

District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution
1050 - First Street, N.E.; Washington, D.C. 20002
(202) 698-3819 www.osse.dc.gov

Confidential

Parent on behalf of Student¹)	Case No. 2021-0126
)	
Petitioner,)	Hearing Dates: January 31, 2022
)	February 1-2, 24, 2021
)	
)	
)	Conducted by Video Conference
v.)	
)	Date Issued: April 4, 2022
District of Columbia Public Schools)	
)	Terry Michael Banks,
Respondent.)	Hearing Officer

HEARING OFFICER DETERMINATION

INTRODUCTION

Petitioners are the parents of an X-year-old student (“Student”) attending School A. Petitioners filed a Due Process Complaint Notice (“*Complaint*”) on August 24, 2021, alleging that the District of Columbia Public Schools (“DCPS”) denied Student a free appropriate public education (“FAPE”) by failing to provide an appropriate Individualized Education Program (“IEP”) for the 2021-22 school year. On September 8 2021, DCPS filed *District of Columbia Public Schools’ Response* (“*Response*”), denying that it had denied Student a 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.*, Title38 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 August 4, 2021, Petitioners rejected DCPS' proposed IEP and placement. Petitioners filed the *Complaint* on August 24, 2021, alleging that DCPS denied Student a FAPE by failing to provide an appropriate IEP for the 2021-22 school year. On September 3, 2021, Witness D, Petitioners' educational consultant, requested of DCPS the opportunity "to observe the proposed program for [Student]." DCPS denied the request, indicating that only the parents would be allowed to observe. On September 8 2021, DCPS filed its *Response*, denying that it had denied Student a FAPE in any way.

On September 16, 2021 Petitioners filed *Parents' Motion to Permit Observation of Parent Designee* ("Motion"). On September 24, 2021, DCPS filed *District of Columbia Public Schools' Opposition to Petitioners' Motion for Order to Permit Observation* ("Opposition.") DCPS asserted several grounds for its opposition: (1) Witness D is acting in a representative capacity, (2) Witness D has a financial interest in the outcome of the litigation, and (3) the observation is sought for an impermissible purpose. On September 29, 2021, I issued an order denying the *Motion*. That order was based on the provision in D.C. Code Section 38-2571.03(5)(A) that precludes a representative in litigation from being a designated observer.

On October 4, 2021, Petitioners filed *Parents' Motion for Reconsideration of Motion to Permit Observation of Parent Designee* ("*Reconsideration Motion*"). Petitioners advanced several arguments: (1) that the Hearing Officer misinterpreted Witness D's intended role in the observation in that Witness D, not being a lawyer, is incapable of representing Petitioners in litigation, citing section 401(B) of the Office of Dispute Resolution's Standard Operating Procedures ("SOP"), (2) Petitioners and Witness D executed a new agreement after the issuance of my September 29, 2021 order, in which any representation of Petitioners by Witness D "in litigation related to the provision of free appropriate public education" for Student was specifically precluded, and (3) that the term "litigation" in the statute does not include administrative proceedings, citing 5 U.S.C. Section 551(7). On October 7, 2021, Respondent filed *District of Columbia Public Schools' Opposition to Petitioners' Motion for Reconsideration* ("*Opposition to Reconsideration*"). DCPS argued that the SOP does not provide for reconsideration of motions. On October 10, 2021, I issued an order denying the *Reconsideration Motion*.

The parties participated in resolution meetings on September 2, 2021 that did not result in a settlement. A prehearing conference was conducted by video conference on October 21, 2021, and the Prehearing Order was issued that day. An Amended Prehearing Order was issued the following day.

The due process hearing was conducted on January 31, February 1-2, 2022 and on February 24, 2022 by video conference. The hearing was closed to the public at Petitioner's request. Petitioner filed disclosures on December 28, 2021 and a corrected version and a supplemental version on January 24, 2022 containing a witness list of seven witnesses and proposed Exhibits P1-P31, including Exhibit P4A. Respondent filed objections to Petitioner's disclosures on January 4, 2022. Respondent objected to Witnesses A, B, and D's qualifications as experts in the areas in which they were offered as well as on grounds of hearsay and relevance. Rulings on these objections were deferred subject to *voir dire*. DCPS also objected to Petitioners' Exhibits P2-P4, P6-P8, P10, P15-P17, P19-P20, and P22-P26. At the hearing, Respondent's counsel withdrew his

objections to Exhibits P3, P4, P8, and P22. Petitioners' counsel withdrew Exhibit P19. I deferred ruling on Exhibits P2, P6, P7, P10, P15, P20, P23-P26, and I overruled Respondent's objections to Exhibits P16, P17, and P19. During Petitioner's direct case, I admitted into evidence P2, P6, P7, P15, P20, and P24, I sustained Respondent's objections to P23 and P25, and Petitioner's counsel did not offer P10 or P26 during Petitioner's direct case. Thus, Petitioners' Exhibits P1-P9, P11-P22, P24, and P27-31 were admitted into evidence. Respondent's Disclosures, also filed on December 28, 2021, contained a witness list of eight witnesses and documents R-1 through R-13. Petitioners did not object to Respondent's disclosures. During Respondent's direct case, Respondent's Exhibits R1-R13 were admitted into evidence.

Petitioner presented as witnesses in chronological order: Witness A, Witness B, Witness C, Witness D, Witness C (postponed cross-examination), and Petitioner/mother. Over DCPS' objections, Witness A was accepted as an expert in neuropsychology, Witness B was accepted as an expert in special education, and Witness D was admitted as an expert in special education. Witness C was accepted as an expert in speech and language psychology and reading literacy without objection. Respondent presented as witnesses in chronological order: Witness E, Witness F, Witness G, Witness H, and Witness J. Witness E was accepted as an expert in special education, Witness F was accepted as an expert in school psychology and psychology, Witness G was accepted as an expert in special education, Witness H was admitted as an expert in special education and reading instruction, and Witness J was accepted as an expert in special education. Counsel for the parties provided oral closing arguments. On March 4, 2022 DCPS filed *District of Columbia Public Schools' Case Citations*. On March 9, 2022, DCPS filed an email with an additional citation, and a copy of an additional opinion on March 22, 2022. On February 28, 2022, Petitioners filed *Petitioners' Closing Authorities* and a copy of an additional opinion.

