

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

<i>Student,</i> ¹)	Case No.: 2019-0215
through <i>Parent,</i>)	
<i>Petitioner,</i>)	Date Issued: 12/20/19
)	
v.)	Hearing Officer: Keith L. Seat, Esq.
)	
District of Columbia Public Schools)	Hearing Dates (Room): 12/5/19 (423) &
("DCPS"),)	12/9/19 (423)
Respondent.)	
)	

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 lack of an appropriate Individualized Education Program ("IEP") and appropriate placement. DCPS asserted that it had provided an appropriate IEP and placement in a suitable school that could implement the IEP.

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 E-30, of the District of Columbia Municipal Regulations (“D.C.M.R.”).

Procedural History

Following the filing of the due process complaint on 8/26/19, the case was assigned to the undersigned on 8/27/19. Respondent filed a timely response on 9/5/19, which did not challenge jurisdiction. On 10/8/19, Petitioner filed a Motion to Amend the Hearing Request, to which Respondent gave consent in writing and the undersigned granted on

¹ Personally identifiable information is provided in Appendix A, including terms initially set forth in italics.

Hearing Officer Determination

Case No. 2019-0215

10/18/19. The timeline began anew with the filing of the amended complaint on 10/18/19. Respondent filed a timely response to the amended complaint on 10/28/19, which did not challenge jurisdiction. A resolution meeting on the amended complaint took place on 11/19/19, but the parties did not resolve the case. The 30-day resolution period ended on 11/17/19. 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 1/1/20.

Following the prehearing conference on 11/21/19 and issuance of the Prehearing Order on 11/25/19, the due process hearing took place on 12/5/19 and 12/9/19 and was closed to the public. Petitioner was represented by *Petitioner’s counsel*. DCPS was represented by *Respondent’s counsel*. Petitioner was present in person for the entire hearing.

Petitioner’s Disclosures, submitted on 11/27/19, contained a cover letter and documents P1 through P37, which were admitted into evidence without objection. Respondent’s Disclosures, submitted on 11/27/19, contained a cover letter and documents R1 through R79, which were admitted without objection.²

Petitioner’s counsel presented 4 witnesses in Petitioner’s case-in-chief (*see* Appendix A):

1. *Educational Consultant* (qualified without objection as an expert in Special Education)
2. *Program Supervisor at Nonpublic School* (qualified without objection as an expert in Special Education)
3. *Therapist* (qualified without objection as an expert in Social Work)
4. Parent

Respondent’s counsel presented 5 witnesses in Respondent’s case (*see* Appendix A):

1. *BES Teacher at Proposed Public School*
2. *School Social Worker A at Prior Public School*

² References herein to Petitioner’s documents are indicated by a “P” followed by the exhibit number, a hyphen, and the exhibit page number (or numbers, separated by commas). Respondent’s documents are consecutively page numbered throughout, so are referenced by an “R” followed by the exhibit number, followed immediately by a “p” (for page) and the page number(s).

Hearing Officer Determination

Case No. 2019-0215

3. *Manager of Special Education Instruction* at Prior Public School (qualified without objection as an expert in Special Education Programming and Placement)
4. *School Social Worker B* at Proposed Public School (qualified without objection as an expert in School Social Work)
5. *Local Education Agency (“LEA”) Representative* at Proposed Public School (qualified without objection as an expert in Special Education Programming))

Issues and Relief Sought

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

Issue 1: Whether DCPS denied Student a FAPE by failing to propose an appropriate IEP for 2019/20,³ as Student developed serious and severe behaviors in February 2019 and needed more support to make educational progress. *Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.*

Issue 2: Whether DCPS denied Student a FAPE by failing to timely propose an appropriate educational placement for 2019/20, as Student needed a therapeutic program but the proposed Behavior & Education Support (“BES”) program at Proposed Public School was not appropriate due to: lack of any behavioral reward system; exposure to general education children in a low performing school; lack of social interaction with the small number of BES children; insufficient movement during the day, apart from recess; and/or lack of specific reading strategies and other evidence-based academic interventions required by Student’s learning disabilities. *Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.*

Issue 3: Whether Nonpublic School is a proper placement. *Petitioner has the burden of persuasion on this issue.*

The relief requested by Petitioner is:

- DCPS shall place and fund Student at Nonpublic School for the 2019/20 school year, with all related costs and fees.

³ All dates in the format “2019/20” refer to school years.

