which proved unsuccessful due to the Student's difficulty hearing the device's simulated speech, which was coupled with small icons. The Student progressed in some areas, including "guarded" progress in speech and language. The Student depended on a caregiver for feeding at this time. P-7-1-3.

6. For the 2018-2019 school year, the Student attended School A, a DCPS public school. The Student would elope from class and was not aware of his/her safety. At this time, the Student could not communicate his/her wants and needs. P-12-2. The Student had an aide considered be a one-on-one ASL intervener. The Student was engaged in visual strengthening exercises in class, such as stacking blocks and completing puzzles. P-14-3. The Student was taught tactile ASL signing and was

“babbling” with his/her hands. Petitioners felt that the school was inappropriate for the Student because of safety issues, poor teacher attendance, lack of a bathroom in the Student’s classroom, and lack of a fire alarm in the school. Testimony of Mother; P-12.

7. The Student’s IEP dated October 5, 2018, indicated that the Student was beginning to look at books and turn his/her head in response to sudden sounds, but not consistently in response to novel sounds. The IEP indicated that the Student had the opportunity to communicate via ASL and auditory input, and noted that the Accent 1000 had been trialed without success at Center A. Nevertheless, the IEP stated that Center A staff had said that an assistive technology consultation was recommended to determine if the Student could benefit from a device. The IEP noted that the Student could gaze at another person for two seconds and produce sound combinations, but did not engage in vocal imitation. The Student could look at pictures in books, locate familiar items, and respond to music by smiling and moving his/her body, but was not using any words or word approximations to communicate. The Student was noted to be very tolerant of hand-to-hand assistance. P-8-3, 9-11. The IEP recommended occupational therapy for 240 minutes per month, physical therapy for 120 minutes per month, audiology for thirty minutes per month, speech-language pathology for four hours per month, and specialized instruction for twenty-four hours per week, with an additional three hours of specialized instruction per month. The IEP also recommended that school staff provide the Student with, among other things, visual supports when needed, close adult proximity, peer and adult models for desired responses, and hand-over-hand assistance as needed, as well as “(g)ain visual attention when sharing communication,” present items within the Student’s visual field, and implement a total communication system. P-8-18.

8. The Student was reported to be using some ASL signs as of April 9, 2019. At the time, the Student had virtually no expressive language skills and was eating only pureed food with adult assistance. The Student's behavior was difficult to control, and his/her cognitive skills were thought to be at a higher level. P-10-2-3. An observation and interview dated May 3, 2019, found that the Student needed "hand-over-hand" assistance with most activities and was engaging in self-stimulatory activities. P-14-3-4.

9. A "Justification and Plan for Dedicated Aide" form was written for the Student on or about May 7, 2019. This plan provided for an aide trained in ASL that was familiar with tactile signing. P-13-1.

10. Institute A conducted a neuropsychological assessment of the Student on or about July 17, 2019. According to the assessment, the Student did not engage in reciprocal play, did not produce spoken English or ASL spontaneously, and did not consistently respond to either spoken English or ASL. The Student babbled and vocalized throughout the testing, during which s/he was inattentive and frequently pushed away items and engaged in sensory-seeking behaviors. The assessment determined that the Student displayed multiple features of autism spectrum disorder, including repetitive behaviors, and endorsed tactile Applied Behavior Analysis ("ABA") for the Student in the classroom, incorporating techniques such as discrete trial teaching, with a BCBA to implement strategies and teachers who are trained to work with deaf and blind children. The assessment recommended visually-based augmentative communication strategies such as signs and "PECS." The assessment also recommended that the Student be referred to other agencies, including Center B, which employs Witness A. P-14.

11. For the 2019-2020 school year, the Student attended School B PCS, which was better organized than School A. Testimony of Mother. The Student did not know any ASL when s/he started at the school. DCPS worked with the Student's speech therapist to provide him/her with ASL and enrolled a paraprofessional, Aide A, in a training program to become a deaf-blind intervener. Testimony of Witness H. Aide A did not know any ASL at the time. Testimony of Mother.

12. The plan was to use the AAC device for expressive language and ASL for receptive language. Testimony of Witness H. None of the school staff who worked with the Student knew tactile ASL except Witness G, the speech and language pathologist at School B PCS. All staff at School B have ABA training and ABA is embedded into daily instruction, including discrete trials. The school does not record daily data or graph data. Testimony of Witness F. An object schedule was used for the Student and was beneficial to him/her. School staff encouraged the Student to use the SGD to generate speech. The Student was initially resistant to the SGD and became more comfortable with handling the device as the year progressed. Witness G worked with the Student's dedicated aide on how to teach ASL to the Student and how to use the AAC device. Testimony of Witness G. The AAC device is ten inches long and six inches high, in a thick rubber case, with approximately twenty-eight icons on the screen representing basic words like "good," "bad," and "play." The icons on the device are "dynamic" and "open up" new images or make sounds. A variety of other modalities were used for the Student's lessons, including low-tech picture boards and ASL signing. Testimony of Witness E; Testimony of Witness G; Testimony of Witness H. When the Mother observed the Student, she did not see ASL being used. She also noticed that the Student ended up

sitting in a corner, not doing anything in particular. The Student's progress at School B was most obvious in the area of feeding. Testimony of Mother.

