

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

Office of Dispute Resolution  
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<b>Parents, on behalf of Student,<sup>1</sup></b>	)	
<b>Petitioners,</b>	)	
	)	<b>Hearing Dates: 3/27/25; 3/28/25; 4/1/25</b>
<b>v.</b>	)	<b>Hearing Officer: Michael Lazan</b>
	)	<b>Case No. 2025-0010</b>
<b>District of Columbia Public Schools,</b>	)	
<b>Respondent.</b>	)	

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**HEARING OFFICER DETERMINATION**

**I. Introduction**

This is a case involving an X-year-old student who is currently eligible for services as a student with Multiple Disabilities. A due process complaint (“Complaint”) was received by District of Columbia Public Schools (“DCPS” or “Respondent”) pursuant to the Individuals with Disabilities Education Act (“IDEA”) on January 21, 2025. The Complaint was filed by the Student’s parents (“Petitioners”). On January 30, 2025, Respondent filed a response. The resolution period expired on February 20, 2025.

**II. Subject Matter Jurisdiction**

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the IDEA, 20 U.S.C. 1400 et seq., its implementing regulations, 34 C.F.R. Sect. 300 et seq., Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-A, Chapter 30.

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

### **III. Procedural History**

A prehearing conference was held on February 28, 2025. Attorney A, Esq., counsel for Petitioners, appeared. Attorney B, Esq., counsel for Respondent, appeared. A prehearing conference order was issued on March 6, 2025, summarizing the rules to be applied in the hearing and identifying the issues in the case. The hearing was conducted through the Microsoft Teams videoconferencing platform, without objection. Petitioners were again represented by Attorney A, Esq. Respondent was again represented by Attorney B, Esq. This was a closed proceeding.

Hearings were held on March 27, 2025, March 28, 2025, and April 1, 2025. On April 3, 2025, Petitioners moved to extend the Hearing Officer Determination (“HOD”) due date from April 11, 2025, to April 21, 2025, to allow for a briefing schedule. On April 4, 2025, the motion was granted. On April 9, 2025, the parties submitted briefs. On April 11, 2025, Petitioners filed a reply.

During the proceeding, Petitioners moved into evidence exhibits P-1 through P-31. Objections were filed with respect to exhibits P-1, P-6, P-16, P-23, P-26, and P-28. Exhibit P-26 was withdrawn. All other objections were overruled. Exhibits P-1 through P-31, except for exhibit P-26, were admitted. Respondent moved into evidence exhibits R-6, R-7, R-9, R-12, R-16, R-17, R-19, R-30, R-37, R-42, R-44, R-51, R-55, R-58 through R-63, R-67 through R-74, and R-76 without objection. Petitioners presented as witnesses, in the following order: Witness A, a pediatric neuropsychologist (expert in neuropsychology with an emphasis on deafness); and the Student’s father (“Father”). Respondent presented as witnesses, in the following order: Witness B, director of the non-public unit at DCPS (expert in special education programming and placement);

Witness C, a teacher of the deaf and hard of hearing (expert in special education programming and placement); Witness D, a DCPS deaf and hard of hearing specialist (expert in special education programming and placement); Witness E, a psychologist; and Witness F, a Local Educational Agency (“LEA”) representative (expert in special education programming and placement).

#### **IV. Issues**

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

**1. Did DCPS deny the Student a Free Appropriate Public Education (“FAPE”) by failing to provide the Student with an appropriate placement/location of services for the 2024-2025 school year?**

Petitioners contended that the placement did not provide for instruction by teachers who are fluent in American Sign Language (“ASL”).

**2. Did DCPS deny Petitioners an opportunity to request the aid or service that the Student and his/her family think is needed to provide for effective communication to and from the Student at school? If so, did DCPS deny the Student a FAPE?**

As relief, Petitioners seek placement at School C.

#### **V. Findings of Fact**

1. The Student is an X-year-old who is eligible for services as a student with Multiple Disabilities. The Student has been diagnosed with a rare, complex condition that includes, among other things, profound bilateral hearing loss, vestibular difficulties, severe vision and nasal problems, and significant renal issues. The Student also has longstanding concerns with cognitive and adaptive functioning, language development, social skills, and attention and behavior regulation. The Student is considered to have an

intellectual disability. P-2-9; P-20-1-2, 7. The Student has also been diagnosed with Autism Spectrum Disorder. P-2.