ISSUES

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

1. Whether DCPS provided Student an appropriate IEP and placement for the 2021-22 school year. Specifically, Petitioners allege that DCPS failed to provide sufficient specialized instruction, failed to address Student's deficits in reading and written language, and offered no counseling or psychotherapy services to address Student's anxiety and social difficulties.
2. Whether Lab is an appropriate placement for Student.

FINDINGS OF FACT

1. Student is X years old and is in grade G at School A.²
2. Petitioners solicited a neuropsychological evaluation of Student by Witness A in

² Petitioner's Exhibits ("P:") 5 at page 1 (61) and 18 at page 1 (159). The exhibit number and exhibit page numbers are followed by the electronic page number in the disclosure in parentheses, i.e., P5:1 (61), P18:1 (159).

January 2020 due to Student’s oppositional and emotional behavior at home. Witness A previously evaluated Student in 2015 and 2016.³ Petitioner/mother was concerned about “how rigid [s/he] was” and “a lot of social problems” that Student was having. When Witness A evaluated Student in 2015-16, s/he “did not demonstrate significant social emotional difficulties.”⁴

3. On or about August 4, 2020, Witness A completed a Neuropsychological Reevaluation of Student at Petitioners’ request. Student had attended School A for three years, since grade C. Witness A initiated his examination in January 2020, expecting to complete it in March. However, due to COVID-19 restrictions, he and his staff did not complete testing until August 2020. Witness A’s neuropsychological evaluation of Student in 2015 resulted in diagnoses of Attention Deficit Hyperactivity Disorder (“ADHD”) – Combined Presentation, Phonological Disorder, Developmental Coordination Disorder, and Specific Learning Disorder with impairment in reading (dyslexia) and math. A speech and language assessment at School A in 2017 resulted in a diagnosis of Language Disorder and Specific Learning Disorder with impairment in reading and written expression.⁵

On the Weschler Intelligence Scale for Children (“WISC-V”),⁶ Student scored in the Average range on the Verbal Comprehension Index (108), the Visual Spatial Index (108), and the Fluid Reasoning Index (109), in the Below Average range on the Processing Speed Index (83), and in the Low range on the Working Memory Index (74). Witness A did not provide the results of the Full Scale IQ “due to the unevenness among the index score... Student’s much lower scores on the Working Memory and Processing Speed indices reflect weaker skills in more basic aspects of information processing that are highly related to attention. In my experience, similar WISC-V profiles are invariably associated with weaknesses in attention, organization, time management, and work production or ‘output.’”⁷ S/he scored in the Average range in Language Comprehension on the OWLS-II, in Sentence Memory on the WRAML-2, in Delayed Recall, in Word Retrieval on the Boston Naming Test, and Below Average in Oral Expression on the TLC-E that required him/her to generate grammatically correct sentences. In Phonological Awareness, Student’s scores on the CTOPP-2 for Blending Words, Rapid Letter Naming and Rapid Digit Naming were in the Average range, but was Below Average in Phoneme Isolation. On the WRAML-2, his/her scores were Average in Verbal Learning-Immediate Memory and slightly Below Average in Delayed Recall. In Fine-Motor Coordination and Visual-Motor Integration, s/he was more than two standard deviations slower with each hand on the Klove Grooved Pegboard, which measures manual dexterity and speed.⁸

Witness A conducted a number of tests to measure Student’s attention and executive functioning. S/he was Below Average on a measure of visual attention. In terms of executive functioning, on the D-KEFS, Student scored in the Superior range in Category Fluency and in the upper range of Average in Letter Fluency. “These findings suggest that [s/he] quite readily accesses familiar information and is adept at thinking on [her/his] feet.” However, s/he was Below

³ Witness A’s previous evaluations were not offered into evidence.

⁴ Testimony of Witness A.

⁵ P15:1 (129).

⁶ Witness A did not provide classification of standard scores on the WISC-V or the WJ-III, i.e., Average range, Below Average range, etc. The ranges provided are from the Hearing Officer’s recollection from previously reviewed WISC and WJ assessments.

⁷ P15:8 (134-35).

⁸ *Id.* at 8-9 (136-37).

Average on the Tower of London test of planning ability and inhibitory control. Petitioner/mother and a teacher completed a behavior rating scale on the Child Behavior Checklist that produced elevated scores for attention. Petitioner/mother and three teachers completed rating scales on the BRIEF-2 resulting in “high” scores in the Behavior Regulation Index, the Emotion Regulation Index, and the Cognitive Regulation Index. “[Student] was rated by [his/her] mother and by at least one teacher as having significant weaknesses in the executive skill areas of inhibition, emotional control, and cognitive flexibility, as well as in working memory, planning and organization, self-monitoring, task monitoring, and organization of materials.”⁹

On the Woodcock-Johnson Tests of Achievement -3rd Edition (“WJ-III”), Student scored in the Average range in Broad Reading (94) and in all subtests, Below Average in Broad Mathematics (82) and in three subtests, two points Below Average in Broad Written Language (88), with scores in the Low range in Spelling (73) and Average in Writing Samples (96) and Writing Fluency (101). On the TOWRE-2, Student was Average in Sight Word Efficiency (98), but Below Average in Phonemic Decoding Efficiency (82); Witness A attributed the latter score to impulsivity.¹⁰

