

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

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

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Office of Dispute Resolution  
April 15, 2024

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<i>Student</i> , <sup>1</sup>	)	Case No.: 2024-0019
through <i>Parent</i> ,	)	
<i>Petitioner</i> ,	)	Date Issued: 4/15/24
	)	
v.	)	Hearing Officer: Keith L. Seat, Esq.
	)	
District of Columbia Public Schools	)	Hearing Dates (using Microsoft Teams):
("DCPS"),	)	4/10/24 & 4/11/24
Respondent.	)	
	)	

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**HEARING OFFICER DETERMINATION**

**Background**

Petitioner, Student’s Parent, pursued a due process complaint alleging that Student had been denied a free appropriate public education (“FAPE”) in violation of the Individuals with Disabilities Education Improvement Act (“IDEA”) due to DCPS’s failure to provide a sufficiently restrictive Individualized Education Program (“IEP”) and placement, along with a second issue that was settled at the start of the hearing. DCPS responded that Student’s IEP and placement were appropriate.

**Subject Matter Jurisdiction**

Subject matter jurisdiction is conferred pursuant to the IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; and Title V, Chapter A30, of the District of Columbia Municipal Regulations (“D.C.M.R.”).

**Procedural History**

Following the filing of the due process complaint on 1/31/24, the case was assigned to the undersigned on 2/1/24. Respondent filed a response on 2/22/24 and did not challenge jurisdiction. A resolution meeting took place on 2/12/24, but the parties did not settle the

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<sup>1</sup> Personally identifiable information is provided in Appendix A, including terms initially set forth in italics. Personal pronouns and other terms that would indicate Student’s gender are omitted.

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case or shorten the 30-day resolution period, which ended on 3/1/24. A final decision in this matter must be reached no later than 45 days following the end of the resolution period, which requires a Hearing Officer Determination (“HOD”) by 4/15/24.

A prehearing conference was held on 3/21/24 and a Prehearing Order was issued that same day, addressing, among many other things, the use of a videoconference platform to conduct the due process hearing. The due process hearing took place on 4/10/24 and 4/11/24, and was open to the public. Petitioner was represented by *Petitioner’s counsel*. DCPS was represented by *Respondent’s counsel*. Petitioner participated in the entire hearing.

### Documents and Witnesses

Petitioner’s Disclosure and Supplemental Disclosure, submitted and corrected on 4/2/24, contained documents P1 through P40, all of which were admitted into evidence over certain objections. Respondent’s Disclosure, also submitted on 4/2/24, contained documents R1 through R48, all of which were admitted after a single objection was withdrawn.<sup>2</sup>

Petitioner’s counsel presented 2 witnesses in Petitioner’s case-in-chief (*see* Appendix A):

1. *Educational Advocate* (qualified without objection as an expert in Special Education)
2. Parent

Respondent’s counsel presented 2 witnesses in Respondent’s case (*see* Appendix A):

1. *Special Education Teacher* (qualified without objection as an expert in Special Education)
2. *LEA Representative* (qualified without objection as an expert in Special Education)

Petitioner’s counsel offered no rebuttal evidence.

### Stipulations

At the start of the hearing, the parties negotiated privately and agreed to the issuance of a consent decree in full resolution of Issue 1 in this case. The substance of the stipulation is that within 10 business days from the date of this HOD, DCPS shall provide a missed-

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<sup>2</sup> Citations herein to the parties’ documents are identical except that Petitioner’s documents begin with a “P,” while Respondent’s documents begin with an “R,” followed by the exhibit number and then a “p” (for page) and the Bates page number or numbers (which are numbered consecutively through to the end of the exhibits), with any leading zeros omitted.

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services plan with authorization for (a) 20 hours of speech-language services, and (b) 10 hours of occupational therapy services.

During the hearing, the parties agreed to a second stipulation that an Adaptive area of concern be added to Student's IEP to address concerns raised in the 1/24/24 IEP meeting.