13. An IEP was written for the Student on October 2, 2019. The IEP indicated that the Student demonstrated behaviors that impeded his/her learning, and that the Student used his/her vision to access objects that s/he wanted to play with. The IEP stated that the Student's functional hearing ability was "to be determined" and that s/he used a speech-generating device and unconventional methods (such as crying or laughing) to communicate. The IEP indicated that the Student required visual supports such as a speech-generating device, objects, and pictures, and needed to use ASL for salient vocabulary and simple instructions. The IEP indicated that the Student was not using his/her SGD intentionally and required a multi-modality approach to expressive and receptive language learning. The IEP stated that the Student would "greatly benefit from visual mode of communication (ASL) to supplement [his/her] auditory input." The IEP contained "Area of Concern" sections in mathematics, reading, adaptive/daily living skills, hearing, vision, communication/speech and language, and motor skills/physical development. The IEP recommended 27.62 hours of specialized instruction per week, with speech-language pathology for one hour per week, audiology for thirty minutes per week, occupational therapy for 180 minutes per month, and physical therapy for 120 minutes per month. All services were to be delivered outside general education. An additional two hours of specialized instruction "consultation" services per month were also recommended. The "Other Classroom Aids and Services" section of the IEP recommended "hand-over-hand" assistance as needed, the use of a light box and highly saturated colors, and extended wait time, as well as to "(g)ain [the Student's] visual

attention when sharing communication” and to present items within the Student’s visual field. A dedicated aide was again recommended. P-15.

14. During the first two terms of the 2019-2020 school year, the Student progressed the most on goals relating to toileting, feeding, and physical activities. The Student had less success on goals relating to sound awareness, expressive communication, and play routines. In both terms, the Student received an “A” (less than 20 percent accuracy) for the goal relating to the use of a speech-generating device. In the third term, the Student also received an “A” for the goal relating to sound awareness and increasing communication. Additionally, the school tried to reintroduce the Student to the SGD, but s/he was not tolerant of the device at first. In September, 2019, reports indicated that the Student needed hand-over-hand assistance to use the device, reached out to the device minimally, and did not consistently attend to the device. R-6-2. Data from November, 2019, showed similar results. R-6-6, 7. By January 24, 2020, the Student sometimes attended to models on the device, but only in ten percent of his/her opportunities, and required hand-over-hand assistance to say hello. R-6-10. By February 20, 2020, it was reported that the Student only activated icons on his/her device when staff provided full physical assistance, and even then, s/he did not attend to the device. By about March, 2020, the Student would reach toward his/her device at appropriate times, but could not use it independently. Progress notes from Witness G indicated that the Student demonstrated some understanding that s/he could use the SGD to ask for items or “request recurrence,” and that s/he could reach out to the device, but required moderate to maximal gestural and tactile prompting in order to “use the correct target word.” P-16; P-16-A; R-11-13; Testimony of Witness G; Testimony of Witness H. An

object schedule was used for the Student, consisting of such cues as a mini book for reading and a paintbrush for art. Testimony of Witness E.

15. During the 2019-2020 school year, the Student's speech and language pathologist, Witness G, worked with the Student on operating the SGD, using hand-over-hand prompting, verbal support, gestural support, and signing. Modeling was used to get the Student to respond to the SGD. Some of the Student's speech-language pathology sessions were provided in group therapy, but most sessions were one-on-one with Witness G. The Student would sometimes have behavioral issues during these sessions. R-6. Witness G was "proficient" in ASL but not conversationally fluent. Other staff members at School B PCS, including related service providers, sometimes used signs with the Student, and the Student's aide used signs and worked with SGD. Testimony of Witness G.

16. Witness A, from Center B, observed the Student at School B PCS in or about November, 2019. The observation lasted for about one hour. The Student was with an adult the whole time. The Student ate a meal, transitioned to toileting, then went back to the classroom. Witness A did not see the Student communicate or see any adult use ASL with the Student. The Student was led by the hand and fed by an adult, and did not engage with any peers. Testimony of Witness A.

17. During the 2019-2020 school year, prior to the inception of the COVID-19 pandemic, the Student was receiving autism-related services from Witness B, who observed the Student at School B in or about December, 2019. The Student was not seen communicating; instead, s/he was twirling cloth. The Student complied with instructions 50 percent of the time without protest. The Student's aide tried to work with his/her

unconventional communication, such as whining, pushing a hand away, crying, and flopping on the floor. The classroom was visually cluttered and loud, but well-staffed. Quite a few children in the room had maladaptive behaviors. The classroom included walls with colorful posters, a play kitchen, a table work area, and cubbies. No use of ASL or ABA was observed. Testimony of Witness B.

18. As a result of the COVID-19 pandemic, School B shut down in-person instruction on or about March 20, 2020. Witness D and Witness G tried to set up weekly phone or Zoom contact with Petitioners to discuss how the Student was doing at home, and DCPS sent them weekly newsletters and video lessons, including language activities and home activities. The Mother then requested that DCPS stop the remote sessions. Testimony of Witness D; Testimony of Witness G. With the Student's communication and behavior issues, s/he was resistant to virtual learning. At one point, the Student left the computer and walked into his/her family's pool with his/her clothes on. Testimony of Mother.

19. The Student regressed during the pandemic and the Mother contacted Witness B to set up a program for the Student. This approach was consistent with the recommendations of Physician A, who had recommended ABA therapy at home and at school to allow the Student to make academic progress. Testimony of Mother; P-11.

