

**District of Columbia**  
**Office of the State Superintendent of Education**  
**Office of Dispute Resolution**  
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**Confidential**

<b>Parent on behalf of Student<sup>1</sup></b>	)	<b>Case No. 2024-0008</b>
	)	
<b>Petitioner</b>	)	<b>Hearing Date: March 26, 2024</b>
	)	
<b>v.</b>	)	<b>Conducted by Video Conference</b>
	)	
<b>School A</b>	)	<b>Date Issued: April 4, 2024</b>
	)	<b>Terry Michael Banks,</b>
<b>Respondents</b>	)	<b>Hearing Officer</b>

**AMENDED HEARING OFFICER DETERMINATION**

**INTRODUCTION**

Petitioner is the parent of an X-year-old student (“Student”) attending School A. On January 11, 2024, Petitioner filed a Due Process Complaint (“*Complaint*”) alleging that School A denied Student a free appropriate public education (“FAPE”) by failing to comply with its child find obligation to Student. On January 22, 2024, School A filed [*School A’s*] *Response to Petitioner’s Due Process Complaint* (“*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.*, Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-E, Chapter 30.

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

## PROCEDURAL HISTORY

On January 11, 2024, Petitioner filed her *Complaint* alleging that School A should have suspected Student to be a student with a disability no later than the date Student's first quarter grades were issued during the 2023-24 school year. On January 22, 2024, School A filed its *Response*, denying that it had denied Student a FAPE in any way. School A asserted that Student was making progress without structured interventions and had not been flagged as needing interventions. Student's poor grades were affected by poor attendance and not turning in assignments.

The parties participated in a resolution meeting on January 30, 2024 that did not result in a settlement. The prehearing conference in this case was conducted on February 5, 2024 through video conference facilities. The *Prehearing Order* was issued later that day.

The due process hearing was conducted on March 26, 2024 by video conference. The hearing was closed to the public at Petitioner's request. Petitioner filed disclosures on March 19, 2024 containing a witness list of two witnesses and documents P1 through P8. Respondent filed objections to Petitioner's disclosures on March 22, 2024. Respondent objected to expert testimony from Witness A to the extent that the testimony would assert that Respondent should have suspected that Student had a disability by a date earlier than was provided in the *Prehearing Order*. A ruling on this objection was deferred until the witness testified. Petitioner's exhibits P1-P8 were admitted into evidence. Respondent also filed disclosures on March 19, 2024, containing a witness list of four witnesses and documents LEA1 through LEA11. Petitioner did not file an objection to Respondent's disclosures. Therefore, Respondent's Exhibits LEA1-LEA11 were admitted into evidence.

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Petitioner presented as witnesses in chronological order: Witness A and Petitioner. Witness A was admitted as an expert in special education. Respondent presented as witnesses in chronological order: Witness B, Witness C, Witness D, and Witness E. Witness E was admitted as an expert in special education. At the conclusion of testimony, the parties' counsel gave oral closing arguments.

## ISSUES

As identified in the *Complaint* and the *Prehearing Order*, the issue to be determined in this case is whether School A denied Student a FAPE by failing timely to comply with its child find obligation to Student. Specifically, Petitioner asserts that School A should have suspected Student to be a student with a disability no later than the date Student's first quarter grades were issued during the 2023-24 school year.

## FINDINGS OF FACT

1. Student is X years old<sup>2</sup> and is enrolled in grade G at School A for the 2023-24

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<sup>2</sup> Respondent's Exhibit ("LEA:") 1 at page 1. The exhibit number is followed by the electronic page number in the disclosure, i.e., LEA1:1.

school year.<sup>3</sup> Student first attended School A for the 2022-23 school year.<sup>4</sup>

2. Student has been administered the Measures of Academic Progress (“MAP”) assessments in Mathematics and Reading five times since the fall of 2022. In the fall of 2022, his/her Mathematics score was 210, which coincided with the national average score. In the winter of 2023, his/her score of 207 was below the national average score of 215. In the spring of 2023, his/her score of 224 was above the national average of 220. In the fall of 2023, his/her score of 212 was below the national average of 215. In the winter of 2024, his/her score of 229 was above the national average of 220 and in the 71<sup>st</sup> percentile. Student’s score increase from the fall of 2023 to the winter of 2024 was in the 98<sup>th</sup> percentile.<sup>5</sup>