### Issues and Relief Requested

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

**Issue 1:** Whether DCPS denied Student a FAPE by failing to fully implement Student's IEPs during 2022/23<sup>3</sup> and 2023/24 by not providing all (a) speech and language services, and/or (b) occupational therapy services. (*Petitioner has the burden of persuasion on this issue.*)

**Issue 2:** Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and/or placement on 1/24/24, when the school team refused to consider a more restrictive environment despite Student's lack of adequate progress and/or reports of changes in Student's affect, motivation and engagement. (*Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.*)

The relief requested by Petitioner is:

1. A finding that Student has been denied a FAPE.
2. DCPS shall provide Student a more restrictive environment and/or place and fund Student in a suitable nonpublic program with transportation.
3. DCPS shall provide compensatory education for any denial of FAPE.<sup>4</sup>
4. Any other just and reasonable relief.

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<sup>3</sup> All dates in the format "2022/23" refer to school years

<sup>4</sup> etitioner's counsel was put on notice that, at the due process hearing, Petitioner must introduce evidence supporting the requested compensatory education, including evidence of specific educational deficits resulting from Student's alleged denial of FAPE and the specific compensatory measures needed to best correct those deficits, i.e., to elevate Student to the approximate position Student would have enjoyed had Student not suffered the alleged denial of FAPE. Respondent should be prepared at the due process hearing to introduce evidence contravening the requested compensatory education in the event a denial of FAPE is found.

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### Findings of Fact

After considering all the evidence, as well as the arguments of counsel, the Findings of Fact<sup>5</sup> are as follows:

1. Background. Student is a resident of the District of Columbia; Petitioner is Student's Parent.<sup>6</sup> Student is *Age, Gender,* and in *Grade* during 2023/24 at *Public School*.<sup>7</sup> Student is academically far behind others and becoming more aware of inability to keep up with peers and even younger sibling, who has begun helping Student at home; Student is unable to write name or tie shoes.<sup>8</sup> Student is well below grade level and has difficulty accessing general education, impacting self-esteem.<sup>9</sup> Student whines, cries and, according to Parent, doesn't want to go to school now, of which Special Education Teacher was not aware.<sup>10</sup>

Student's disability classification is intellectual disability ("ID").<sup>11</sup> A 2022 assessment utilized the Wechsler Intelligence Scale for Children – Fifth Edition ("WISC-V") to determine that Student's Full Scale IQ ("FSIQ") was 57 (Extremely Low).<sup>12</sup> In addition, the Test of Nonverbal Intelligence – Fourth Edition ("TONI-4") was used to assess non-verbal cognitive ability which revealed an Index score of 69 (Extremely Low).<sup>13</sup> A 1/7/24 independent educational evaluation ("IEE") utilized the Wechsler Abbreviated Scale of Intelligence – Second Edition ("WASI-II") to determine that Student's FSIQ was 57 (Extremely Low), and the Comprehensive Test of Nonverbal Intelligence, 2<sup>nd</sup> Edition ("CTONI-2") to determine non-verbal cognitive functioning, which found Student's FSIQ was 79 (Poor).<sup>14</sup> It is not reasonable to expect Student to be on grade level.<sup>15</sup> The Woodcock-Johnson IV Tests of Achievement ("WJ-IV ACH") noted that Student's performance is "comparable" to cognitive abilities.<sup>16</sup>

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<sup>5</sup> Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

<sup>6</sup> Parent.

<sup>7</sup> P40p573; Parent.

<sup>8</sup> Parent.

<sup>9</sup> Parent; Special Education Teacher.

<sup>10</sup> *Id.*

<sup>11</sup> P9p118; P40p573; P13p157.

<sup>12</sup> P9p109.

<sup>13</sup> *Id.*

<sup>14</sup> P9p109-12.

<sup>15</sup> LEA Representative.

<sup>16</sup> P9p113.

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2. IEPs. The single IEP at issue in this case is dated 1/24/24 and as written provides 20 hours/week of specialized instruction outside general education, along with 30 minutes/week of speech-language pathology inside general education, 30 minutes/week of speech-language pathology outside general education, and 45 minutes/week of occupational therapy outside general education.<sup>17</sup> Public School explained that the 20 hours/week of specialized instruction in this IEP was a “typo” and should be 22 hours/week based on the prior IEP, and will be modified promptly by Student’s IEP team; Public School further asserted that 22 hours/week has actually been provided to Student while the IEP has been in effect.<sup>18</sup> When not outside general education, Student is in general education classes which may need less specialized instruction, specifically PE, performing arts, library, STEM, and language.<sup>19</sup>