Witness A concluded that Student had strengths in the following areas: verbal intelligence, visual-spatial intelligence, logical-mathematical intelligence, abstract/conceptual verbal reasoning ability, practical reasoning, common-sense logic, vocabulary, letter fluency, category fluency, spatial visualization, visualization and analysis of information in space, pattern recognition, logical problem solving, and quantitative reasoning. He found Student’s weaknesses to be as follows: attention and executive functioning, phonological awareness, automatic verbal sequencing, receptive and expressive language. Witness A diagnosed Student with the previously diagnosed ADHD and Language Disorder. He also diagnosed Student with a Specific Learning Disorder (“SLD”) with impairment in reading, math, and written language, General Anxiety Disorder, and an Unspecified Mood Disorder. Witness A discounted autism as a viable diagnosis: “...[t]he fact that [Student] showed no signs of social difficulty at all before age six makes it very unlikely that [s/he] has a true autism spectrum disorder, as social disorders are developmental in nature and are typically apparent (at least in subtle form, even in [REDACTED]) by age four or five.”¹¹

Witness A recommended that Student remain enrolled at School A for the following reasons:

Given [his/her] quite severe ADHD, [his/her] language disorder and multiple academic challenges, [his/her] anxiety and mood-related difficulties, and [his/her] social issues, I believe that [s/he] will continue to require full-time placement in a special education program. I say this, in part, because [Student] needs specialized instruction in all academic areas, which should be provided in small groups and with very clear structure and sequencing. I also say this because [s/he] requires speech/language therapy, occupational therapy, and psychological counseling, as well as extensive academic accommodations. Moreover, [Student’s} social

⁹ *Id.* at 9-10 (137-38).

¹⁰ *Id.* at 15 (150).

¹¹ *Id.* at 14-16 (142-44).

challenges suggest that, even for nonacademic subjects, lunch, and recess periods, [s/he] will need small class size and teacher-provided support and supervision.¹²

For academic accommodations, Witness A supported the accommodations listed in Student's IEP at that time as well as testing accommodations. He also provided instructional recommendations in reading, written language, mathematics, and executive functioning. For executive functioning, Witness A recommended the following:

Whenever possible, [Student's] parents and teacher should think out loud as a way of teaching [his/her] executive skills. For example, [his/her] teachers and [his/her] parents could model their own thinking processes related to planning, organizing, and problem-solving. Modeling could take the form of statements such as "When I have to solve that kind of problem, I ask myself questions like..." or, "It might have gone better if I'd said to myself..." This kind of intervention can provide [Student] with the language necessary for structuring [her/his] own thinking.¹³

4. When he was asked during the hearing why he recommended that Student should remain at School A, Witness A opined that they were "doing something right" despite his/her "multiple areas of need." Student's teachers did not report any signs of anxiety or depression, and s/he "has a positive attitude towards school and is not looking unduly anxious when [s/he's] in school... [i]t's hard to address these multiple issues outside of a full-time education program." Witness A also opined that Student's IEP was inappropriate because it lacked goals in written expression; testing revealed deficits in written expression, s/he cannot formulate written paragraphs, and s/he has trouble copying. Witness A also faulted the IEP for its lack of goals in attention, working memory, or cognitive flexibility.

Witness A completed testing of Student in August 2020, but his report was undated. Petitioners received a draft of Witness A's Reevaluation in November of 2020 and sent it to Attorney A and Witness D. At Witness D's request, Witness A made changes to his reevaluation. Witness D sent the revised reevaluation to DCPS just before an Analysis of Existing Data ("AED") meeting scheduled on March 19, 2021 to review the reevaluation.¹⁴

On cross-examination, Witness A testified that he is willing to delete a finding of autism in a child's evaluation "if it's a bridge too far for the parents to accept... If it's unambiguous and everybody sees autism, then I think we could do it." Witness A conceded that he has changed reports "3 or 4 times" when parents objected to his findings. "I don't want parents to have a report that they can't use." Later, in response to my questions, Witness A testified that he typically sends a draft report to parents, and if they have a problem with something in his report, he will remove information about family history "that the school doesn't need to know."¹⁵ Witness A conceded that he was aware that School A might not be authorized to get funding from DCPS for children diagnosed with autism.¹⁶

¹² *Id.* at 16 (144).

¹³ *Id.* at 18-19 (146-47).

¹⁴ Testimony of Petitioner/mother.

¹⁵ Testimony at approximately 12:25 p.m. on January 31, 2022.

¹⁶ The statements throughout finding No. 4 are from the testimony of Witness A.

5. On January 21, 2021, School A conducted an assessment of reading and spelling of Student that it conducts of all of its students in the fall, winter and spring.¹⁷ On the Leveled Reading Assessment, Student was assessed using a grade level passage. Student's Words Correct Per Minute ("wcpm") was 100, with 97% Accuracy for Decoding, and his/her Comprehension Level was 3/4. The assessment indicated that Student was able to read and comprehend the passage at the "Instructional" level, i.e., with some support.¹⁸ Witness D testified that until Student is capable of reading a grade level passage independently, s/he requires special education support.

6. On May 21, 2021, School A conducted the spring assessment.¹⁹ On the Leveled Reading Assessment, Student was assessed using a grade level passage that was more advanced than the passage used in January. Student's wcpm was 77, with 97% Accuracy for Decoding, and his/her Comprehension Level was 4/4. The assessment indicated that Student was able to read and comprehend the passage "Independently."²⁰ On a Word Identification and Spelling Test, Students' scores were Average in Word Identification, Below Average in Spelling, and Poor in Sound-Symbol Knowledge.²¹ The May 21, 2021 Assessment Summary was not reviewed at the May 21, 2021 IEP meeting.