Hearing Officer Determination

Case No. 2019-0215

Findings of Fact

After considering all the evidence, as well as the arguments of both counsel, the Findings of Fact⁴ are as follows:

1. Student is a resident of the District of Columbia; Petitioner is Student's Parent, having adopted Student when 2 days old.⁵ Student is *Age, Gender* and in *Grade* at Nonpublic School since September 2019, following a year at Prior Public School.⁶ Despite struggles with emotional regulation, Student is caring, helpful, and friendly, which aided transition to the new school and making new friends.⁷

2. IEPs. The IEP at issue in this case was prepared on 4/12/19 and amended on 5/3/19 to add private bus transportation with a dedicated aide.⁸ Student's disability classification is Multiple Disabilities ("MD"), with both Specific Learning Disability ("SLD") and Other Health Impairment ("OHI") due to Attention Deficit Hyperactivity Disorder ("ADHD").⁹ The 5/3/19 IEP (like the 4/12/19 IEP) provides for 20 hours/week of specialized instruction outside general education and 5 hours/week of specialized instruction inside general education, 240 minutes/month of Behavioral Support Services ("BSS") outside general education, 120 minutes/month of occupational therapy outside general education, and another 2 hours/month of BSS consultation services.¹⁰

3. Student's 5/3/19 IEP required a "token economy" and repeatedly stated it was key for Student to feel successful in the classroom.¹¹ The Least Restrictive Environment ("LRE") page of the 5/3/19 IEP stated that Student "requires a small group setting for all academic and non academic times."¹² In the Emotional, Social, and Behavioral Development area of concern in the 5/3/19 IEP, an annual goal for social interaction provides: "During peer or adult interactions (lunch, recess, small group projects, free time in class, bus), [Student] will engage appropriately with peers (e.g. initiate positive

⁴ 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.

⁵ Parent; P7-1.

⁶ Parent.

⁷ P31-3.

⁸ P20; R56.

⁹ P20-1; R42p324; R45p330 (disabilities impact math; reading; written expression; emotional, social, and behavioral development; and other areas).

¹⁰ P20-23; R56p376.

¹¹ P20-5,9,13,16,23.

¹² P20-23,24.

Hearing Officer Determination

Case No. 2019-0215

interactions, engage in reciprocal conversation and play), rather than engage in verbal or physical aggression.”¹³

4. Student’s 4/19/18 IEP provided the same services as the 5/3/19 IEP except for BSS which was 3 hours/month (180 minutes/month) inside general education in 2018 and increased to 240 minutes/month outside general education in 2019.¹⁴ Student’s IEP hours had been increased prior to November 2017 to a total of 24 hours/week of specialized instruction, with 16.5 hours outside general education and 7.5 hours inside general education, along with occupational therapy and 90 minutes/week of BSS.¹⁵ Prior Public School considered a change from Student’s Specific Learning Support (“SLS”) program in 2018/19 to the BES program to be a “lateral” move, so the Prior Public School team did not increase specialized instruction.¹⁶

5. Cognitive and Achievement Scores. Cognitively, based on the Wechsler Intelligence Scale for Children – Fifth Edition (“WISC-V”) in 2018, Student’s Full Scale IQ (“FSIQ”) at 97 was Average overall, although working memory was Extremely Low and processing speed was Low Average.¹⁷ Student was performing at Below Basic level in reading, writing and math.¹⁸ The Kaufman Test of Educational Achievement, Third Edition (“KTEA-3”) in March 2018 found that Student was Low in academic skill battery composite (SS 68), as writing was Low and all other composites and supplemental composites were Below Average.¹⁹ In 2018/19, Student’s Beginning of Year (“BOY”) iReady math assessment indicated that Student was about 3 grades behind; by Middle of Year (“MOY”) Student was 2 grades behind.²⁰ Student’s reading grew significantly in 2018/19 from BOY (Level E) to MOY (Level J), but behaviors increased after MOY and End of Year (“EOY”) did not increase (Level J).²¹ As of 10/30/19, Student was about 2 grades behind in reading, 1.5 grades behind in math, and 2 grades behind in written expression.²²

6. Behavior. In 2017/18, Student had a very difficult beginning, with daily incidents in September and October 2017 that were highly disruptive and unsafe, including frequent physical aggression towards staff and peers involving hitting, kicking, biting, destruction of materials and elopement; Student sometimes took a very long time to de-escalate and became highly resistant to spending time in Student’s grade.²³ In November 2017, Student

¹³ P20-20.

¹⁴ P9-19; P20-23; School Social Worker A (BSS increase from 180 to 240 minutes/month based on Student’s need).

¹⁵ P3-2,5.

¹⁶ Manager of Special Education Instruction.

¹⁷ P8-14.

¹⁸ P8-32.

¹⁹ P8-19,20,30.

²⁰ P20-4.

²¹ R67p420.

²² P31-4,5.

²³ P3-1.