3. Student’s previous IEP was dated 2/13/23 and provided for 22 hours/week of specialized instruction outside general education due to Student’s “severe academic deficits,” along with related services.<sup>20</sup> An amended IEP on 10/27/22 increased Student’s specialized instruction outside general education to 15 hours/week.<sup>21</sup> Student’s initial IEP on 8/31/22 provided for 6 hours/week of specialized instruction outside general education and 6 hours/week of specialized instruction inside general education.<sup>22</sup>

4. Specialized Instruction. The 1/7/24 IEE noted that Student does not achieve adequately for age or meet approved grade-level standards in the areas of reading, writing, and math, but that the deficits do not appear to be due to lack of appropriate instruction.<sup>23</sup> Student is receiving specialized instruction outside general education and needs “heavy support” in a small setting with slow pacing and scaffolding.<sup>24</sup> Among 14 numbered paragraphs of school recommendations, the IEE notes that a classroom environment that provides more time and allows frequent breaks would assist Student in learning.<sup>25</sup> Student’s 1/24/24 IEP noted that Student had made gains of a year in overall reading from Beginning of Year (“BOY”) to Middle of Year (“MOY”), with “significant” gains in sight words.<sup>26</sup> Student has difficulty identifying lowercase and uppercase letters, and difficulty forming letters, but can write first name.<sup>27</sup>

5. Special Education Teacher repeatedly testified that Student was receiving 20 hours/week of specialized instruction, and needed that heavy support in a self-contained

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<sup>17</sup> P40p573,579,591.

<sup>18</sup> LEA Representative; Special Education Teacher (confusingly testified that only 20 hours/week could be provided in the ILS classroom).

<sup>19</sup> Special Education Teacher; LEA Representative.

<sup>20</sup> P13p157,167-68.

<sup>21</sup> P12p141,152.

<sup>22</sup> P11p125,136.

<sup>23</sup> P9p117; Educational Advocate (not due to ILS).

<sup>24</sup> Special Education Teacher.

<sup>25</sup> P9p118.

<sup>26</sup> P40p581.

<sup>27</sup> P40p577.

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Independence & Learning Support (“ILS”) classroom.<sup>28</sup> This was Student’s appropriate setting and Least Restrictive Environment (“LRE”).<sup>29</sup> The ILS classroom was appropriate for Student, learning in a small setting with appropriate support to determine what assistance Student needed.<sup>30</sup> Time in general education was important for Student to interact with non-disabled peers on a regular basis to gain confidence and work on everyday skills.<sup>31</sup> Special Education Teacher observes Student with general education kids during recess, when Student is very energetic and accepted by general education peers; Student wants to participate with them.<sup>32</sup> A more restrictive environment was not needed, as Student was in the appropriate setting; a more restrictive environment would not have been beneficial socially for Student; Student needed to interact and work with general education peers.<sup>33</sup> Special Education Teacher expects Student to continue to show growth in the ILS classroom based on existing data and Student’s work.<sup>34</sup> LEA Representative expects to see more progress from Student in the future.<sup>35</sup>

6. Progress. Student has been making progress in reading and math in the ILS classroom, based on iReady and other data; progress looks different for each child in the ILS classroom.<sup>36</sup>

7. Math Data. Student’s 9/14/21 BOY iReady diagnostic in math revealed that Student was at 309 points and 2 years behind grade overall (nationally normed at the 1<sup>st</sup> percentile) and 2 years behind grade in each domain.<sup>37</sup> Student’s 9/13/22 BOY iReady diagnostic in math revealed that Student was again at 309 points and 2 years behind overall (1<sup>st</sup> percentile) and in each domain.<sup>38</sup> Student’s 9/13/23 BOY iReady diagnostic in math revealed that Student was at 328 points, 3 years behind overall (1<sup>st</sup> percentile) and in each domain.<sup>39</sup> Student’s 1/22/24 MOY iReady diagnostic in math revealed that Student was at 374 points, an increase of 46, exceeding typical growth and progressing toward stretch growth; Student was 3 years behind overall (2<sup>nd</sup> percentile), and was only 2 years behind in 1 domain.<sup>40</sup>

8. Reading Data. Student’s 9/21/22 BOY iReady diagnostic in reading revealed that Student was at 341 points and 2 years behind overall (at the 2<sup>n</sup> percentile) and in each

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<sup>28</sup> Special Education Teacher.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Special Education Teacher; LEA Representative (social-emotional connection with peers is important).