In the fall of 2022, his/her Reading score was 186, below the national average of 205. In the winter of 2023, his/her score of 182 was below the national average of 210. In the spring of 2023, his/her score of 188 was below the national average of 212. In the fall of 2023, his/her score of 198 was below the national average of 210. In the winter of 2024, his/her score of 202 was below the national average of 214, and in the 23<sup>rd</sup> percentile. Student’s score increase from the fall of 2023 to the winter of 2024 was in the 45<sup>th</sup> percentile.<sup>6</sup>

3. Student was first enrolled in School A for grade D in the 2022-23 school year. At year-end, her/his grades, participation grades (where provided), and relevant comments from teachers were as follows: Art – B+, Student “completed a comics assignment and created an image of kinetic art,” Drama – C-, Student “worked on [her/his] personal growth in the theatrical areas of improvisation and scene creation,” Humanities – D, Not Progressing in all four Participation categories, “[Student] has to try to do all of [his/her] assignments. [S/he] has to want to pass the class.” (first quarter) “[Student] has struggled with focusing and completing work. [S/he] has although shown that [s/he] understands the assignments and skills learned in class.” (4<sup>th</sup> quarter), Math C-, Satisfactory in all four Participation categories, “[Student] has a great personality. To see more success, scholar must be attentive during instruction and ask questions for clarity when dealing with misconceptions,” (1<sup>st</sup> quarter) “[Student is showing progress and mastery throughout modules 4-6. To see more success, [Student] should continue to be hard worker and leader in the class,” (4<sup>th</sup> quarter), Physical Education – A, and Science – F, Progressing in all four Participation categories, “[Student] would benefit from asking questions, completing work, and participating in work.” (first quarter) “[Student] should make sure to complete work with [her/his] best effort in class.” (fourth quarter) Student was absent nine days during the school year and tardy twelve days. Student was also graded “Satisfactory” in five Character Development/Work Habits: Treats all with respect, Resolves conflicts peacefully, Accepts responsibility, Works well independently, and Works cooperatively in groups. “Satisfactory” was an improvement from the first quarter, when s/he was graded Progressing in all four categories.<sup>7</sup>

4. During the first quarter of the 2022-23 school year, 50% of the students in Student’s Humanities class received F’s, 29% received D’s, and 21% received C’s. In Student’s Mathematics

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<sup>3</sup> LEA4:26.

<sup>4</sup> Petitioner’s testimony.

<sup>5</sup> LEA1:7. The national average scores are estimates based on the graph on the cited page.

<sup>6</sup> *Id.*

<sup>7</sup> LEA2:11, 13-14, 28-29. The four categories of “Participation” in Humanities, Math, and Science were Homework Completion, Classwork/project completion, Participation in class activities and discussions, and Effort and engagement in class assignments.

class, 36% received D's, 36% received C's, and 29% received B's. In Science, 14% failed, 36% received C's, 36% received B's and 14% received A's.<sup>8</sup>

5. On February 8, 2023, School A notified Petitioner that “Based on the data, inconsistency with completion of homework and classwork and student data, [School A] has presently placed your scholar on our summer school/ retention list for [grade D] for the 2022-23 school year.”<sup>9</sup>

6. During the fourth quarter of the 2022-23 school year, 14% of the students in Student's Humanities class received D's, and 64% received C's, In Student's Mathematics and Science classes, 14% received D's and 36% received C's.<sup>10</sup>

7. During the first quarter of the 2023-24 school year, Student's grades, participation grades (where provided), and relevant comments from teachers were as follows: Art A-, Student “studied Line Study, sketching a self (full body) and creating a cut out version of [him/herself],” Drama – D, “[Student] has focused on improving [her/his] skills as a performer, including writing scripts, memorizing lines, and enhancing stage etiquette. To improve [his/her] grade, it's essential that [s/he] completes [his/her] assignments accurately,” Humanities – C-, Progressing in all four Participation categories, “[Student] has been working hard this quarter, and writing is improving. To ensure success, [Student] should continue to use the race strategy while writing. This unit was high in informational text, so continuing to use all class notes to help with overall comprehension is ideal,” Mathematics – C, Satisfactory in “Participation in class activities and discussions” and Progressing in the other three categories, “[Student] is showing proficiency and mastery throughout module 1. To see more success, [Student] should continue to be an active listener and more of a vocal participant during class,” Physical Education – B-, “[Student] is learning to increase the speed of play while manipulating and carrying the ball short and intermediate distances,” Science – C-, Satisfactory in all four Participation categories, “[Student] should make sure to focus on completing [her/his] work in class and asking questions when needed,” and Social Studies – D, Not Progressing in all four Participation categories, “[Student] is progressing in Social Studies. For [him/her] to improve even more, [s/he] needs to ask more questions and study harder at home. [Student] is very capable and I know [s/he] will do better in the second quarter.” Student was Satisfactory in two of the five Character Development/Work Habits categories and Progressing in the other three.<sup>11</sup>