2. The Student's hearing loss was identified in infancy. S/he underwent surgery for placement of a right cochlear implant at age one and a left cochlear implant at age two. His/her left cochlear implant was removed at age seven, due to infection. P-20-1-2. The Student has always had issues with resisting the use of the cochlear implants. Testimony of Witness B. When the Student removes his/her cochlear implants and glasses, s/he loses all communication channels and tends to engage in behaviors. R-72.

3. The Student's knowledge of ASL is rudimentary. Testimony of Witness B. The Student's receptive ASL skills are better than his/her expressive ASL skills. Testimony of Witness A; Testimony of Witness F.

4. The Student is prescribed glasses for vision correction. His/her left eye has more disruption to the field of vision than the right eye, which is described as having better functional vision. S/he has visual acuity of 20/600 in the left eye and 20/20 in the right eye with correction. S/he receives information better on the right side. P-20-2.

5. The Student received a neuropsychological evaluation in 2017 at a clinic associated with School B, a school for children with special needs. The Student was cooperative and responded well to a highly structured 1:1 setting. The Student demonstrated a strength in nonverbal reasoning skills, compared with his/her visual and motor skills. The intellectual disability diagnosis was considered appropriate for his/her then-current presentation. Behaviorally, the Student demonstrated repetitive behaviors, sensory fixation with substances such as water, and limited social interaction. P-2.

6. In spring 2020, the Student attended School A, a school for children with hearing impairment. The Student had a 1:1 aide who was familiar with ASL and signed to the Student. Testimony of Father. Petitioners felt that the Student made satisfactory progress during the 2018-2019 school year, specifically in reading. P-20-2. At the time, the Student needed to have language directed at him/her in spoken English, though s/he benefitted from ASL supported with speech. Signing was considered a “tool” rather than a separate language. The Student primarily used ASL for single words and basic commands. His/her ASL was not conversational. R-72; Testimony of Witness D; Testimony of Witness A.

7. In the 2021-2022 school year, when the Student returned to School A in person after the COVID-19 pandemic, s/he started to display tantrums and other disruptive behaviors, including flopping to the floor, which have persisted to the present. The Student was encouraged to leave School A. Starting in or about March 2022, the Student then attended School B, a non-public special education school, which s/he continues to attend. The Student was placed in a self-contained special education class. None of the other students in this class had the Student’s condition, signed fluently, or used ASL. At School B, the Student’s speech-language pathology was provided via a group that included students with different needs, and the Student was required to do the same tasks as the other students. Witness C, a teacher of the deaf, provided training and consultation services to the School B team at least monthly to explain why ASL was important, how to implement ASL, and how to support the Student’s attempts to express him/herself with language. Testimony of Witness C; Testimony of Witness D; Testimony of Father. School B provides an 11-month program, where the Student is

enrolled in a classroom with approximately nine other students. Testimony of Witness A; P-23; Testimony of Father.

8. The Student's classes at School B included an "ASL block" so that s/he could practice ASL skills. The Student worked on sign language with his/her aides (who did not know sign language themselves), together with an ASL interpreter. Each ASL block lasted approximately thirty-five to forty minutes, including story time, where the Student watched a video and the aide asked the Student "why" questions. Testimony of Witness C; Testimony of Witness D.

9. While at School B, the Student has had difficulty with incontinence and has been on a toileting schedule to prevent accidents. Testimony of Witness E. The Student has also consistently engaged in noncompliant behaviors such as dropping to the ground, eloping from his/her area, and removing his/her cochlear implant and his/her glasses, which has impacted his/her ability to hear and see instruction and understand related materials. The Student has required significant adult support to reinforce appropriate classroom behaviors and to block, redirect, and respond to impacting behaviors in the classroom. R-19.

10. During the 2022-2023 school year, School B tried to work with the Student through a total communication approach. Since no School B staff could sign, there was a concern about teaching the Student's teachers and teaching assistants some ASL so that they could engage with the Student. R-7. Despite the presence of an ASL interpreter, the Student's language issues significantly impacted his/her ability to do work. Despite a behavioral rewards system, which including giving the Student food, s/he would, among other things, elope, "drop" to the floor, spit, and vomit in class. The

Student's aggression, disruptiveness, and noncompliance occurred multiple times a day and was difficult for staff to manage. R-19.