<sup>32</sup> Special Education Teacher.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> LEA Representative.

<sup>36</sup> Special Education Teacher; LEA Representative.

<sup>37</sup> P23p314.

<sup>38</sup> P25p339.

<sup>39</sup> R10p116; P29p400.

<sup>40</sup> R5p56; P31p443; Educational Advocate.

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domain.<sup>41</sup> Student's 8/30/23 BOY iReady diagnostic in reading revealed that Student was at 291 points and is 3 years behind overall (1<sup>st</sup> percentile) and in each domain, except for testing out in 1 domain, a decline from BOY 2022.<sup>42</sup> Student's 1/22/24 MOY iReady diagnostic in reading revealed that Student was at 456, an increase of 165 points, well above typical growth and achieved stretch growth; Student was 2 years behind overall (at the 14<sup>th</sup> percentile), but tested out of 1 domain and was only 1 year behind on 2 other domains.<sup>43</sup> The increase from BOY to MOY occurred in 4 months and was more significant than before ILS.<sup>44</sup>

9. IEP Progress Reports. Student's IEP Progress Report on 11/3/23 revealed that Student was progressing on 2 math goals and not progressing on 1; Student was progressing on 2 reading goals and not progressing on 1; Student was progressing on 1 written expression goal, with 2 others not yet introduced.<sup>45</sup> Student's 2/6/24 IEP Progress Report (not available at the 1/24/24 meeting) showed Student progressing on academic goals or that they were just introduced or not introduced.<sup>46</sup> IEP goals that have just been introduced or have not yet been introduced are not a concern, nor that Student has not "mastered" any goals.<sup>47</sup>

10. Suitable Program. Parent sought and obtained the self-contained ILS program for Student in May 2023; Student has been in the ILS program for less than a year.<sup>48</sup> Student's ILS classroom at Public School has 9 students (counting Student) with 1 teacher and 1 assistant teacher; a related services provider often pushes in and a fourth adult is a 1:1 for another student.<sup>49</sup> The composition of the ILS classroom does not overwhelm students by having too much support, but Student has never needed Special Education Teacher's support without being able to get it.<sup>50</sup> Student is always respectful in class and tries to do what is asked, with no question about motivation or engagement.<sup>51</sup> Student will befriend anyone and Special Education Teacher is not aware of any teasing by Student or of Student; there is no issue of Student getting along with others in the classroom.<sup>52</sup> Student will continue to grow in the ILS classroom; it would not be appropriate for Student to be in a more restrictive environment.<sup>53</sup>

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<sup>41</sup> P27p364.

<sup>42</sup> R11p141; P28p383; P27p364.

<sup>43</sup> R6p87; P30p426.

<sup>44</sup> Educational Advocate.

<sup>45</sup> P17p246.

<sup>46</sup> R3p10-11; Educational Advocate.

<sup>47</sup> LEA Representative; Parent.

<sup>48</sup> Educational Advocate.

<sup>49</sup> P14p195; Educational Advocate; LEA Representative.

<sup>50</sup> Special Education Teacher.

<sup>51</sup> Special Education Teacher; P14p212.

<sup>52</sup> Special Education Teacher.

<sup>53</sup> LEA Representative.

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11. Student's "affect" shortly before the 1/24/24 IEP meeting was very similar to the previous year when Student was new to the school and was warming up to the setting and adults and peers; Student has made gains expressing feelings.<sup>54</sup> Student has trouble with social cues and school work; Student tries hard but struggles to retain information.<sup>55</sup> The need to consider Proposed Nonpublic School for Student due to concerns about engagement were only raised by Parent and her advocates at the end of the 1/24/24 meeting.<sup>56</sup> Academics were not questioned by Parent during the meeting.<sup>57</sup> Educational Advocate wanted to see the MOY data due to concern that Student was not making adequate progress, which was available right after the 1/24/24 meeting and showed significant increases.<sup>58</sup> Student was accepted at Proposed Nonpublic School where older sibling attended.<sup>59</sup>

### Conclusions of Law

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

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

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

Once a child who may need special education services is identified and found eligible, Respondent must devise an IEP, mapping out specific educational goals and requirements in light of the child's disabilities and matching the child with a school capable of fulfilling those needs. *See* 20 U.S.C. §§ 1412(a)(4), 1414(d), 1401(14); *Andrew F.*, 137 S. Ct. at 994; *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385 (1985); *Jenkins v. Squillacote*, 935 F.2d

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<sup>54</sup> P14p205-06,208-09,212; Special Education Teacher; LEA Representative (affect normal; teachers asking if anything else going on with child).