8. During the second quarter of the 2023-24 school year, Student's grades and participation grades (where provided) were as follows: Art B, Drama – B+, Humanities – C, Satisfactory in all four Participation categories, Mathematics – C-, Satisfactory in “Classwork project completion” and Progressing in the other three categories, Physical Education – B+, Science – D, Progressing in all four Participation categories, and Social Studies – D, Progressing in all four Participation categories, Student was Excellent in three of the five Character Development/Work Habits categories, Satisfactory in one and Progressing in “Works well

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<sup>8</sup> LEA3:31.

<sup>9</sup> Petitioner's Exhibit (“P.”) 2 at page 8. The exhibit number is followed by the electronic page number in the disclosure, i.e., P2:8.

<sup>10</sup> LEA3: 31, 34.

<sup>11</sup> LEA4: at 36-37.

independently.”<sup>12</sup>

9. During the second quarter of the 2023-24 school year, 53% of the students in Student’s Humanities class received C’s, 37% received B’s, and 11% received A’s. In Student’s Mathematics class, 32% received D’s and 37% received C’s, 26% received B’s, and 5% received A’s. In Science, 11% received D’s and 47% received C’s, 26% received B’s, and 5% received A’s.<sup>13</sup>

10. According to a Mathematics skill mastery assessment, *Formative and Summative Assessments Made Easy*, printed on January 17, 2024, Student Exceeds Mastery of 56% of the grade level math curriculum, Mastered 7%, Almost Mastered 7%, and had Not Mastered 30%.<sup>14</sup>

11. On February 5, 2024, School A issued a Prior Written Notice (“PWN”) stating that it would not proceed with evaluations to determine Student’s eligibility for services under IDEA, but would “proceed with scales for 504 because the parent suspects [Student] has ADHD.”<sup>15</sup> Petitioner provided written consent for testing under Section 504 of the Rehabilitation Act<sup>16</sup> on January 30, 2024.<sup>17</sup>

12. Witness A, Petitioner’s educational consultant, testified that she was retained by Petitioner after the *Complaint* was filed. Petitioner was concerned that Student was “not being as successful as [s/he] could be” and struggled with reading. Witness A testified that while Student’s standardized test scores were above average in math and low average in reading, Student’s grades, D’s and F’s, were significantly lower than would be expected. “Often when that’s occurring, that usually indicates a learning disability.” Witness A opined that after having already required Student to attend summer school, the data available to School A at the beginning of the second quarter of the 2023-24 school was sufficient to warrant suspicion that Student had a disability; Student was not focused, not completing assignments, and not following directions. Witness A further opined that Student needed specialized instruction in reading comprehension and decoding. She also opined that a Section 504 plan would not meet Student’s needs, because it is “more informal,” does not provide specialized instruction, and there is no written educational plan. On cross-examination, Witness A conceded that she had never met Student, never observed her/him in class, never talked to any of Student’s teachers, never participated in a School A meeting involving Student, and was unaware of the provisions in School A’s proposed Section 504 plan.<sup>18</sup>

13. Petitioner testified that Student began failing courses in his/her first semester at School A. Teachers reported Student was “not doing anything – [s/he] would not say anything – just be sitting there.” Petitioner complained that s/he was never able to meet with all of Student’s teachers at one meeting. Student’s performance during the 2023-24 school year is “just like last year.” Petitioner retained Witness A because a teacher notified her that Student had done no work on a month-long project; Petitioner wanted Witness A’s assistance to get Student comprehensively

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<sup>12</sup> *Id.* at 38.

<sup>13</sup> LEA5:42.

<sup>14</sup> LEA8:48.

<sup>15</sup> LEA6:44.

<sup>16</sup> 29 U.S.C.A. § 794.

<sup>17</sup> LEA7:46.