20. In or about June, 2020, Witness B received a telephone call from the Mother asking for support. Witness B then developed a plan with Witness A, who has worked as a deaf-blind intervener and for an organization that coaches deaf-blind interveners in Maryland and the District of Columbia. A BCBA signed off on the plan. On June 24, 2020, Petitioners sent a letter to Respondent informing Respondent that they

were placing the Student in Program A for the 2020-2021 school year. Testimony of Witness A; Testimony of Witness B; Testimony of Mother. In June of 2020, the parties met. Petitioners wanted to explore using an iPad with the Student, as well as ABA instruction. Testimony of Witness H; Testimony of Witness G.

21. A program review meeting was held for the Student on August 24, 2020. Among the attendees were Petitioners, Witness G, Witness F, Witness C, Witness D, Witness B, and attorneys for both Petitioners and Respondent. Petitioners stated that the Student had not made adequate progress at School B PCS and requested a specialized program for deaf/blind students, including a deaf-blind intervener fluent in ASL. Witness B spoke about the Student's overall progress since s/he started working with Provider A at Program A, and mentioned that the Student had mastered some IEP goals at Program A. School B PCS staff noted that Program A was not recognized as a private placement, that the Student was making progress with feeding skills, and that s/he was becoming tolerant of the SGD with hand-over-hand support or gestural prompts. Respondent represented that the Student's dedicated aide, Aide A, was enrolled in a program as a deaf-blind intervener and had completed one-third of the program. The Student's teacher at School B PCS, Teacher A, indicated that the Student also showed improvements in his/her ability to match objects, turn the pages of a book, follow directions, and stay seated. The Mother said that distance learning was not working for the Student. R-10A.

22. The Student started attending Program A on a regular basis in or about September, 2020. Testimony of Mother. A "Functional Vision Assessment Report" on the Student by Witness A, dated September 16, 2020, found that the Student's visual impairment had changed for the better on "CVI Range" testing, which measures visual

function across ten characteristics. The report advised integrating vision into the Student's activities all day and providing modifications, such as reducing the complexity of arrays by presenting them on a plain background.

23. Witness G observed the program at Program A in or about September, 2020. Witness G saw that the Student had maintained his/her feeding skills and noticed s/he was signing. The Student also played with toys, transitioned from one room to another, and went on a walk. Witness G felt that there was not sufficient social distancing, though some people were wearing masks. Testimony of Witness G.

24. An IEP meeting was held for the Student on October 15, 2020. The DCPS members of the IEP team were influenced by the Student's experience at Program A and School A, where the Student had not succeeded with ASL. Testimony of Witness H; Testimony of Witness E; Testimony of Mother. DCPS team members felt that the Student should not be taught ASL all day because the Student was not fluent. Testimony of Witness C; Testimony of Witness E. DCPS team members thought that the Student needed to learn multiple forms of communication, and they provided for ASL in his/her daily routine to increase receptive language. Testimony of Witness H; Testimony of Witness G; Testimony of Witness E. DCPS team members believed a full-time ASL intervener would be overstimulating for the Student. Testimony of Witness F. DCPS team members also felt that therapy all day, every day would result in Student "burnout." Testimony of Witness G. The Student's behavior was not a main subject of the meeting. Testimony of Witness F. There was little to no discussion of ABA at the meeting. Testimony of Witness H. The team promised to provide the Student with a Functional

Behavior Assessment (“FBA”) when in-person instruction resumed. Testimony of Witness F; P-32-1.

25. In the Student’s October 15, 2020, IEP, s/he was recommended for 28.12 hours of specialized instruction per week outside general education, along with related services. The Student was recommended for one hour of speech-language pathology per week, thirty minutes of audiology per week, 180 minutes of occupational therapy per month, two hours of specialized instruction consultation services per month, and 120 minutes of physical therapy per month. A dedicated aide was again recommended for the Student. The IEP described the Student as a non-verbal communicator who used an SGD to communicate, was developing interest in the device, and should continue learning how to use it to request/protest appropriately and develop his/her expressive communication skills. ASL was recommended only for salient vocabulary and simple directions to enable the Student to access language and the school curriculum. ASL was recommended for the Student’s receptive skills, not the Student’s expressive skills.

Testimony of Witness G; Testimony of Witness H; R-11.

26. For the current 2020-2021 school year, the Mother takes the Student to Program A’s Virginia facility, where the Student stays from 9:00 A.M. to 3:00 P.M. four day per week. Testimony of Mother; P-19. On Fridays, instruction occurs at the Student’s home. At the facility, the Student first transitions to a work area, then goes into one of four rooms with Provider A and perhaps one ABA therapist. The Student then works on goals for five minutes to one half-hour. The facility houses all of the Student’s materials, including a computer and a desk, and also has a playroom and a kitchen. Breaks are built into the Student’s day. The Student may go into the CVI room, which

has blacked out windows, or interact with other children at the facility. The children may also go outside. Provider A is present for all services. Testimony of Witness B.