7. On May 21, 2021, DCPS conducted an IEP Annual Review meeting. Student was classified with Multiple Disabilities (SLD and Other Health Impaired ("OHI")).²² The Consideration of Special Factors provided that in Communication, Student needed support to help Student's oral responses "to reflect a more organized manner to confirm intended meaning and allowing extra time for [her/him] to reformulate." With respect to Assistive Technology, Student's "limited" written expression skills required the use of speech to text, text to speech, spell check, grammar check, and word prediction software "to understand directions, produce written work, and to edit and revise [his/her] work."²³

In Mathematics, the Present Levels of Academic Achievement and Functional Performance ("PLOP"), Student was reported to have learned multiplication facts through 10, but "still needs more work on both multiplication and division facts. S/he can solve one-step word problems by struggles to write his/her answer in complete sentences. S/he has 50% accuracy with single-digit by single-digit multiplication solutions. On an October 27, 2020 diagnostic assessment, Student was determined to be performing at a grade C level, three grade levels below Student's at that time. On a Measures of Academic Progress ("MAP") assessment in the spring of 2021, Student's score of 183 placed her/him eight points above the RIT normed score for grade C, and five points below grade F. Some of his/her challenges included not taking an active role in his/her own learning, demonstrates weak organization skills, has difficulty copying from the board, has difficulty following oral directions, has difficulty following written directions, loses attention resulting in errors, unable to work independently, and inconsistently completes class work. The baselines were: s/he is able to solve one-step word problems with answers less than 99 in addition, subtraction, and multiplication, (2) s/he has 60-70% accuracy on calculation problems up to 999, (3) s/he has 60% accuracy in addition and subtraction, but had difficulty recalling the concept of

¹⁷ P2:1 (15).

¹⁸ *Id.* at 3 (17).

¹⁹ P7:1 (87).

²⁰ *Id.* at 3 (89).

²¹ *Id.*

²² P5:1 (61).

²³ *Id.* at 3 (63).

division, and is working on multiplication fact fluency, (4) s/he understands the concept of a fraction and can identify halves and fourths, but has not yet been introduced to any operations involving fractions. The goals were: (1) given problems that are read to him/her, s/he will independently solve one-step word problems with all operations, (2) given number sentences of calculation problems involving regrouping up to 9999, s/he will independently solve them with 80% accuracy, (3) s/he will increase math facts fluency by 20%, and (4 and 5) given a math worksheet of 10 problems involving aspects of manipulation of fractions, s/he will solve the problems with 80% accuracy.²⁴

In Communication/Speech and Language, the PLOP reported that a speech and language evaluation was recently recommended but could not be conducted due to COVID-19 restrictions. Observations during virtual learning revealed strengths in articulation, receptive vocabulary, aspects of receptive language (sentence comprehension), morphology, and basic syntax. His/her weaknesses were aspects of expressive vocabulary (academic language), aspects of receptive language (following classroom directions), expressive language formulation and organization (providing concise and well-organized oral narratives and summaries), aspects of social pragmatic language (making compromises, turn-taking). The baselines were: (1) s/he requires moderate to maximum verbal prompts to provide clear and concise definitions; s/he demonstrates difficulty using academic vocabulary, (2) s/he frequently requires support to follow directions and answer critical thinking questions, (3) s/he requires moderate support to plan an oral narrative using a Story Grammar Marker graphic organizer, and (4) s/he frequently interrupts communication partners and requires support to solve peer conflicts. The goals were: (1) s/he will demonstrate effective semantic skills for therapeutic and academic tasks with 80% accuracy, (2) s/he will demonstrate effective receptive language skills for therapeutic and academic tasks with 80% accuracy, (3) s/he will demonstrate effective expressive language skills for therapeutic and academic tasks with 80% accuracy, and (4) s/he will demonstrate expected social pragmatic skills in 80% of opportunities.²⁵

In Motor Skills/Physical Development, the PLOP revealed that Student puts forth effort in “concentrated bursts” and has difficulty pacing and sustaining energy throughout a task. S/he requires support with material organization, planning related to time, pacing, motor planning, eye-hand coordination, fine-motor skills (pencil grasp, individualization of fingers in typing, visual spatial organization (in handwriting), visual scanning skills, and postural endurance. The PLOP indicated that while Student continues to need support, s/he has made progress sustaining task attention in 1:1 sessions, pacing his/her activity to directions, attempting novel motor activities, and producing legible handwriting. The baselines were: (1) s/he has difficulty with sequencing and motor planning, and right/left awareness in motor activities, difficulty positioning her/his body to use tools in novel tasks, demonstrates increased effort and awkward positioning when using her/his arms together for tasks such as scooping and using tools, requires visual and verbal cues to remember novel sequential motor patterns of three or more steps, and requires reminders to avoid beginning before directions are completed, (2) s/he demonstrates an increased willingness to write, but complains of fatigue or his/her hand hurting after a 10-minute writing task about 50% of the time, can touch-type less than 25% of the keys and uses correct fingering 50% of the keys, puts excessive spacing between words 10-20% of the time, made errors in sizing 15% of the time, made errors in copying (spelling) in 15% of words, and uses a pencil grip inconsistently and resorts to a

²⁴ *Id.* at 4-8 (64-68).

²⁵ *Id.* at 8-10 (68-70)

thumb wrap grasp for 80% of writing tasks, (3) s/he requires visual/verbal cues for orienting to a starting point to follow spatial directions when asked to locate an item on a physical or virtual page, makes spelling errors in copying about every 40 characters, has difficulty remembering, visually recognizing, and identifying errors in sequencing, requires cues to locate errors systematically and recognizes about 50% of errors in case, placement, sizing, and spacing, reverses placement of items when creating a map, and catches thrown balls about 70% of the time, and (4) s/he continues to require support not to rush ahead of instructions, struggles to locate materials in a timely manner without assistance, struggles organizing and maintaining her/his belongings, has poor awareness of time sequences, and requires support remembering regular appointments. The goals were: (1) s/he will demonstrate adequate motor planning, right/left awareness, and bilateral integration with 80% accuracy, (2) s/he will demonstrate adequate written communication skills with 80% accuracy, (3) s/he will demonstrate adequate oculomotor control and visual-spatial/directional awareness with 80% accuracy, and (4) s/he will demonstrate adequate functional independence skills for academic and pre-vocational tasks with 80% accuracy.²⁶