Hearing Officer Determination

Case No. 2019-0215

was in the care of a child psychiatrist.²⁴ On 11/1/17 an LRE Classroom Observation of Student was planned due to high levels of noncompliance, aggression and property damage and performing 2.5 years below grade level in both math and ELA.²⁵

7. In 2018/19, Student was in a self-contained SLS class at Prior Public School which had 12 students, 1 teacher and 1 aide.²⁶ Student was supported by a classroom behavior modification chart, reinforced with incentives, and a safety plan with proactive measures that gave Student time away from academic and social demands.²⁷ Student exhibited good control of behavior in the first part of 2018/19, from August-December.²⁸ As of 10/30/18, Student had no incidents of physical aggression in 2018/19, with an ability to manage feelings in class when frustrated or upset; Student was making progress in cooperating and connecting with peers.²⁹ From December-February, Student had intermittent peer conflict and began avoiding some academic subjects, especially avoiding some so-called “specials” (gym, art, etc.).³⁰ As of 1/28/19, Student continued to be well-regulated during weekly counseling sessions and have positive peer interactions in class and in specials, although there were several incidents with verbal aggression on the bus.³¹

8. In March 2019, Student’s behaviors escalated to non-compliance multiple times daily, verbal aggression daily, and physical aggression including posturing, lunging, and throwing objects; Student required significant support throughout the entire school day in both academic and non-academic times.³² Student was psychiatrically hospitalized on 4/1/19.³³ The Strengths and Difficulties Questionnaire (“SDQ”) from April 2019 indicated Very High scores in overall stress, behavioral difficulties, hyperactivity and concentration difficulties, and impact of any difficulties on the child’s life, which was slightly higher than the SDQ scores in February 2019, and significantly higher than September 2018 scores.³⁴

9. On 5/3/19, Student’s IEP was amended because Student needed to be transported on the bus with a dedicated aide but without any other children due to safety concerns, as a result of Student’s verbal aggression, physical aggression and refusal to follow directions.³⁵ From March-May 2019, Student had 12 incidents requiring crisis intervention due to destruction of property, trying to harm others, and efforts to elope, resulting in multiple suspensions, ChAMPS (formally, Child & Adolescent Mobile Psychiatric Services) being

²⁴ P3-2.

²⁵ R21p170.

²⁶ P20-2.

²⁷ *Id.*

²⁸ P17-1.

²⁹ P14-13,14.

³⁰ P17-1; School Social Worker A.

³¹ P15-12,13.

³² School Social Worker A; P20-2.

³³ R67p421,422.

³⁴ P20-18.

³⁵ P20-27.

Hearing Officer Determination

Case No. 2019-0215

called twice and the police being called twice.³⁶ The escalation of behaviors caused Student to miss a lot of instruction time, particularly since March 2019, so Student was not able to make progress.³⁷ Given the level of problems, the plan was to return Student to a higher-frequency positive behavior reinforcement system.³⁸

10. Student was written up for numerous incidents at Prior Public School that Parent described as shocking and alarming: among many other incidents, on 12/12/18 Student was screaming on the bus about killing and raping a child on the bus and killing her whole family, threatening to “grind your anus” and “sell you for \$100 like you’re my slave,” and screaming about killing everyone on the bus; also on 12/12/18, Student laughed while describing the ways Student had killed animals and wanted to be a torturer for Halloween; on 3/14/19, 3/19/19 and other times, Student’s class had to evacuate the classroom when Student was bullying or violent; Student would often hiss at others causing fear; on 3/21/19, during lunch in the cafeteria Student was banging the table with lunchbox and being very disruptive, with many peers cheering Student on and causing mass disruption; Student hit both adults and children and on 4/12/19 knocked the phone from an adult’s hand and stomped on it a few times; on 4/12/19, Student punched, kicked and pinched 2 adults before running off; and also on 4/12/19, Student trashed the classroom, dumping supplies, throwing chairs at windows, pouring hand sanitizer over books and papers, and breaking parts off the computers.³⁹

11. Parent reported in late May 2019 that Student ran from home several times and Parent had to search for Student; Student was verbally aggressive toward older children walking by the house.⁴⁰ Parent was concerned that Student could become physically aggressive with her; Student had suicidal ideation, making suicidal comments daily at home, but denied having a plan.⁴¹ In late May 2019, Student was unable to go to school, and mere mention of going to school triggered reactive behavior; School Social Worker A sought to support Parent and encourage re-assessment for hospitalization if necessary; School Social Worker A sought to re-engage Student to return to school.⁴² A 5/2/19 Reentry Plan proposed having 2 adults working with Student in an alternative learning environment; Student would not have recess with the SLS class, but with younger children (with whom Student does well).⁴³ Student needed supports with behavior to be available for learning.⁴⁴

12. FBAs/BIPs/Safety Plans. A Functional Behavioral Assessment (“FBA”) was conducted on 11/18/17; Behavioral Intervention Plans – Level II (“BIP-IIs”) were developed on 2/22/18 and 4/12/19, as Student exhibited noncompliant, oppositional, and

³⁶ P23-1,2.