27. Program A provides the Student with ABA services. P-37-4; Testimony of Witness B. Provider A has a bachelor's degree in deaf studies and is currently attending a deaf-blind intervenor program. Provider A is fluent in tactile and visual ASL and provides tactile and visual instruction to the Student throughout the day. Program A is teaching the Student twenty-five to fifty signs, some of which the Student has learned, such as the signs for "red" and "snack." The Student can also refer to his/her sibling as being mischievous. Testimony of Witness A; Testimony of Witness B; Testimony of Mother. Provider A also incorporates strategies such as an object communication system and touch cues (a system of touches on the body to indicate that something is going to happen) into the Student's program. Other accommodations provided to the Student in Program A relate to the presentation of materials, clutter, lighting adjustments, a quiet work-space, and adjusted seating. Witness A is with the Student one or two times per month in Program A to discuss the Student's progress with the intervener and offer observations, technical assistance, coaching, and additional ideas on instruction. Witness A also models tactile ASL for other staff and helps set up the materials. Program A has developed a behavior plan for the Student, targeting elopement and tantrums through the use of ABA methodology, data, and graphs. Up to three other students attend Program A at the same time as the Student. P-37-23; P-20; Testimony of Witness A; Testimony of Witness B.

28. Program A does not have an audiologist, but the Student has a private audiologist that services his/her needs. Testimony of Witness A. The Student receives

occupational therapy, physical therapy, and speech and language therapy through other private providers. Testimony of Mother.

29. Program A produced a document entitled “IEP Goals and Objectives Rewrite Suggestions” on October 15, 2020. The document suggested rewrites of the Student’s goals for understanding pictures, toileting skills, vision functionality, and communication skills. P-30.

30. On November 12, 2020, DCPS sent another Prior Written Notice to Petitioners informing them that the Student had been withdrawn from DCPS. P-34-1. Petitioners had been told the Student could be considered truant because s/he was not attending school, and they were encouraged to withdraw the Student from DCPS, to open a spot for other students at School B PCS. Testimony of Mother. A document from Program A stated that Petitioners chose to withdraw the Student from DCPS because the Student was not able to access or meaningfully participate in its virtual program for deaf-blind students. P-37-2; P-36; Testimony of Mother.

31. An ABA “Therapy Treatment Plan” was written for the Student on December 23, 2020. The plan indicated that the Student has become more engaged and attentive, is receptively responding to several high-frequency ASL signs, and is beginning to imitate and demonstrate a few modified ASL signs expressively. The report indicated that the Student’s improvements have led to decreased behavioral issues, including elopement and tantrums. Progress was reported in labelling, attending to a communication partner, following directions, variation in play, motor attention, imitating actions, drinking from a straw, one-on-one correspondence, and matching, with particular progress in seeking out adult attention using eye gazes or gestures. The Student mastered

eight goals during his/her time at Program A, including goals to indicate “yes” and “no,” initiate communication, use a utensil, complete a puzzle, engage in reciprocal play, imitate a motor movement, and transition. Program A reported less progress in manding, pointing, locating objects, turn-taking, demonstrating the functional use of objects, and toileting. P-37-1-20; Testimony of Witness B.

32. The Student can currently sign “shoes,” “bread,” and “snack” independently. Testimony of Witness B. The Student can also indicate and sign “yes” and “no,” and knows the difference. The Student can initiate a conversation and understand when others are signing to him/her. The Student’s behavior has improved. The Student can now go up stairs one foot at a time, on his/her own, and look at magazines right-side up, whereas formerly s/he would look at them upside down. Testimony of Mother.

VI. 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 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.” D.C. Code Sect. 38-2571.03(6)(A)(i).

Accordingly, on both Issue #1 and #2, relating to the appropriateness of the Student’s IEP and placement, the burden of persuasion is on Respondent if Petitioners present a *prima facie* case.

1. Did Respondent fail to provide the Student with an appropriate IEP on October 15, 2020? If so, did Respondent act in contravention of 34 C.F.R. 300.320, Endrew F. v. Douglas County School District, 137 U.S. 988 (2017), Hendrick Hudson Bd. of Educ. v. Rowley, 458 U.S. 176 (1982), and related authority? If so, did Respondent deny the Student a FAPE?

Petitioners contended that the Student’s IEP should have required the use of ASL, that the IEP had deficient goals relating to reading, vision, and speech, and that the IEP improperly required the use of a speech-generating device for the Student.

In Hendrick Hudson Bd. of Educ. v. Rowley, 458 U.S. 176 (1982), the Court explained that an IEP must be formulated in accordance with the terms of the IDEA and “should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” Id. At 204. The IDEA also requires that children with disabilities be placed in the “least restrictive environment” so that they can be educated in an integrated setting with children who are not disabled to the maximum extent appropriate, that is, one that provides a program that “most closely approximates” the education a disabled child would receive if s/he had no disability. Leggett v. Dist. of Columbia, 793 F.3d 59, 74 (D.C. Cir. 2015); 20 U.S.C. Sect. 1412(a)(5)(A). In 2017, the Supreme Court addressed a split amongst the circuit courts regarding what the IDEA means when it requires school districts to provide an “appropriate” level of education to children with disabilities. Endrew F. ex rel. Joseph F. v. Douglas County School Dist.

RE-I, 137 S. Ct. 988 (2017). In Endrew F., the Court held that an IEP must be reasonably calculated “in light of the child’s circumstances.” Id. at 999-1000. The Court also held that a student’s educational progress must be “markedly more” than merely “de minimis” for a FAPE to be provided, and that a student’s educational program must be “appropriately ambitious.” Id. at 1000-1001. The Court also held that parents can fairly expect school authorities to offer a “cogent and responsive explanation” for their decisions, and that its ruling “should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of school authorities, to whose expertise and professional judgment deference should be paid.” Id. at 1001-1002.