The IEP team prescribed 10 hours per week of specialized instruction outside general education, and six hours per month each of OT and S/L therapy outside general education. Other Classroom Aids and Services included, *inter alia*, small group and/or individualized instruction in a highly structure setting with a low teacher to student ratio, multi-sensory approach and materials, adaptive seating, frequent movement breaks, slant board, pencil grip, frequent teacher clarification and redirection, support for managing materials, strategies for pacing, extended time, preferred seating, sensory motor techniques, extra processing time to formulate verbal responses, and manipulative materials and a place value mat.²⁷

8. Prior to the May 21, 2021 IEP meeting, the staff at School A submitted a proposed IEP to DCPS for Student for the 2021-22 school year.²⁸ The classification was the same as that proposed by DCPS.²⁹ The Mathematics, Communications, and Motor Skills goals in the School A draft were identical to those in the DCPS IEP.³⁰ Unlike the DCPS IEP, the School A draft included Reading as an Area of Concern and four reading goals³¹ and Written Expression as an Area of Concern with three goals.³² School A proposed that Student receive 27 hours per week of specialized instruction outside general education and 6 hours per month each of OT and S/L therapy outside general education. In addition to the Other Classroom Aids and Services prescribed in the DCPS IEP, the School A draft proposed Aids and Services in Reading and Written Expression.³³ The classroom accommodations in the School A and DCPS IEPs were virtually identical.³⁴ Neither IEP included goals for social/emotional deficits or goals that specifically referenced inattention, focus, or impulsivity. Both IEPs included Other Classroom Aids and Services that addressed these issues, i.e., movement breaks, frequent teacher clarification and redirection, support for managing materials, strategies for pacing, extended time, preferential

²⁶ *Id.* at 10-15 (70-75).

²⁷ *Id.* at 16 (76).

²⁸ Testimony of Witness D.

²⁹ P4A:1 (29); testimony of Witness B; testimony of Witness D.

³⁰ P4A:5-6 (33-34), P4A:18-19 (46-47), P4A:20-23 (48-51).

³¹ P4A:7- 12 (35-40).

³² *Id.* at 12-17 (40-45).

³³ *Id.* at 25 (53).

³⁴ P4A:28 (56), P5:18 (78).

seating, and extra processing time to formulate verbal responses.³⁵

9. On June 6, 2021 DCPS issued a Final Eligibility Report indicating that Student's disabilities impact his/her participation in the general education curriculum in Mathematics, Communication/Speech and Language, Motor Skills/Physical Development.³⁶ In Reading, the Report indicated that Student was reading on grade level, has a large reading vocabulary, is able to comprehend who, what, where, when and the main idea, is able to comprehend at the literal level, accurately recalls story facts, understands cause/effect relationships, derives logical conclusions, reads independently, demonstrates intellectual curiosity, and demonstrates enthusiasm for reading. Concerns for Student's reading included, weak decoding skills for vowels and additional sounds and affixes, drops or substitutes articles, guesses unknown word from the first letter, unable to accurately sequence events, has difficulty integrating new information, difficulty understanding figurative language, weak paraphrasing skills, weak language skills (processing, expressive), weak organization skills, and inconsistently completes classwork.³⁷ In Written Expression, the Report indicated that Student has knowledge of basic sentence structure, knowledge of complex/compound sentences, use of expanders such as who, what, where, when, and why to produce complex sentences, understands what makes a complete sentence, understands basic grammar concepts, uses speech-to-text and spell check, beginning to use topic sentences, able to communicate basic thoughts and ideas, demonstrates understanding of semantics; uses appropriate grammar, demonstrates understanding of paragraphs, demonstrates understanding of sentence diagramming, exhibits intellectual curiosity, and asks meaningful questions. Concerns included using topic sentences that appropriately address the prompt, composing detail sentences that clearly support topic sentences and are fully developed, using complex sentences using conjunctions and transition words, composing concluding sentences that appropriately address the prompt, weak sequencing skills, writes in run-on sentences, inconsistent application of grammar rules, expression of ideas lack clarity, writing lacks detail, weak knowledge of paragraphing, weak proofreading skills, weak skill in managing materials/space, difficulty following oral and written instructions, unable to work independently, inconsistently completes classwork, and has difficulty maintaining a focus on a task.³⁸

10. On June 23, 2021, DCPS issued a Prior Written Notice ("PWN") notifying Petitioners of Student's continued eligibility for services with the classification of MD (SLD in math only and OHI), the proposed IEP developed on May 21, 2021 that reduced Student's specialized instruction to 10 hours per week outside general education, and of its proposal that the IEP be implemented at School B. The PWN reflected Petitioners' disagreement with the IEP and proposed location of services at School B.³⁹

11. Witness B, the Head of the Intermediate Division of School A, testified that Student's class sizes are no larger than eight students except homeroom, physical education (15 students), and theater (11 students). Witness B opined that the IEP proposed by DCPS was

³⁵ P4A:25 (53); P5:16 (78).

³⁶ P11:1-2 (109-10).

³⁷ *Id.* at 8-9 (116-7). This information was derived from a January 2021 classroom-based assessment (P2:6 (20), progress report, and work samples in Teacher A's classroom.

³⁸ *Id.* at 9-10 (117-18). This information was derived from a January 2021 classroom-based assessment (P2:6 (20), progress report, and work samples in Teacher A's classroom.

³⁹ Respondent's Exhibits ("R:") 8 at page 1 (82). The exhibit number and exhibit page numbers are followed by the electronic page number in the disclosure in parentheses, i.e., R8:1 (82).

inappropriate because it did not offer a sufficient number of hours of specialized instruction, and did not provide goals in Reading, Written Expression, or for Student's executive functioning deficits. Witness B testified that support for Student's executive functioning needs is provided through constant redirection and support for organization of his/her materials. Witness B opined that Student's progress during the 2021-22 school year is evinced through School A's progress monitoring, his/her gains in code knowledge, and his/her development of math skills.