<sup>18</sup> Testimony of Witness A.

evaluated.<sup>19</sup>

14. Witness B has been Student's Humanities teacher for the current and past school year. Witness B testified that there is "quite a bit of writing in our curriculum" and a lot of reading. All of her students have difficulty keeping up – "stamina is an issue." Witness B testified that Student routinely forgot about or did not turn in assignments. Student's grades were brought down due to incomplete assignments and failing to do homework. Witness B believes that Student is capable of doing grade level work, citing a 90-minute assignment Student completed two weeks previously. "The homework completion is the main issue." Witness B testified that she never referred Student for evaluation because "s/he can do the work," but it is too often incomplete. "It's not comprehension, it's the incompletes." When asked how Student is doing this school year, Witness B testified that Student is doing better than last year, "Not the highest, but 'up there.' [S/he] can be there by the end of the year." On cross-examination, Witness B insisted that Student's grade of C- in the first two quarters represented an improvement over his/her D's last year. When asked why special education evaluations were not indicated from this performance, Witness B replied that "the curriculum is rigorous, we have assessments, homework. [S/he's] able to write two pages, citing sources. [S/he] can do the work." When asked on redirect examination why the referral to summer school did not suggest that evaluations should be conducted, Witness B reiterated, "It was always about completing assignments... It's a lot of reading, writing. A lot of students are the same."<sup>20</sup>

15. Witness C has been Student's Mathematics teacher for the current and past school year. When asked to characterize Student, he said that Student is "one of my strongest students. [S/he's] done well." He rated Student fourth highest in the class of nineteen students; last year s/he was sixth out of twenty-two. When asked if he had any concerns about Student, he replied, "Not academically, not behaviorally, bright and astute, very respectful. Nothing major that I would point out." When asked if Student's C grades should have evoked concern, Witness C replied that it was not concerning. "No. [S/he's] mastered up to 70% which we consider proficiency." He also testified that Student's work completion is "100 times better this year. [S/he] had a hard time adjusting." On cross examination, Witness C was asked why Student could only earn a C even though his/her math skills were in the 71<sup>st</sup> percentile nationally. Witness C testified that the C grade indicates that "[s/he's] proficient – 7% of all standards, it's based on standards, it does not mean [s/he] gets an A." Witness C opined that Student was performing at grade level in class. When asked about Student's reputation among teachers, Witness C testified that his/her homework completion is "few and far between... Most of the time we have to send home work that was not completed. Typically, it does not come back completed. When I talk to Mom, it comes back. We can monitor [his/her] work in class, but when they go home, we can't control it. [Her/his] homework is poor."<sup>21</sup>

16. Witness D, School A's principal, substituted as Student's English Language Arts ("ELA") class teacher during the first quarter of the 2022-23 school year. She attributed Student's difficulties during the 2022-23 school year, in large part, to poor instruction. "I don't know where [s/he] came from, but that school didn't do [him/her] justice. A lot had to be tightened up... [S/he] was missing basic writing fundamentals. Over time, [his/her] writing has grown exponentially.

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<sup>19</sup> Petitioner's testimony.

<sup>20</sup> Witness B's testimony.

<sup>21</sup> Witness C's testimony.

[S/he] knows how to reference a text to verify [his/her] writing.” Witness D testified that School A did not refer Student for evaluations because “from mislearning in previous years, and what we’re doing, we are seeing progress. The work we see now is night and day from what we saw earlier.” Witness D opined that Student’s performance was also negatively affected by her/his attendance. Student was absent nine days during the 2022-23 school year, one day short of “chronic” truancy, and s/he has been absent thirteen times during the 2023-24 school year. On cross-examination, when asked why Student received a D during the first quarter of the 2022-23 school year, Witness attributed it to “a lot of things that weren’t learned before” and the failure to complete and turn in assignments. When asked why Student’s grades did not show growth, Witness D disagreed: “No F’s. Last year was D’s and F’s. It shows we’re not done. We expect the [next two years] grade transcripts to be nice... We never heard about [Petitioner] being concerned about special education until the complaint was filed.”<sup>22</sup>