In S.S. ex rel. Shank v. Howard Road Academy, 585 F. Supp. 2d 56, 66-67 (D.D.C. 2008), the Court found that the measure and adequacy of an IEP decision must be determined as of the time it was offered to the student. Citing to circuit court decisions, the Court found that an IEP should be judged prospectively to avoid “Monday morning quarterbacking.” See also Pavelko v. District of Columbia, 288 F. Supp. 3d 301, 307 (D.D.C. 2018); Moradnejad v. District of Columbia, 177 F. Supp. 3d 260, 275 (D.D.C. 2016). Contrary to Petitioners’ argument out-of-circuit citations to the contrary, this rule is widely adopted in the circuit and will be adopted in this HOD.

This case involves a child with a constellation of severe disabilities. The Student is only at the “detection” level in hearing and has been diagnosed with CVI. The Student has also been diagnosed with autism spectrum disorder. As a result of these deficits, the Student has effectively been unable to communicate with language, despite being in school for several years. The Student communicates mainly through gesturing and prompts, which has caused the Student to engage in behavioral issues in recent school

years. Most witnesses therefore suggested, directly or indirectly, that the Student's first priority in education is the development of communication skills. Petitioners argued that the Student needs to learn a specific language, ASL, to develop communication skills that can be generalized, so that the Student can eventually communicate with others who also speak ASL, including peers and family members. Respondent contended that the Student has not responded to prior attempts to teach him/her ASL, and that the Student instead requires exposure to multiple forms of communication.

In support of their position, Petitioners presented Witness A, who specializes in the very issues that this Student presents with. Witness A has worked with deaf and blind children throughout her almost twenty-year career. She is a project coordinator and second-in-charge at Center B, an organization that was established to assist children with significant hearing and vision loss. The organization coaches deaf-blind interveners for the benefit of the deaf-blind community. It is funded by the United States Department of Education's Office of Special Education Programs ("OSEP") and the state government of State A. Witness A oversees the coaching that Center B provides to deaf-blind children.² Witness A also served as a deaf-blind intervener for five years at the Maryland School for the Blind and worked nine years as a teacher at the Maryland School of the Deaf. Moreover, she has an endorsement certificate in working with children with CVI.

Additionally, Witness A was a neutral, non-party witness. She specifically stated that Center B does not take sides in disputes and was established to provide technical assistance to help school systems as well as individual parents. There was no statement

² Center B appears to be established and respected in the medical community. It is, in fact, referenced as a resource in a neuropsychological evaluation in the record from Institute A. P-14-7.

to the contrary by Respondent or any of its witnesses. Certainly, no witness from Respondent testified to the effect that any untoward activities are associated with Center B, or that Center B has any agenda except to help deaf-blind children. To this Hearing Officer, Witness A had no clear incentive to testify in support of Petitioners except for her sincere belief in supporting the deaf-blind community. In fact, it was School B PCS that first contacted Witness A so that she could conduct a Functional Vision Assessment of the Student.

The gist of Witness A's testimony was that for the Student to meet his/her IEP goals, s/he needs a deaf-blind intervener who is fluent in both tactile and visual ASL. Witness A suggested that a deaf-blind intervenor is necessary to provide a bridge from the classroom to the Student, and that fluency in tactile and visual ASL throughout the day is recommended for any deaf-blind student capable of learning it. Witness A testified that, in her opinion, the Student has shown that s/he has the potential to learn tactile and visual ASL, and therefore needs this kind of training throughout the school day. Witness A pointed out that ASL is preferable to the SGD to enable the Student to communicate meaningfully with people. Witness A also testified that an SGD device is ordinarily recommended only if tactile and visual ASL are not feasible for a student.

Indeed, in the areas of audiology and communication, the Student did not master or even make much progress on his/her goals³ at School B PCS during the 2019-2020 school year. At School B PCS, goals are measured through codes that determine the

³ In their brief, Petitioners stressed that the Student did not master his/her goals, but they did not maintain that the IEP had any inappropriate goals. Accordingly, this claim appears to have been withdrawn by Petitioners. To the extent that this issue may be live, however, this Hearing Officer must rule that Petitioners did not present a *prima facie* case on these issues. None of Petitioners' witnesses clearly and comprehensively discussed the inadequacy of any of the Student's speech, vision, or reading goals.

percentage of mastery that a Student has reached during the subject time period. The code reflecting the lowest level of mastery is code “A,” which reflects less than twenty percent mastery. On the Student’s sound awareness goal at School B PCS, s/he received an “A” in all three terms prior to the onset of the COVID-19 pandemic. On the goal relating to expressive communication, the Student also received an “A” in all three terms prior to the onset of the pandemic. And in the goal relating to participation in a play routine, the Student again received an “A” in all three terms prior to the pandemic.

Similarly, as Petitioners pointed out, in September 2019, reports indicated that the Student needed hand-over-hand assistance to use his/her device, reached out to the device minimally, and did not consistently attend to the device. Data from November, 2019, showed similar results. By January 24, 2020, the Student had attended to “models” on his/her device, but only in ten percent of opportunities. By February 20, 2020, it was reported that the Student activated icons on his/her device when given “full-physical assistance,” but was still not “attending” toward the device.