12. Witness D, Petitioners' educational consultant, participated in the March 2021 AED meeting to review Witness A's Neuropsychological Reevaluation. The DCPS members of the IEP team found the report inappropriate because it recommended Student's continued placement at School A. Based on Witness A's reevaluation and School A's Assessment Summaries, Witness D opined that Student had a continuing need for support in reading. Witness D had specific concerns about Student's spelling, where her/his standard score of 73 was in the Low range. Witness D opined that Student has documented needs in fluency, comprehension, vocabulary, and decoding. Witness D did not believe that the May 21, 2021 IEP was appropriate because it lacked goals in reading, written expression, and spelling, and provided an insufficient amount of specialized instruction outside general education. She noted that the section of the IEP on page 2 relating to A/T confirmed Student's weaknesses in written expression. Witness D opined that while she agreed with the IEP's OT goals, the OT goals alone were inadequate to address Student's attentional needs; s/he requires one-on-one attention. Witness D opined that DCPS's proposed placement of School B was inappropriate because it does not offer a small group environment throughout the school day.

13. Petitioner/mother testified that at home, Student is impulsive, distracted, oppositional, combative, and angry. However, s/he can also be a "super funny," happy child, outgoing, friendly, and artistic. Student "has come a long way" at School A in terms of making friends, loves School A and is comfortable at School A in this, his/her fifth year there. Petitioner/mother visited School B in November 2021. She found it inappropriate for Student because the class sizes of 25 were too large for Student – Petitioner/mother believed Student would remain off-task in the larger environment.⁴⁰

14. Witness E, DCPS' Manager of the Elementary Math & Science Cluster, was a member of the May 2021 IEP team. He concurred with the IEP team's determination that the IEP was appropriate, despite the lack of goals in reading and written expression, because the data reflected that Student was performing in the average range in those areas.⁴¹

15. Witness F, a DCPS psychologist, also participated in the March 19, 2021 AED meeting and the May 21, 2021 IEP team meeting. He had concerns about the impartiality of Witness A's reevaluation, because it was "not normally appropriate" for an evaluator to recommend a particular school in a psychological evaluation. He testified that DCPS did not conduct an evaluation of its own due to COVID-19 restrictions – School A did not allow visitors. Witness F agreed with the IEP team that Student did not require reading and written expression goals because s/he was average in testing and performing on grade level in the classroom.⁴²

⁴⁰ Testimony of Petitioner/mother.

⁴¹ Testimony of Witness E.

⁴² Testimony of Witness F.

16. Witness G, the Special Education Coordinator at School B, testified that School B was capable of implementing the May 21, 2021 IEP. With respect to executive functioning and social/emotional concerns, School B employs strategies that are embedded for all students. The class sizes at School B range from 15 to 26. Resource rooms are no larger than 12.⁴³

17. Witness H, DCPS' Manager of its Central IEP Team, attended the March 19, 2021 AED meeting and the May 21, 2021 IEP team meeting. She was unaware that Witness A had changed his reevaluation in response to suggestions from Witness D, and was unaware of what the changes were. Witness H had concerns about the impartiality of the reevaluation because of the changes that were solicited and made, and because Witness A recommended placement in a particular school. Witness H also expressed concern that Student was being taught writing from a speech therapist who is not certified as a special education teacher or to teach writing. Witness H conceded that the statement about Student's limitations in written language in the A/T section on page 2 of the IEP were mistakenly copied from School A's proposed IEP; she did not believe that Student requires services in written language. Witness H testified that there was no disagreement with the Other Classroom Aids and Services in the IEP. Witness H opined that Student was reading on grade level and did not require services in that area. She testified that Teacher A's report indicates grade level ability in written expression despite weaknesses in some areas that is typical of most students at Student's age. Witness H conceded that Student's most obvious weakness was in spelling, but testified that this weakness did not diminish the fact that her/his writing was at grade level. She also opined that School A's latest Assessment Summary supported that Student's reading and reading fluency were at grade level; School A did not provide this document at the IEP team meeting. Witness H testified that Teacher B, Student's math and reading teacher, and Teacher C, his/her physical education teacher, are not certified in special education. Witness H also testified that SLP A, Student's writing teacher, is not certified in special education or in any subject matter area. Witness H opined that the 10 hours per week of specialized instruction were adequate to meet Student's need in math as well as to provide support in other areas.⁴⁴

18. Witness J, a DCPS Monitoring Specialist, is the case manager for 22 of the students at School A that are funded by DCPS. He attended the AED meeting on March 19, 2021. Witness J testified that DCPS received Witness A's reevaluation "days before" the meeting. Witness J testified that Witness A's reevaluation was not impartial for two reasons: (1) Witness A has history of speaking at School A and writing reports in support of placements at School A, and (2) the parents solicited an evaluation from Witness A due to concerns about autism, but Lab is not authorized to receive DPCS funding for autistic children, and Witness A discounted autism in his report. Witness J testified that *he* mistakenly copied the A/T box on page 2 of the IEP that described Student's limitations in written expression; the DCPS team did not believe Student needed support in written expression. Witness J opined that School A is not a proper placement due to the number of uncertified teachers providing services to Student.

⁴³ Testimony of Witness G.

⁴⁴ Testimony of Witness H.

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.⁴⁵

The issues in this case involve the appropriateness of Student's IEP and placement. As to these issues, Respondent bears the burden of persuasion.⁴⁶

Whether DCPS provided Student an appropriate IEP and placement for the 2021-22 school year. Specifically, Petitioners allege that DCPS failed to provide sufficient specialized instruction, failed to address Student's deficits in reading and written language, and offered no counseling or psychotherapy services to address Student's anxiety and social difficulties.

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*.⁴⁷ 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.'"⁴⁸ 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..."⁴⁹ 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 the public school system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade."⁵⁰

⁴⁵ D.C. Code Sect. 38-2571.03(6)(A)(i).

⁴⁶ *Schaffer v. Weast*, 546 U.S. 49 (2005).

⁴⁷ 458 U.S. 176, 187 (1982).

⁴⁸ *Id.* at 189-90, 200

⁴⁹ *Id.* at 200.

⁵⁰ *Id.* at 203-04.