11. A psychological evaluation of the Student was conducted in February 2023 by a psychologist at School B. The psychologist concluded that the Student would benefit from ASL instruction, with the goal of increasing his/her expressive ASL skills, and that a data tracking system should be implemented to ensure that s/he continues to make progress with his/her signed vocabulary skills. The psychologist also indicated that the Student should have direct access to a teacher of the deaf and hard of hearing at least once a day. The psychologist said that it was not uncommon for children with the Student's condition to have cognitive limitations as well as autism spectrum disorders, and that the Student continued to meet the criteria for Autism Spectrum Disorder. P-2.

12. School B wrote a Functional Behavior Assessment ("FBA") and a Behavior Intervention Plan ("BIP") for the Student in March 2023. The FBA indicated that, when s/he was fatigued, overstimulated, confused, not feeling well, had a change in routine, or was unable to communicate his/her wants and needs, s/he had been observed to engage in the following behaviors: crying, grabbing his/her head, throwing his/her cochlear implant and glasses, collapsing on the floor, tucking into a ball, and running away from his/her area. The FBA suggested that a differential reinforcement schedule might help the Student, as well as planned ignoring in response to aggression. The FBA advised that, when the Student has a tantrum, staff should ask a series of questions to gain a better understanding of what the Student may need. The FBA concluded that the Student's aggression served the function of access to activities/items with a secondary function of attention from adults. R-19.

13. A speech-language evaluation of the Student, written on April 25, 2023, indicated that s/he communicated through a total communication approach, using a combination of ASL, “Signed Exact English” through an ASL interpreter, a speech-generating device, gestures, written output, facial expressions, and pointing to pictures. At the time, the Student wore a cochlear implant and could hear and understand spoken information in English. The evaluation said that the Student relied greatly on spoken language for receptive input but expressed him/herself through multiple modalities. The Student could follow spoken directions, understand the meaning of words, answer simple questions, understand what s/he read, and follow written directions. However, the Student could not effectively engage in back-and-forth interactions with people. The Student demonstrated difficulty with asking for help when needed, asking questions, using a variety of vocabulary words when speaking, finding the right words to say, staying on the subject when talking, and having a conversation with someone. The Student also got upset when people did not understand him/her. R-21.

14. During the 2023-2024 school year, the Student’s placement and performance remained the same, with no reports of meaningful progress and incidences of dropping to the floor, eloping, aggression, and being physically sick. The Student’s Individualized Education Program (“IEP”) progress reports indicated that s/he made progress on IEP goals and received good grades. But the progress reports also said that the Student was not available for direct instruction because s/he took breaks and engaged in behaviors like noncompliance when work was presented or in the restroom. In the second quarter, on average, the Student “dropped to the ground” 0.67 times per school day and engaged in noncompliance for 5.66 minutes per hour. P-7; P-8; P-9; P-10.

15. An IEP was written for the Student on May 31, 2024. The IEP said that the Student engaged in significant behaviors, including dropping, elopement, and noncompliance. The IEP stated that, as a deafblind person with the Student's condition, the Student required the dedicated 1:1 support of a well-trained staff member to ensure that the Student could access language, participate in activities/instruction, and use accommodations consistently across all settings. The IEP said that specific training would be beneficial to ensure that the staff member could facilitate the Student's access to environmental information that was usually gained through vision or hearing, and to help grow the Student's expressive and receptive language and communication skills. The IEP also indicated that it was critical for this staff member to be a competent user of ASL with spoken English support. The IEP's "Present Levels of Performance" sections on math, reading, and written expression did not mention progress and instead discussed what the Student had been doing. The IEP's section on speech-language communication indicated that the Student had achieved goals relating to expressive language. For one such goal, the Student was able to expand expressions to at least three- or four-word utterances in eighty-one percent of opportunities. The IEP said that the Student could benefit from using ASL sentence structure, including different combinations of subject, verb, object, and location. The IEP reported that an online ASL assessment could not be completed because the Student was so distracted. The IEP said that the Student was making progress because s/he participated more and spent more time on academics. However, overall, the Student was displaying the same academic level as in the beginning of the year. The IEP recommended 28.5 hours of specialized instruction per week outside general education, with seventy-five minutes of speech-language pathology

per week, two hours of consultant specialized instruction per month by a teacher of the deaf, and consultation services for occupational therapy (320 minutes yearly), vision (eight hours yearly), and physical therapy (thirty minutes monthly). P-12.