There is nothing in the record to suggest that the Student's goals were too difficult or ambitious. Accordingly, given the Student’s performance, the staff at School B PCS should have recommended changes the Student’s program so that the Student could make more progress in communication skills, especially since an expert in the Student’s areas of deficit told them exactly what they had to do to develop those communication skills. Instead, a number of Respondent's witnesses stated that a multi-modal approach was required. A significant factor in their reasoning was that they felt the Student should not have been recommended for an ASL-intensive program, because the Student had done

poorly in ASL programs in the past. They pointed to the Student's experience at School A, a DCPS public school, and in an ASL immersion program at Special School A.

Petitioners were able to establish that this reasoning was flawed. The programs at School A and Special School A are entirely different than the program that could have been implemented at School B PCS with a deaf-blind intervener fluent in tactile and visual ASL. The Mother testified that Special School A had an ASL program for deaf students only, which did not involve any tactile ASL, that the school did not want students who also had vision impairment like CVI, and that the Student was effectively asked to leave the school. The Mother also testified that School A was a chaotic place where she felt her child was not safe, and that the Student was accordingly not able to learn at the school. Respondent presented no testimony or evidence to contest either of these assertions.

Respondent's witnesses also testified that the Student would be overwhelmed by tactile and visual ASL instruction all day, and that the Student had to know ASL in order to be taught through an ASL immersion program. But Witness A, who works with deaf-blind children all the time, was more persuasive than Respondent's witnesses on these contentions. Respondent's witnesses failed to point to any evidence indicating that Witness A was wrong, and that a deaf-blind child like the Student would be overwhelmed by a program providing tactile and visual ASL throughout the day. Instead, Respondents kept insisting that the Student needed to continue to work on the SGD, even though the Student had made slow progress on the device, which s/he could not use independently.⁴

⁴ Respondent did not call the Student's main teacher at School B PCS (Teacher A) for the 2019-2020 school year as a witness in this proceeding.

Petitioners' argument also relied on the Americans with Disabilities Act ("ADA"), in particular, Title II of the ADA, which requires that public schools give "primary consideration" to auxiliary aid or services requested by the affected family. 28 C.F.R. Sect. 35.160(b)(2). Of course, this proceeding involves the IDEA, not the ADA, but Witness D from DCPS appeared to agree with the ADA requirement, at least to an extent. Witness D testified that the decision of the family is important when determining the best way to work with a student, and that parents are members of the team and their input is welcome and regarded. Title II of the ADA also suggests that a student's "interpreter" must be qualified. U.S. Department of Justice, Technical Assistance on Effective Communication, found at <https://www.ada.gov/effective-comm.htm>. The Student's one-on-one aide during the 2019-2020 school year was not qualified to be a deaf-blind intervener and was not trained in visual and tactile ASL. Indeed, in something of a concession that the Student needed a deaf-blind intervener, School B PCS appears to have arranged for Aide A to go to classes to become a deaf-blind intervener.

Respondent failed to provide a single sentence in response to Petitioners' contentions about the ADA. Instead, Respondent spent much of its brief rearguing its motion to dismiss, which was denied by this Hearing Officer on January 20, 2021. That motion was premised on the notion that Petitioners agreed to sign papers indicating that the Student was being "home-schooled," and that "home-schooled" students do not have the right to bring actions such as the instant action. However, as pointed out in the order denying the motion, Petitioners did not choose to home-school the Student for the 2020-2021 school year. Instead, Petitioners asked for an IEP, rejected the IEP, and then placed the Student in a program that was different than a typical non-public school, but was not

a “home school.” The Student is being educated at Program A’s facility in Virginia. Petitioners only signed paperwork indicating that the Student was being home-schooled in order to avoid truancy charges and to open up a place at School B PCS for another disabled child.

Respondent also pointed out that the Mother and Witness B appeared to talk to each other prior to the submission of Exhibit P-47, which they co-wrote. Respondent argued that it is understood in this forum that witnesses should not talk to each other about their testimony, and that, accordingly, the testimony of both witnesses should be stricken. There is no real dispute that Respondent’s reference to the “rule on witnesses” is correct. Witnesses cannot talk to each other to collaborate on a case. However, Respondent’s proposed remedy, striking the testimony of the Mother and Witness B, is disproportionate to the rule violation in this instance. There is nothing to suggest that the testimony of Witness B was compromised in any way, since it occurred prior to the alleged communications with the Mother. Respondent’s main objection was to proposed exhibit P-47, which was written by both Witness B and the Mother. However, Petitioners did not move Exhibit P-47 into evidence. The appropriate remedy in this instance is to deny the motion to strike but consider the Mother’s rebuttal testimony in light of the conversations she had with Witness B prior to that testimony. It is noted, however, that the Mother’s rebuttal testimony is not the primary basis for any of the findings in this HOD.

Finally, Respondent suggested that the Student’s IEP did provide for ASL services. However, there was only a vague mandate for ASL services in this IEP. The IEP said that the Student “would get ASL in [his/her] daily routine (i.e., signing salient

vocabulary and/or directions) to increase receptive language.” However, broad language like this could involve either a great deal of ASL instruction or very little ASL instruction throughout the day. There is also nothing in the IEP about tactile ASL, even though in 2019, in a document entitled “Justification and Plan for Dedicated Aide,” DCPS itself indicated that “the [Student’s] aide should be fluent in ASL” and have “experience with tactile signing.” P-13-1. The IEP also has no requirements for a trained deaf-blind intervener, even though Witness A was clear that such a person is necessary for the Student to learn communication skills. For the foregoing reasons, this Hearing Officer agrees with Petitioners that Respondent denied the Student educational benefit, and therefore a FAPE, through the IEP dated October 15, 2020.