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.⁵¹ 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*.”⁵² 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.⁵³

In *Endrew*, the Supreme Court held that an IEP must be designed to produce more than minimal progress in a student’s performance from year to year:

When all is said and done, a student offered an educational program providing ‘merely more than *de minimis*’ progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to ‘sitting idly... awaiting the time when they were old enough to drop out...’ The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”⁵⁴

The issues in this case include the types, amounts, and environment of special education services Student requires to make appropriate progress in light of his/her unique circumstances. DCPS asserts that Student’s assessment scores and classroom work product indicate that while s/he has deficits in math, s/he is an average student in reading and written expression. Thus, DCPS asserts that Student’s needs can be met primarily in a general education classroom with specialized instruction support for ten hours per week in a small group environment outside general education, along with other classroom aids and services. Petitioners contend that Student’s deficits are considerably more severe than DCPS will concede. They believe Student also has significant deficits in reading and written expression, and that her/his inattentiveness, distractibility, deficits in executive functioning, anxiety, and mood disorder are such that s/he can only make progress in a small group environment receiving specialized instruction throughout the school day.

There was minimal objective data introduced into evidence. Both parties relied on the data collected by Witness A in his 2020 reevaluation, but they disagreed as to the conclusions he reached. No report cards or narrative progress reports from School A were introduced into evidence, and the standardized monitoring assessments given three times a year to DCPS students are apparently not used at School A. Instead, School A uses an Assessment Summary that it

⁵¹ *Endrew F. ex rel. Joseph F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (2017).

⁵² *Id.* at 997.

⁵³ *Id.* at 1000-01 (citations omitted).

⁵⁴ 137 S.Ct. at 1000-01.

developed for its students alone, as well as the MAP Student Progress Report. I gave no weight to the spring 2021 MAP Report in Petitioner's Exhibit 3, as neither party explained or relied on the data therein.

Mathematics

The parties agree that Student has an SLD in math that requires special education support. Student's scores on the WJ-III in Broad Mathematics (82) and on the Calculation (82), Applied Problems (82), and Math Fluency (85) subtests were all in the Low Average range.

Reading

The parties disagree strenuously as to Student's deficits in Reading. Student's Broad Reading score (94) as well as the subtests in Passage Comprehension (90), Sentence Reading Fluency (99), and Word Attack (91) were all in the Average Range, and Letter-Word Identification was one point below the Average range (89). Student also scored in the Average range in Language Comprehension on the OWLS-II, in Sentence Memory on the WRAML-2, in Delayed Recall, in Word Retrieval on the Boston Naming Test, in Phonological Awareness, Blending Words, Rapid Letter Naming, and Rapid Digit Naming on the CTOPP-2, and in Verbal Learning-Immediate Memory and slightly Below Average in Delayed Recall on the WRAML-2. S/he was Below Average in Oral Expression and Phoneme Isolation. Based on information provided by School A's Assessment Summaries, DCPS' Eligibility Report indicated Student's strengths in this area: currently reading on grade level, has a large reading vocabulary, is able to comprehend who, what, where, when and the main idea, is able to comprehend at the literal level, accurately recalls story facts, understands cause/effect relationships, derives logical conclusions, reads independently, demonstrates intellectual curiosity, and demonstrates enthusiasm for reading.

Witness A found Student's reading-related strengths to be in verbal intelligence, visual-spatial intelligence, abstract/conceptual verbal reasoning ability, practical reasoning, common-sense logic, vocabulary, letter fluency, category fluency, spatial visualization, visualization and analysis of information in space, and pattern recognition. He found Student's reading-related weaknesses to be attention and executive functioning, phonological awareness, and automatic verbal sequencing. Witness A diagnosed Student with an SLD in reading. Witness D, Petitioners' educational consultant, attended the May 2021 IEP meeting and opposed DCPS' proposed IEP due, in part, to its failure to recognize reading as an area of concern.

Written Expression

The parties and their experts also disagreed as to Student's need for support in written expression. On the WJ-III, Student was two points Below Average in Broad Written Language (88), Average in Writing Samples (96) and Writing Fluency (101), and Low in Spelling (73). Witness A diagnosed Student with an SLD in Written Language. Witness D opposed DCPS' May 2021 IEP due, in part, to the lack of goals in written expression. Based on information provided in School A's Assessment Summaries, DCPS' Eligibility Report indicated Student's strengths in this area: knowledge of basic sentence structure, knowledge of complex/compound sentences, use of expanders such as who, what, where, when, and why to produce complex sentences, understands what makes a complete sentence, understands basic grammar concepts, uses speech-to-text and spell check, beginning to use topic sentences, able to communicate basic thoughts and ideas,

demonstrates understanding of semantics; uses appropriate grammar, demonstrates understanding of paragraphs, demonstrates understanding of sentence diagramming, exhibits intellectual curiosity, and asks meaningful questions.

Inattention and Executive Functioning

Witness A's testing found Student to be Below Average on a measure of visual attention, and in planning ability and inhibitory control. However, s/he was in the Superior range in category fluency and in the upper range of Average in letter fluency. On the BRIEF-2, Petitioner/mother and one teacher rated Student as having significant weaknesses in inhibition, emotional control, and cognitive flexibility, as well as in working memory, planning and organization, self-monitoring, task monitoring, and organization of materials.

The objective data alone does not support Petitioners' contentions that Student has significant weaknesses in reading and written expression. Her/his reading scores are solidly in the Average range, as are his/her written language scores other than spelling. Thus, a justification for substantial intervention in these two areas must be supported by Petitioner's expert testimony. However, I found that testimony unpersuasive for a number of reasons.