16. The Student has continued to attend School B during the 2024-2025 school year. In this school year, the Student's ASL block has been three times a week for thirty minutes. R-63. A classroom aide is assigned to the Student. The aide is not the same every day. The aide is directed to try to use basic ASL with the Student. The aide sits to the right of the Student since the Student's right side is his/her stronger side. The ASL interpreter sits in front of the Student. Testimony of Witness D.

17. Witness A conducted an evaluation of the Student in January 2025. The evaluation report indicated that the Student's needs for access and communication have changed markedly since his/her prior evaluations in 2021 and 2023. The Student can no longer consistently access spoken language via his/her cochlear implant. The evaluator indicated that, while previously the Student needed auditory input as well as ASL to obtain information, s/he now requires access to information only in ASL. The evaluator found that the Student's receptive language skills in ASL remain within the exceptionally low range but that ASL is his/her primary and best means for receptive language input, given his/her declining use of the cochlear implant. The evaluation also stated that the Student's problem-solving skills (when s/he does not need to use language) have declined. The evaluator said that the Student's visual access needs remain a constraint on his/her access to information in a classroom where s/he is the only deafblind student. The evaluator recommended that, to develop the Student's communication skills, s/he should attend an educational program that is specifically designed for the accessibility needs of

deafblind students, where s/he would be able to communicate freely with both peers and teachers. The evaluator recommended that the Student get a 1:1 teaching aide who understands ASL. The evaluator suggested that the Student's programming incorporate "pro-tactile" ASL, as well as touch and other tactile cues, to support his/her access to environmental information, incidental communication, and safety information. The evaluator also recommended teaching the Student through other communication methods that incorporate touch, gestures, objects, pictures, and assistive technology devices. P-20.

18. The Student's IEP progress reports for the 2024-2025 school year indicated that the Student progressed on all goals, until the January 2025 progress report, which indicated that s/he did not progress on reading and writing goals. Most of the goal reports suggested that the Student was not available for direct instruction because s/he took breaks and engaged in behaviors, like noncompliance when work was presented or in the restroom. P-17; P-18; P-19.

19. The Student was observed by Witness A on January 10, 2025. The Student sat directly across from an ASL interpreter, and an aide sat at his/her right side. After settling into class, the Student answered "yes" when asked if s/he wanted to wear his/her cochlear implant and glasses, and s/he independently placed his/her cochlear implant and glasses on. Less than five minutes later, the Student independently took off his/her cochlear implant and glasses. While not wearing the cochlear implant, the Student was not observed to respond to sound. During the observation, the Student responded only to direct gestures and signs presented within his/her field of vision. No interaction was observed between the Student and peers. The Student was presented with some written English sentences and, at times, s/he produced signs or fingerspelling in

response to the English words. During the observation, the Student communicated expressively in ASL and with brief written responses when prompted to provide/indicate a written choice. The Student actively copied signs presented by his/her ASL interpreter and also copied gestures. An assistive technology device was available on the Student's desk, but s/he did not use the device during the observation. P-20-5.

20. The Student has not made any meaningful progress in his/her toileting after three years at School B. Testimony of Witness F.

21. School C is a residential school for the deaf and blind in another state that has accepted the Student. The school educates students from ages three to twenty-two, and all students have some degree of hearing and vision loss. Each class has roughly three to five students, with one teacher and one to three aides. School C would follow the Student's toileting protocol and try to schedule academics around the toileting schedule. The school has three Board Certified Behavioral Analysts ("BCBAs") on staff to design support plans for the Student, including with respect to toileting issues and dropping to the floor. If the Student misses time because of behaviors, the school would provide make-up time. The school has a vocational program and provides opportunities for students to go into the community. School C currently has sixteen students who have the same condition and share similar characteristics as the Student. The school provides social skills development and encourages students to interact with one another in the classroom and vocational settings. Teachers bring groups of students together, and a social worker runs social groups with peers in the classroom or other peers in the program who share similar interests. R-73.

22. Some students at School C use ASL, at a range of skill levels. Generally, students' ASL receptive skills are better than their expressive skills. Staff use all modes of communication. School and residential staff collaborate to ensure continuity between the classroom and residences. Facilitated conversations help students learn social skills and reciprocal conversation skills to be good listeners and responders. R-73; Testimony of Witness F.