2. Did Respondent fail to provide the Student with an appropriate placement for the 2020-2021 school year? If so, did Respondent act in contravention of 34 C.F.R. 300.320, Endrew F. v. Douglas County School District, 137 U.S. 988 (2017), Hendrick Hudson Bd. of Educ. v. Rowley, 458 U.S. 176 (1982), and related authority? If so, did Respondent deny the Student a FAPE?

Petitioners contended that School B PCS failed to provide services with sufficient intensity for the Student given his/her significant impairments, failed to employ expert staff sufficiently familiar with the Student’s needs, failed to provide instruction through ASL, and failed to provide sufficient ABA services.

The “educational placement” of a student is based on the child’s IEP. 34 C.F.R. Sect. 116(a)(1), (b)(2); Smith v. D.C., No. CV 12-2058 JEB/DAR, 2014 WL 1425737, at *8 (D.D.C. Mar. 14, 2014) (placement is based on the Student’s IEP). It has already been ruled that the Student’s IEP did not provide for tactile and visual ASL instruction from a deaf-blind intervener throughout the day. The Student’s placement at School B PCS must therefore also have been inappropriate. Moreover, while the IEP was written on

October 15, 2020, Respondent was informed by Petitioners that they wanted the Student to receive ASL instruction through a deaf-blind intervener throughout the day at the meeting between the parties on August 24, 2020. Respondent represented that it would not provide the Student with these services during the 2019-2020 school year. Petitioners presented sufficient testimony and evidence to establish that the Student required these services from a fully trained professional from the start of the 2020-2021 school year. It is noted that placements can be deemed inappropriate where special factors at the school prevent proper implementation of an IEP. W.S. v. District of Columbia, No. 19-CV-1390 (KBJ), 2020 WL 6611048, at *4 (D.D.C. Nov. 12, 2020) (aggressive behaviors); Gellert v. District of Columbia, 435 F. Supp. 2d 18 (D.D.C. 2006) (hectic, unstructured environment); Shore Regional High School Board of Education v. P.S., 381 F.3d 194 (3d Cir. 2004) (proposed placement would subject a student to bullying); M.L. v. Federal Way School District, 394 F.3d 634 (9th Cir. 2005) (teacher was deliberately indifferent to the teasing of child with a disability). School B PCS does not have someone on staff who could provide this severely disabled Student with the services that s/he needs. Were the Student to have attended School B PCS for the 2020-2021 school year, s/he would not have had a trained deaf-blind intervener with fluency in ASL throughout the day, as the Student required. DCPS therefore denied the Student a FAPE by providing the Student with an inappropriate educational placement for the 2020-2021 school year.⁵

⁵ Petitioners' contention that the Student was denied access to ABA services, by itself, was not persuasive. Though there was no requirement for ABA services in the IEP, and there was no dispute that the Student requires ABA services, there was undisputed testimony that instruction at School B PCS is infused with ABA methodology, and that Petitioners were made aware of this prior to the 2020-2021 school year. Petitioners' claim is therefore, at best, a procedural violation that does not rise to the level of FAPE denial.

RELIEF

As relief, Petitioners seek reimbursement for Program A for the 2020-2021 school year. When school districts deny students a FAPE, courts have wide discretion to ensure that students receive a FAPE going forward. As the Supreme Court stated, the statute directs the Court to “grant such relief as [it] determines is appropriate.” School Committee of the Town of Burlington v. Dep’t of Education, Massachusetts, 471 U.S. 359, 371 (1985). The ordinary meaning of these words confer broad discretion on a hearing officer, since the type of relief is not further specified, except that it must be “appropriate.” If petitioners meet their burden of persuasion (D.C. Code Sect. 38-2571.03(6)(A)(ii), the school district may be required to pay for educational services obtained for a student by the student’s parent, if the services offered by the school district are inadequate or inappropriate, the services selected by the parent are appropriate, and equitable considerations support the parents’ claim, even if the private school in which the parents have placed the child is unapproved. Florence County School District Four et al. v. Carter by Carter, 510 U.S. 7 (1993). Courts must consider “all relevant factors” including the nature and severity of the student’s disability, the student’s specialized educational needs, the link between those needs and the services offered by the private school, the placement’s cost, and the extent to which the placement represents the least restrictive educational environment. Branham v. District of Columbia, 427 F.3d 7, 12 (D.C. Cir. 2005).

Respondent argued that Program A is not a school, and that reimbursement should be denied on this basis. However, Respondent did not provide any authority for this proposition, and there is no specific requirement that parents must select a “school” in all

instances in order to obtain reimbursement. Courts have held that parents alleging that their child was denied a FAPE in violation of the IDEA may seek reimbursement for a variety of educational programs, including for an educational program consisting of a series of service providers. T.H. v. Bd. of Educ. of Palatine Cmty. Consol. Sch. Dist. 15, 55 F. Supp. 2d 830, 843–44 (N.D. Ill. 1999), *aff’d sub nom. Bd. of Educ. of Oak Park & River Forest High Sch. Dist. No. 200 v. Kelly E.*, 207 F.3d 931 (7th Cir. 2000) (ABA/DTT program); G ex rel. Rg v. Fort Bragg Dependent Schools, 343 F.3d 295 (4th Cir. 2003) (home-based ABA program); 34 C.F.R. Sect. 300.148 (c) (a parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the state standards that apply to education provided by the state educational agencies and local educational agencies).