<sup>55</sup> Parent.

<sup>56</sup> P14p221.

<sup>57</sup> Special Education Teacher.

<sup>58</sup> P14p225.

<sup>59</sup> Educational Advocate.



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303, 304 (D.C. Cir. 1991); *Dist. of Columbia v. Doe*, 611 F.3d 888, 892 n.5 (D.C. Cir. 2010).

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

Importantly, the local education agency (“LEA”) must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114; *Endrew F.*, 137 S. Ct. at 1000 (children with disabilities should receive education in the regular classroom to the extent possible); *Montuori v. Dist. of Columbia*, No. 17-cv-2455 (CKK), 2018 WL 4623572, at \*3 (D.D.C. 2018).

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

Petitioner carries the burden of production and persuasion, except on issues of the appropriateness of an IEP or placement on which Respondent has the burden of persuasion, if Petitioner establishes a *prima facie* case. D.C. Code Ann. § 38-2571.03(6); *Z. B. v. Dist. of Columbia*, 888 F.3d 515, 523 (D.C. Cir. 2018) (party seeking relief bears the burden of proof); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005).

**Issue 1:** *Whether DCPS denied Student a FAPE by failing to fully implement Student’s IEPs during 2022/23 and 2023/24 by not providing all (a) speech and language services, and/or (b) occupational therapy services.*

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This first issue was resolved by a stipulation between the parties, as noted above, and issuance of the Consent Decree, below.

**Issue 2:** *Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and/or placement on 1/24/24, when the school team refused to consider a more restrictive environment despite Student’s lack of adequate progress and/or reports of changes in Student’s affect, motivation and engagement. (Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)*

Petitioner established a *prima facie* case concerning Student’s IEP and placement through testimony and documents, shifting the burden to DCPS, which met its burden of persuasion, as discussed below.

The applicable legal standard for analyzing the appropriateness of the IEP at issue in this case was articulated by Chief Justice Roberts for a unanimous Supreme Court as whether it was “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S. Ct. at 1001. As the U.S. Court of Appeals for the District of Columbia emphasized in *Z.B.*, 888 F.3d at 517, *Endrew F.* “raised the bar on what counts as an adequate education under the IDEA,” requiring more than “merely some” educational benefit. *See also Damarcus S. v. Dist. of Columbia*, 190 F. Supp. 3d 35, 51 (D.D.C. 2016) (IEP must be “reasonably calculated to produce meaningful educational benefit”). The measure and adequacy of the IEP are determined as of the time it was offered to Student, rather than with the benefit of hindsight. *See Z.B.*, 888 F.3d at 524; *A.T. v. Dist. of Columbia*, CV 16-1086 (CKK), 2021 WL 1978792, at \*12 (D.D.C. 2021); *S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 66 (D.D.C. 2008). The appropriateness of Student’s IEPs is analyzed by focusing on the specific concerns raised by Petitioner, which are considered next.<sup>60</sup> *See* 34 C.F.R. § 300.320(a); *Honig*, 484 U.S. at 311.

Here, Parent successfully obtained the self-contained ILS program for Student in May 2023, and Student has been in the ILS program for less than a year. While there have been significant indicia of progress by Student in the ILS program, it is undeniable that Student is held back by Student’s intellectual disability. This is likely to be increasingly evident as the gap grows between Student’s abilities and ever more challenging academic requirements. Parent now seeks to move Student to Proposed Nonpublic School with a modest increase in specialized instruction in an effort to support Student and avoid general education. However, such an approach ignores the notable progress Student has made in the ILS program and the need to help Student engage and find Student’s place in a world with a broad range of possibilities.