17. Witness E is School A’s Director of Special Education. She testified that when Student enrolled in School A, s/he struggled at first, but over time his/her MAP scores have improved and his/her grades have improved slightly. Witness E attributed the primary cause of Student’s low grades to her/his failure to complete assignments. When asked why Student’s grades did not raise red flags, Witness E replied, “They don’t give A’s at that campus.” When asked if she suspected Student of having a disability, Witness E replied, “No. We need to get [him/her] to get work done and returned.” When asked again on cross-examination why Student’s grades did not elicit concern, Witness E replied, “Grades are subjective. At [School A], a C or C- is not something that would cause alarm.” And on redirect examination, “[Her/his] grades are affected by work completion. That alone is not enough to warrant referral. The majority of [her/his] peers are getting C’s. Only a handful get A’s... [School A] is the highest performing school in the ward.” In response to my question, Witness E testified that the “highest performing” characterization was based on a comparison of standardized test scores for elementary and middle schools.<sup>23</sup>

## 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.<sup>24</sup>

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<sup>22</sup> Witness C’s testimony.

<sup>23</sup> Witness D’s testimony.

<sup>24</sup> D.C. Code Sect. 38-2571.03(6)(A)(i).

The issue in this case does not involve the alleged failure of School A to provide an appropriate IEP or placement. Therefore, under District of Columbia law, Petitioner bears the burden of persuasion as to the issue presented.<sup>25</sup>

**Whether School A denied Student a FAPE by failing timely to comply with its child find obligation to Student. Specifically, Petitioner asserts that School A should have suspected Student to be a student with a disability no later than the date Student’s first quarter grades were issued during the 2023-24 school year.**

IDEA requires local education agencies (“LEAs”) to identify and evaluate all students suspected of having disabilities to determine their eligibility for special education services. LEAs must ensure that

All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.<sup>26</sup>

The regulations define a child with a disability as follows:

Child with a disability means a child evaluated in accordance with §§ 300.304 through 300.311 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.<sup>27</sup>

The District’s regulations require an LEA to consider any oral or written referral from a parent, an employee of an LEA, or an employee of a public agency who has knowledge of the child, as a request for an initial evaluation of the child.<sup>28</sup> The LEA must issue a PWN informing the parent of its decision to evaluate or not evaluate the child.<sup>29</sup> If the LEA decides to evaluate the child, it must (1) initiate efforts to secure parental consent for the evaluation within ten days of the referral, (2) make and document its reasonable efforts, to obtain parental consent within thirty days from the date on which the child is referred, and (3) evaluate and make an eligibility

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<sup>25</sup> *Schaffer v. Weast*, 546 U.S. 49 (2005).

<sup>26</sup> 20 U.S.C. §1412(a)(3)(A); 34 C.F.R. §300.111(a)(1)(i).

<sup>27</sup> 34 C.F.R. §300.8(a)(1).

<sup>28</sup> 5-A DCMR § 3004.1 and § 3004.5.

<sup>29</sup> 5-A DCMR § 3005.2.



determination within sixty days from the date that the student's parent or guardian provides consent for the evaluation.<sup>30</sup>

Petitioner does not assert that she ever requested that School A evaluate Student prior to filing the *Complaint*, and that School A declined the request. In fact, School A's principal testified that the school was unaware of Petitioner's interest in special education services for Student until the *Complaint* was filed. Petitioner conceded that she retained Witness A to assist in securing special education services for Student, and Witness A testified that she was not retained until after the *Complaint* was filed.

Petitioner's claim that Student's academic performance should have put School A on notice that Student had a disability is based entirely on Student's relatively low grades at School A. Petitioner testified that she became concerned when Student began failing courses in his/her first semester at School A, and Student's performance during the 2023-24 school year is "just like last year." Witness A testified that Petitioner was dissatisfied because Student was "not being as successful as [s/he] could be," and success was measured in terms of Student's grades. Witness A had virtually no independent knowledge of Student's capabilities. She was retained after the *Complaint* was filed, has never met Student, never observed her/him in class, never talked to any of Student's teachers, never participated in a School A meeting involving Student, and was unaware of the provisions in School A's proposed Section 504 plan.

The objective measures of Student's academic ability available in the record are his/her MAP scores and the *Formative and Summative Assessments Made Easy* scores. Student's Mathematics MAP scores increased from 210 in the fall of 2022 to 229 in the winter of 2024. The winter 2024 score was in the 71<sup>st</sup> percentile, above the national average, and the increase in her/his score from the fall of 2023 to the winter of 2024 was in the 98<sup>th</sup> percentile. In Reading, Student's fall 2023 and winter 2024 MAP scores of 188 and 198 were each twelve points below the national average, and the winter 2024 score was in the 23<sup>rd</sup> percentile, two percentile points below the lower threshold of the average range. Student's MAP Reading score increase from the fall of 2023 to the winter of 2024 was in the 45<sup>th</sup> percentile, the average range. The *Formative and Summative Assessments Made Easy* were conducted sometime prior to January 17, 2024, during the 2023-24 school year. It revealed that Student Exceeded Mastery, Mastered, or had Almost Mastered 70% of the math skills expected for Student's grade level.