23. A typical day at School C starts when students get ready to go to school between 7:00 a.m. and 8:00 a.m., with opportunities to practice daily living activities. Students come downstairs at 8:00 a.m. to get medication, if needed, and then the students and the staff eat breakfast together. After breakfast, the students walk about an eighth of a mile to the school, and the academic day lasts from 9:00 a.m. to 3:00 p.m. Lessons can be 1:1, in small groups, or in large groups. During lunch, the students participate in self-feeding skills and learn how to act appropriately in a dining room with friends. After lunch, the students clean up and return to academics, including English language arts, math, motor activities or exercises, and different therapies. School C staff have access to strategies to support students who have the Student's condition. All staff have some degree of ASL knowledge; ASL is part of the school's natural language of instruction. The school stresses language and communication development, individualized instruction, and age-appropriate curriculum in a total communication environment. Several School C staff members are lifetime members of a foundation dedicated to the Student's condition. School C also has several related service providers with experience working with children who have the Student's condition. The residential environment maintains consistent implementation of IEP goals and objectives in areas such as

communication and behavior. The school also provides instruction in developing skills for independent living, social engagement, and recreation and leisure. R-73; Testimony of Witness F; P-16.

24. The Student has not made progress in ASL skills over the last several years, and his/her expressive skills are not improving. Testimony of Father; Testimony of Witness A. The Student's ability to communicate his/her peers has not increased while the Student has been at School B. Testimony of Witness C.

## **VI. Conclusions of Law**

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

The burden of proof in District of Columbia special education cases was changed by the local legislature through the District of Columbia Special Education Student Rights Act of 2014. That burden is expressed as the following: "Where there is a dispute about the appropriateness of the child's individual educational program or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement" provided that "the party requesting the due process hearing shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the public agency." D.C. Code Sect. 38-2571.03(6)(A)(i).

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

**1. Did DCPS deny the Student a FAPE by failing to provide the Student with an appropriate placement/location of services for the 2024-2025 school year?**

**2. Did DCPS deny Petitioners an opportunity to request the aid or service that the Student and his/her family think is needed to provide for effective communication to and from the Student at school? If so, did DCPS deny the Student a FAPE?**

Petitioners contended that the Student’s placement did not provide for instruction by teachers who are fluent in ASL, the preferred language of choice for the Student, who is currently unable to communicate meaningfully and express him/herself with other people without an ASL interpreter.<sup>2</sup>

The IDEA was enacted to “ensure that children with disabilities have available to them 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.” M.G. v. Dist. of Columbia, 246 F. Supp. 3d 1, 7 (D.D.C. 2017) (citing 20 USC Sect. 1400(d)(1)(A); 34 C.F.R. Sect. 300.300). The Court’s decision in Andrew F. v. Douglas County School District, 137 S. Ct. 988 (2017), stated that parents can fairly expect school authorities to offer a “cogent and responsive explanation” for their decisions, and that the student’s program should be “appropriately ambitious,” a standard “markedly more demanding than the ‘merely more than de minimis’ test applied by the Tenth Circuit.” Id. at 1000-1002. Finding that “instruction that aims so low” would be tantamount to “sitting idly...awaiting the time when they were old enough to drop out,” the Court held that IDEA “demands” a higher standard. Id. (citing to Rowley). The District of Columbia Circuit Court of Appeals has

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<sup>2</sup> Because of the overlap between these two issues, this section analyzes both issues together.

accordingly found that Andrew F. raised the bar on what counts as adequate education under the IDEA. Z. B. v. District of Columbia., 888 F.3d 515, 517 (D.C. Cir. 2018).

Federal requirements provide that a school district's team must "consider a student's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode." 34 CFR 300.342(a)(2)(iv).

Accordingly, school districts may conclude that a hearing-impaired student needs to be educated with other students who are deaf or have a hearing impairment. Clinton Sch. Dist., 38 IDELR 230 (SEA MO 2003) (a student's severe hearing impairment, together with his increasing needs and lack of appropriate district facilities, made it paramount that he attend a deaf education program as quickly as possible); Adams Arapahoe-28J, Aurora Pub. Schs., 123 LRP 24949 (SEA CO 06/18/23) (because a deaf student gave up on conversing with peers who didn't know ASL, her IEP and placement were inappropriate).

Petitioners argued that in the almost three years that the Student has attended School B, s/he has achieved few goals, rejected the use of his/her cochlear implant and Augmentative and Alternative Communication devices, and not improved in the use of ASL. Petitioners contended that the Student's ASL use has gone virtually unaddressed and unmeasured, and that the Student has been isolated in the classroom without any way to talk to peers or staff without an interpreter. Petitioners contended that the Student needs an environment with ASL staff and other ASL speakers in the classroom, so that

s/he can and develop generalized communication skills and make meaningful progress in his/her ability to communicate with other people without an interpreter.