In this case, Petitioners faced a particularly difficult problem in developing a program for their child. The Student is difficult to educate even under the best circumstances, and here Petitioners were seeking to develop a program for the Student during the COVID-19 pandemic. The Student was understandably not receptive to online instruction, and it is fair to say that many educators would not provide students with in-person services in or about September, 2020. Petitioners, however, were able to find providers through Program A, which was willing to provide the Student with the very in-person services that s/he needs. The Mother takes the Student to Program A’s facility in Virginia four days week, where the Student learns from 9:00 A.M. to 3:00 P.M. The Student works all day with Provider A, who is fluent in tactile and visual ASL, is enrolled in a program to be a deaf-blind interpreter, and has a bachelor’s degree in deaf studies. Provider A teaches the Student ASL all day, and the Student is also provided with an

ABA therapist all day. Program A is making progress on teaching the Student twenty-five to fifty signs, working on strategies such as an object communication system and touch cues (a system of touches on the body to indicate that something is going to happen), and providing the Student with accommodations such as lighting adjustments, a quiet work-space, and adjusted seating. Importantly, the program was created with the help of Witness A, who is with the Student one or two times per month at Program A to provide oversight, observations, and technical assistance, including coaching the service providers on tactile and visual ASL. Witness A testified that the Student was “thriving” in the program, doing “exceptionally well.”⁶

Additionally, there is uncontested testimony and data that the Student is making breakthroughs through the program that Witness A and Witness B designed. Documentation in the record indicates that the Student is receptively responding to several high-frequency ASL signs and beginning to imitate and demonstrate a few modified ASL signs expressively. The DCPS IEP did not require the Student to receive any ASL instruction for expressive language. Progress was reported in the Student’s ability to attend to a communication partner, follow directions, and seek out adult attention using eye gazes or gestures. The Student mastered eight goals during his/her time at Program A, including goals to indicate “yes” and “no,” initiate communication, use a utensil, complete a puzzle, engage in reciprocal play, imitate a motor movement, and transition. The Student can now independently sign “shoes,” “bread,” and “snack.” The Student can also indicate and sign “yes” and “no,” and knows the difference between

⁶ The program has also developed a behavior plan for the Student targeting elopement and tantrums. Data submitted by Petitioners indicated that the Student’s behaviors were reduced as a result of this instruction.

those terms. The Student can also initiate a conversation and understand when people are signing to him/her. There is nothing in the record to suggest that any other school, or any another program, was available to Petitioners for the 2020-2021 school year. As in Leggett v. Dist. of Columbia, 793 F.3d 59, 74 (D.C. Cir. 2015), Petitioners had no choice when they decided to send this severely disabled Student to Program A for the 2020-2021 school year. Petitioners have therefore shown that Program A was appropriate for the Student for the 2020-2021 school year.

Tuition reimbursement may be reduced or denied when parents fail to raise the appropriateness of an IEP in a timely manner, fail to make their child available for evaluation by the district, or upon a finding of unreasonableness with respect to the actions taken by the parents. 20 U.S.C. Sect. 1412(a)(10)(C)(iii). With respect to parents' obligation to raise the appropriateness of an IEP in a timely manner, the IDEA provides that tuition reimbursement may be denied or reduced if parents neither inform the IEP team of their disagreement with its proposed placement and their intent to place their child in a private school at public expense at the most recent IEP meeting prior to their removal of the child from public school, nor provide the school district with written notice stating their concerns and their intent to remove the child within ten business days before such removal. 34 C.F.R. Sect. 300.148(d)(i), (ii). Under 20 U.S.C. Sect. 1412(a)(10)(C)(iii), a denial or reduction in reimbursement is discretionary.

Respondent argued that Petitioners' failure to provide them with a letter notifying them of their intent to place the Student at Program A ten days prior to removal should bar an award of tuition reimbursement. However, there is no showing of any prejudice as a result of this omission, and Respondent certainly knew that Petitioners were

considering services from Program A during the summer of 2020, since this was the subject of the August 24, 2020, meeting between the parties. To the extent that equities are an issue here, equities favor Petitioners, who were warned about the potential of a truancy proceeding after they decided to place the Student at Program A for the 2020-2021 school year. P-28-2-3. Petitioners are therefore awarded reimbursement for all educational costs associated with Program A for the 2020-2021 school year, exclusive of costs that were or will be paid for by Petitioners' insurance.

VII. Order

As a result of the foregoing, the following is ordered:

1. Respondent shall reimburse Petitioners for all of the Student's educational costs at Program A for the 2020-2021 school year, exclusive of payments that were or will be paid for by Petitioners' insurance.

Dated: April 8, 2021
Corrected: April 9, 2021
Corrected: April 9, 2021

Michael Lazan
Impartial Hearing Officer

cc: Office of Dispute Resolution
Attorney A, Esq.
Attorney B, Esq.
OSSE Division of Specialized Education
[REDACTED]/DCPS
[REDACTED]/DCPS

VIII. Notice of Appeal Rights

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 days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. Sect 1415(i).

Dated: April 8, 2021

Michael Lazan
Impartial Hearing Officer