Witness A's test results did not support the level services he recommended for Student in reading, where his findings were in the Average range, or in written expression, where Student's score was out of the Average range only on the spelling subtest. Witness A's report and testimony appeared designed to support Student's placement at School A, rather than to provide an impartial assessment of his/her needs. First, it was unsettling to learn that Witness A sent his draft report to Petitioners in November of 2020, that Witness D proposed changes, Witness D accommodated the proposed changes, and it was never credibly explained as to what aspects of the original draft Witness D objected. The final report was not provided to DCPS until mid-March 2021, four months after its completion. Second, during his testimony, Witness D clearly stated that "I don't want parents to have a report that they can't use." Thus, he expressed a willingness to tailor his findings, conclusions, and recommendations to meet his client's desired outcome, conceding that he has changed other reports "three or four times" when parents objected to some of his findings. Witness A tailored a report to meet clients' needs in at least one recent case, *Board of Education of Montgomery County v. J.M.*,⁵⁵ in which he removed a diagnosis of autism from a draft report to accommodate his clients' application to School A, which does not serve students on the autism spectrum. Finally, I find Witness A's assertion that Student requires special education support at lunch and recess, both held outside at School A, shows how far he is willing to go to support the placement at School A.

Witness D's insistence that Student could make progress in reading and written expression only with specialized instruction throughout the day in small class environment is also not supported by the record. Witness D testified that Student has documented needs is fluency, comprehension, vocabulary, and decoding. However, as noted above, Witness A's reevaluation found Student to be Average in Passage Comprehension, Sentence Reading Fluency, Language Comprehension, Vocabulary, Letter fluency, and Category Fluency. In her discussion of School

⁵⁵ Civil Action No. 8:18-cv-00849-PX, 2019 U.S. Dist. LEXIS 53544, at *7 (D.Md. March 27, 2019).

A's January 21, 2021 Assessment Summary, Witness D testified that until a student is capable of reading a grade level passage independently, s/he needs special education support. Setting aside whether or not this is an unreasonably low bar for a reading disorder, Student was found to be reading a grade level text "Independently" on School A's spring 2021 Assessment Summary. Witness D dismissed this inconvenient result as being just one data point. The only data points in the record were Witness A's reevaluation and School A's Assessment Summaries.

Thus, I believe the record supports a finding that Student is a student with average cognition, with relatively average capability in reading and written expression, and is somewhat below average in math. Under these circumstances, a substantial amount of specialized instruction or placement in a non-public special education environment, would be appropriate only if Student has severe behavioral issues that demonstrably inhibit his/her ability to make progress in a general education environment or that interfere with his/her classmates' ability to access the curriculum. Again, the record does not support this outcome. The testing results described above do not support a finding of severe executive function deficits or inattention. Moreover, the record supports that *DCPS' programmatic proposal to address Student's inattention, executive function deficits, and social/emotional issues is identical to School A's*. As to these issues, the IEP proposed by the School A staff that knows him/her best, in Exhibit P4A, is identical to the IEP proposed by DCPS. The School A proposal has no social/emotional goals, no goals directed to executive functioning, is identical to the DCPS IEP in OT goals, and is identical to the DCPS IEP in the Other Classroom Aids and Services provided. Moreover, Witness D expressed agreement with each of these provisions in DCPS' IEP.

This leaves the assertion by Petitioners' witnesses that Student can make progress only in a small class environment outside general education as the only remaining justification for rejecting DCPS' proposed IEP. However, there is no history to support this assertion. Student has been at School A for five years; there is no documentation in the record and there was no testimony as to how s/he would perform in a larger environment – only speculation that s/he could not handle one. I do not doubt that the smaller facility footprint, enrollment, and class sizes at School A are more desirable to Petitioners than the circumstances at School B. I am sure that Student is comfortable at School A, is happy at School A, and will continue to thrive there. However, IDEA does not require a local education agency to maximize the services to disabled students,⁵⁶ but to provide those services that are reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

Petitioners' proposed placement also violates the central tenet of IDEA that "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."⁵⁷ Student's deficits cannot be fairly characterized as severe.

⁵⁶ *Rowley*, 458 U.S. at 188-89.

⁵⁷ 20 U.S.C §1412(a)(5)(A). *See also*, 34 C.F.R. §300.114(a)(2); *Endrew*, 137 S.Ct. at 999 (the IDEA requires that children with disabilities receive education in the regular classroom "whenever possible."); *Z.B.*, 888 F.3d at 528, 435 U.S.App.D.C. at 207. *See also*, *A.D. v. District of Columbia*, Civil Action No. 20-cv-2765, 2022 U.S. Dist. LEXIS 40892 (D.D.C. March 8, 2022).

For all of these reasons, I conclude that DCPS has met its burden of proving that the May 21, 2021 IEP it proposed was reasonably calculated to enable Student to make progress appropriate in light of his/her unique circumstances. Her/his deficits are in math and spelling. Despite her/his spelling weakness, there is objective proof that s/he can read and write at grade level. Student's math deficits are not severe. All of his/her subtests in math were in the Below Average range. DCPS' proposed IEP would provide Student specialized instruction in a small group environment and related services, both outside general education, for nearly one-half of his/her academic schedule. Even Petitioner's counsel conceded that this was more than enough to address Student's deficits in mathematics. As for the proposed placement at School B, the testimony was uncontroverted that it could implement the IEP proposed by DCPS and is, therefore, appropriate for that purpose.

Whether Lab is an appropriate placement for Student.

In light of my finding as to the appropriateness of the proposed IEP, I need not reach the issue as to whether School A is an appropriate placement for Student. S/he has clearly made progress there and is likely to continue to do so. However, for a child with more severe deficits, it would be concerning if, as in Student's case, the math, reading, and physical education teachers were not certified in special education, and the writing teacher was a speech therapist, not certified as a special education teacher or in any subject matter area.

RELIEF

For relief, Petitioner requested an order requiring DCPS to place Student at School A for the 2021-22 school year.

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, *District of Columbia Public Schools' Case Citations*, and *Petitioners' Closing Authorities* and a copy of an additional opinion, 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 4, 2022

Copies to: Attorney A, Esquire
Attorney B, Esquire
OSSE Office of Dispute Resolution
OSSE Division of Specialized Education
[REDACTED]/DCPS
[REDACTED]/DCPS