DCPS argued that the Student needs a “total communication” approach to communication, pointing out that the Student’s receptive language skills are different than his/her expressive language skills. But documentation in the record shows that, to be properly educated, the Student needs more than what School B has provided. School B’s own psychologist said that the Student needed to increase his/her expressive ASL skills and that a data tracking system should be implemented to ensure that the Student continues to make progress with his/her signed vocabulary skills. The psychologist also indicated that the Student should have direct access to a teacher of the deaf and hard of hearing at least once a day. No such programs were set up at School B, and there is no data in the record to clearly track the Student’s ASL skill development.

Moreover, Respondent’s total communication approach depends on the Student actually using his/her cochlear implant. Like many students with hearing issues, the Student often refuses to wear his/her cochlear implant, which prevents the Student from understanding spoken English. It is therefore not surprising that Respondent’s witnesses (including no witnesses from School B) did not testify about any meaningful progress that the Student has made at School B in reading, writing, or math.

This result is not a function of School B giving up on the Student. To the contrary, throughout the Student’s records, there is evidence that both School B and DCPS have tried to get the Student to learn more ASL. Classes at School B have included an “ASL block” so that the Student could practice ASL skills. However, there is no data in the record to indicate any progress in this area. The record suggests that this

lack of progress is because the Student works on ASL with teachers and aides who do not know ASL themselves. In fact, the record suggests that the Student is in danger of losing any speech capabilities that s/he might have had. Witness A, the most knowledgeable witness on the Student's condition at the hearing, wrote that the Student "is presently at risk of further regression in [his/her] skills, particularly with language, if not provided with an accessible and language-rich environment that [s/he] can readily access."

Witness A wrote that the Student "is at risk of further isolation from peers and from instruction, as [s/he] is presently reliant on an interpreter for all access to communication, peers, and [his/her] teachers within [his/her] classroom. [The Student] is at risk of missing out on incidental communication, as [s/he] is not presently in an educational environment with multiple individuals able to communicate directly with [him/her]."

Witness A also said that, to meet Student's communication needs, the Student needs a different setting. Witness A recommended that the Student get a 1:1 teaching aide and staff who can understand ASL. Respondent's witnesses did not dispute any of this. In fact, DCPS's own IEP stated that, as a deafblind person with the Student's condition, the Student required the dedicated 1:1 support of a well-trained staff member (not an interpreter) to ensure that the Student could access language, participate in activities/instruction, and use accommodations consistently across all settings. Though Witness C did provide some support to School B staff, this Student has had no access in the classroom to dedicated, 1:1 support from a staff member who is well-trained, or really trained at all, in how to manage students who have the Student's condition or how to assist deafblind students who require ASL.

DCPS contended that caselaw supports its position, pointing to E.C.D. By & Through Chery v. San Diego Unified Sch. Dist., No. 23-CV-303-RSH-MSB, 2025 WL 289422, at \*2 (S.D. Cal. Jan. 24, 2025), where the school district did not deny FAPE to a student by failing or not offering deaf/hard of hearing services. The parents in that case had argued that five hours per week of deaf and hard of hearing services were inadequate, and that their child needed such services all day. But the court found that the parents' witnesses lacked credibility, because the school district's offer was actually for fifteen hours per week of deaf/hard of hearing services. The parents' experts had also never observed the Student. Witness A, on the other hand, testified accurately, credibly, and without rebuttal about the Student's needs, and Witness A did observe the Student.

Moreover, as Petitioners pointed out, Title II of the Americans with Disabilities Act holds that public schools must provide students with disabilities an equal opportunity to participate in all school activities and must ensure, through the provision of auxiliary aids and services, that communication with students with disabilities is as effective as communication with students without disabilities. 28 CFR 35.130 and 35.160. Title II requires that public schools give "primary consideration" to the auxiliary aid or services that are requested by the student with the disability or the family. 28 CFR 35.160(b)(2). The school must honor the choice of the student with the disability (or an appropriate family member) unless the public school can prove that an alternative auxiliary aid or service provides communication that is as effective as that provided to students without disabilities. Frequently Asked Questions on Effective Communication for Students with Hearing, Vision, or Speech Disabilities in Public Elementary and Secondary Schools,

Department of Justice Office of Special Education and Rehabilitative Services, Office for Civil Rights, November 12, 2014, 64 IDELR 180 (November 12, 2014).