Given Student’s intellectual disability, it is important to focus on the determination in the WJ-IV ACH that Student’s performance is comparable to Student’s cognitive

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<sup>60</sup> A Hearing Officer must also determine whether “the State complied with the procedures” set forth in the IDEA. *A.M. v. Dist. of Columbia*, 933 F. Supp. 2d 193, 204 (D.D.C. 2013), quoting *Rowley*, 458 U.S. at 206-07. Procedural issues are only incidentally discussed herein.

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abilities. This suggests that Student isn't likely to be able to perform better in the future with ever more support, given the circumstances. Further, significant progress has been shown based on Student's current situation by iReady testing and IEP Progress Reports. Specifically, once Student moved to the ILS classroom, Student's MOY 2023/24 iReady scores notably increased. In math, the MOY score increased by 46 points, exceeding typical growth and approaching stretch growth, while in reading, the MOY score increased by 165 points, well above typical growth and achieving stretch growth. These are the MOY scores that Educational Advocate said would be important at the 1/24/24 IEP meeting and appear to clearly show the value of the ILS program for Student. Similarly, Student's IEP Progress Reports indicated that Student was progressing in all academic areas, even though some goals had not yet been introduced or had just been introduced. Nor is IEP mastery required, as long as a child is making appropriate progress in the circumstances, which the undersigned finds to be the case here.

Although there was troublesome confusion over whether Student's current IEP requires 20 or 22 hours/week of specialized instruction outside general education, Special Education Teacher was clear that the ILS classroom is suitable for Student and that Student should continue there. The teacher/student ratio is suitable for Student with a teacher and assistant teacher for 9 students, along with additional adults often being present. There was only been passing mention about concern with Student's affect, motivation or engagement. Public School is clear that the ILS classroom is Student's LRE and that it is important for Student to stay engaged with general education children. This will help address Parent's concern about Student not responding appropriately to social cues.

A more restrictive environment would keep Student from engaging with a broader range of children and keep Student from experiencing and learning social cues. Based on Student's progress over the last year, both Special Education Teacher and LEA Representative expect Student to continue to show growth in the ILS classroom in the future. Significantly, as noted above, the IDEA expressly mandates that students with disabilities be educated in their LRE to the maximum extent appropriate. 20 U.S.C. § 1412(a)(5); see *Leggett v. Dist. of Columbia*, 793 F.3d 59, 72 (D.C. Cir. 2015). Here, the undersigned is clear that the ILS classroom is Student's LRE at this time.

As for placement, the applicable legal standard under the IDEA requires "school districts to offer placement in a school and in programming that can fulfill the requirements set forth in the student's IEP." *Middleton v. Dist. of Columbia*, 312 F. Supp. 3d 113, 143 (D.D.C. 2018), citing *O.O. ex rel. Pabo v. Dist. of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008) (placement must be in a school that can fulfill the student's IEP requirements). See also *A.T.*, 2021 WL 1978792, at \*12 (D.D.C. 5/18/21). Here, the IEP at issue requires 22 hours/week of specialized instruction along with 105 minutes/week of related services, which can be met in the ILS classroom at Public School, where the undersigned is persuaded Student will benefit.

In short, as the Court noted in *S.M. v. Dist. of Columbia*, CV 19-2096 (RC), 2020 WL 7230266, at \*5 (D.D.C. 12/8/20), review of an IEP turns on whether it is reasonable, not whether it is ideal, quoting *Endrew F.*, 137 S. Ct. at 999. On balance, this Hearing Officer concludes that the IEP at issue met the required standard and was appropriate for Student.

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**CONSENT DECREE**

As stipulated above, the parties agreed to issuance of a consent decree in full resolution of Issue 1 in this case. Accordingly, **it is hereby ordered that** within 10 business days from the date of this HOD, DCPS shall provide a missed-services plan with authorization for (a) 20 hours of speech-language services, and (b) 10 hours of occupational therapy services.

**ORDER**

Petitioner has not prevailed on the issue in this case. Accordingly, **it is hereby ordered** that any and all claims and requests for relief are **dismissed with prejudice**.

**IT IS SO ORDERED.**

Dated in Caption

/s/ Keith Seat

Keith L. Seat, Esq.  
Hearing Officer

**NOTICE OF RIGHT TO APPEAL**

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

Copies to:

Counsel of Record (Appendix A, by email)  
ODR (hearing.office@dc.gov)