School A's witnesses testified that grades are subjective and School A has the highest standards in Ward 8. Witness B, Student's Humanities teacher for the last two years, testified that Student's grades were low due to incomplete assignments and failing to do homework. While she believes Student has demonstrated the capability to do grade level work, "The homework completion is the main issue." Witness B did not believe Student's performance warranted referral for evaluation because "s/he can do the work... It's not comprehension, it's the incompletes." Witness C, Student's Mathematics teacher for the last two years, testified that Student was proficient in that s/he had already mastered 70% of what is expected for his/her grade level. However, as in Witness B's class, Student's completed homework assignments were "few and far between." Witness D, School A's Principal, was Student's substitute Humanities teacher for two months at the beginning of the 2022-23 school year. She attributed Student's poor grades to inadequate prior instruction in ELA fundamentals and her/his failure to turn in assignments.

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<sup>30</sup> 5-A DCMR § 3005.4.

Although Student's Humanities grades improved only incrementally in the 2023-24 school year, Witness D testified that Student's writing had grown "exponentially" and opined that the improvement from F's and D's to C- was significant. She further opined that a referral for evaluations was unwarranted because "the work we see now is night and day from what we saw earlier," and Student's grades were also depressed due to absences. Witness E, the school's Director of Special Education, testified that Student's grades were low because the school's standards were high. "They don't give A's at that campus." Thus, C-range grades that were depressed by incomplete work assignments would not raise concerns as to a disability.

The objective data supports the testimony of School A's witnesses as to the grading standards at School A. As is set forth in paragraph 4 above, during the first quarter of the 2022-23 school year, when Student received D's in Humanities and Math and failed Science, 50% of the students in Student's Humanities class received F's, 29% received D's, and 21% received C's. In Student's Mathematics class, 36% received D's and 36% received C's. In Science, 14% failed, and 36% received C's. By the second quarter of the 2023-24 school year, the performance of the entire class had improved, although the grades remained relatively low; 53% of the students in Student's Humanities class received C's instead of D's and F's. In Mathematics class, 69% received C's and D's down from 72%. In Science, 11% received D's and 47% received C's, an improvement from the 14% failures in the first quarter of 2022-23.

Although Student's standardized scores in Mathematics are above the national average, s/he has only earned C grades at School A. This is despite the fact that her/his teacher ranked her/him fourth in the class of nineteen students. In Reading, his/her MAP scores have been consistently below the national average, but markedly less so in the current school year (12 points instead of 18-24 points). Moreover, the increase in her/his score from the fall of 2023 to the winter of 2024 was in the average range. Thus, in both core subjects, Student has made academic progress over the past two school years in a rigorous, general education program. While Petitioner believes Student's relatively low grades may be due to a disability, nothing in the record substantiates this concern. Witness B, Witness C, and Witness D have all taught Student, the first two for two school years, and they all believe s/he has the capability to do grade level work. Not only are Student's grades consistent with the majority of his/her classmates, the uncontroverted testimony of all of School B's witnesses is that Student's grades would improve if s/he would simply turn in completed classroom and homework assignments on time.

For all of these reasons, I conclude that Petitioner has failed to meet her burden of proving that School A should have suspected that Student had a disability by the end of the first quarter of the 2023-24 school year.

## **RELIEF**

For relief, Petitioner requested (1) an order requiring School A to conduct a comprehensive psychological evaluation within thirty days, (2) an order requiring School A to convene an eligibility meeting within twenty days of the completion of the evaluation, and an IEP meeting if Student is determined to be eligible for services, (3) compensatory education, and (4) attorneys' fees.

## ORDER

Upon consideration of the *Complaint*, the *Response*, the exhibits admitted into evidence, the testimony of the witnesses during the hearing, and the parties' closing arguments, it is hereby

**ORDERED**, that the *Complaint* is **DISMISSED** with prejudice.

## 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, 2024

Copies to: Attorney A  
Attorney B  
OSSE Office of Dispute Resolution