Accordingly, in Los Angeles Unified Sch. Dist. v. A.O. by & through Owens, 92 F.4th 1159, 1172 (9th Cir. 2024), a parent wanted a deaf student with cochlear implants to learn how to communicate through spoken language. The court held that the requirement to honor parental preference is consistent with the federal IDEA and is therefore “enforceable in federal court.”

DCPS denied the Student a FAPE by failing to provide him/her with a school that could meet the Student’s communication needs and provide the Student with meaningful access to ASL so that s/he could develop ASL skills.

#### **RELIEF**

In Branham v. District of Columbia, 427 F.3d 7 (D.C. Cir. 2005), the circuit court laid forth rules for determining when it is appropriate for hearing officers to order funding of non-public placements. First, the court indicated that “(i)f no suitable public school is available, the [school system] must pay the costs of sending the child to an appropriate private school.” Id. At 9 (citing Jenkins v. Squillacote, 935 F.2d 303, 305 (D.C.Cir.1991)). The circuit then explained that such relief “must be tailored” to meet a student’s “unique needs.” Id. At 11-12 (citing to Carter, 510 U.S. at 16. To inform this individualized assessment, courts must consider “all relevant factors,” including the nature and severity of the student’s disability, the student’s specialized educational needs, the link between those needs and the services offered by the private school, the placement’s cost, and the extent to which the placement represents the least restrictive educational environment. Id. at 12.

In this case, Petitioners wanted the Student to be instructed in an environment where s/he could communicate directly with staff and peers and also learn ASL, so that s/he could communicate with others in the outside world. However, Petitioners carefully explained that the few schools nearby that might possibly be appropriate have not accepted the Student. Petitioners are therefore advocating for School C, a residential school for the deaf and blind that has accepted the Student. School C offers a deafblind program that is suitable for the Student, who needs assistance with both hearing and sight. Each class in the school has roughly three to five students, with one teacher and one to three aides. All the children have hearing and/or vision loss. The school would follow the Student's toileting protocol and has three BCBA's on staff to design support plans for the Student, including with respect to toileting issues and dropping to the floor. If the Student misses time because of behaviors, the school would provide make-up time. School C has a vocational program and provides opportunities for students to go into the community. The school provides social skills development and encourages students to interact with one another in the classroom and vocational settings. School C classes include English language arts, math, motor activities or exercises, and different therapies, and school staff have access to strategies to support students who have the Student's condition. School C currently has sixteen students who have the same condition and share similar characteristics as the Student. Several school staff members are lifetime members of a foundation dedicated to the Student's condition, and several related service providers at School C have experience working with children who have the Student's condition. In addition, all School C staff have some degree of ASL knowledge. Indeed, ASL is part of the natural language of instruction at the school.

Respondent objected because School C is a residential setting. But when nothing in the record suggests that any other viable school or program is available to parents, parents may place their child in a residential program. This is the holding in Leggett v. Dist. of Columbia, 793 F.3d 59 (D.C. Cir. 2015), where an inattentive, disorganized, anxious student had, among other things, major depressive disorder and panic disorder. The parents in that case, like the parents here, tried to find an alternate placement for their child, but they could not, so they placed the child in a residential setting. DCPS argued that a school system must pay for a residential placement only if necessary to provide a FAPE. But the court rejected this argument, finding that the residential placement was “necessary” in a dispositive way, since “it was the only placement on the record that could have provided K.E. with an education that met her identified needs.” Id. at 72. For similar reasons, Petitioners have shown that School C is appropriate for the Student for the 2024-2025 school year.

## VII. Order

As a result of the foregoing:

1. The Student shall immediately be placed at School C for the remainder of the 2024-2025 school year;
2. Respondent shall be financially responsible for the cost of School C;
3. All other requests for relief are denied.

Dated: April 21, 2025

Michael Lazan  
Impartial Hearing Officer

cc: Office of Dispute Resolution

Hearing Officer Determination  
Michael Lazan, Hearing Officer  
Case # 2025-0010

Attorney A, Esq.  
Attorney B, Esq.

### **VIII. Notice of Appeal Rights**

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

Dated: April 21, 2025

Michael Lazan  
Impartial Hearing Officer