³⁷ P20-9,17,10 (IEP); P22-4,7 (5/16/19 IEP Progress Report).

³⁸ P20-2.

³⁹ P18-1,2,7,8,9,13; Parent.

⁴⁰ R67p422.

⁴¹ R75p670; R67p422.

⁴² R75p670.

⁴³ P19-1; Parent.

⁴⁴ R67p420.

Hearing Officer Determination

Case No. 2019-0215

aggressive and unsafe behaviors.⁴⁵ By 4/12/19, Student often refused to engage in academic work and did not participate in the majority of work assignments.⁴⁶ Student Safety Plans were developed for Student on 3/9/18, 3/28/19 and 5/2/19.⁴⁷

13. BES Program at Proposed Public School. On 3/27/19 when talking about Student's safety plan Parent raised a concern about whether Student would be able to stay at Prior Public School and wanted to address the "what ifs" with the IEP team.⁴⁸ Prior Public School staff spoke with Parent about the possibility of the BES program and need for behavioral supports for Student on 5/3/19 and 5/8/19, with a meeting planned for 5/20/19; Student was refusing to go to school.⁴⁹ Prior Public School was not staffed to handle Student's level of behavior concerns, so a BES program was more appropriate.⁵⁰

14. Parent sought to observe the BES program promptly when it was proposed, seeking to view it before the end of the school year.⁵¹ Manager of Special Education Instruction responded promptly on 6/4/19 that Parent needed to wait until a particular school with a BES program was selected for Student, which was expected to occur on 6/6/19, and he would be in touch.⁵² Before the end of 2018/19 on 6/17/19, BES Teacher was informed by DCPS that Student was on her roster for 2019/20 and she received Student's IEP; BES Teacher didn't know why Parent was not informed at that time as well.⁵³ A Location of Services ("LOS") letter for Student specifying the BES program at Proposed Public School (because it was the closest school to Parent's home with space in a BES classroom) was received by Parent by email from Manager of Special Education Instruction on 7/22/19; the letter was dated 6/25/19.⁵⁴ Parent tried to contact Proposed Public School to speak with someone about the BES program, but could not reach anyone.⁵⁵ Parent moved forward with consideration of other options for Student and gave notice through counsel on 8/19/19 of her intention to unilaterally place Student at Nonpublic School.⁵⁶

15. The BES class intended by DCPS for Student in 2019/20 was a self-contained classroom with 3 grades, but only had 2 children who were in different grades, one of which was Student's grade; there were 3 adults (special education teacher, educational aide, and behavior tech) in the class which could have as many as 10-12 children with that staffing.⁵⁷ The Proposed Public School school day is from 8:30-3:00, 5 days a week, which is 32.5

⁴⁵ P3; P5-1; P17.

⁴⁶ P17-1,2.

⁴⁷ R28p198; P6; P16; P19-2.

⁴⁸ R75p664.

⁴⁹ Manager of Special Education Instruction; R3p26,27.

⁵⁰ R1p3.

⁵¹ P24-2.

⁵² P24-1,2.

⁵³ BES Teacher.

⁵⁴ P25-1; Parent.

⁵⁵ Parent; R1p3; R2p9 (received communication 7/22/19).

⁵⁶ P26-1.

⁵⁷ P29-1; P28-1; Therapist.

Hearing Officer Determination

Case No. 2019-0215

hours/week; lunch/recess are 1 hour/day and specials are 45 minutes/day.⁵⁸ BES students were typically “way below grade level” and could include students with ID.⁵⁹ BES Teacher teaches the curriculum at 1 grade level each year and in 2019/20 was teaching the grade above Student (which was also above the 2 children in the class) with many modifications.⁶⁰ The BES classroom has a “chill zone” in one corner and a de-escalation room (describes as “barren”) down the hall; a small pull-out space for services from the social worker doubled as a storage room.⁶¹ LEA Representative at Proposed Public School testified that being in a low performing school would not harm Student; BES students below standards were given academic support, just as Student would.⁶²

16. Social Interaction. The BES program did not include a formal social skills program.⁶³ To work on the social interactions goal in Student’s IEP, Student needed a cohort; 2 other children was too small a group, while 10 is good.⁶⁴ LEA Representative at Proposed Public School’s solution for more social interaction at Proposed Public School was to increase Student’s exposure to general education students in specials, lunch, recess, field trips, and possibly other classes.⁶⁵

17. Evidence-Based Interventions. Student needs evidence-based interventions in particular due to Student’s SLD.⁶⁶ The only academic intervention in the BES class was the Wilson Reading System, in which BES Teacher began training in October 2019 and is to continue training through June 2020; BES Teacher began using the reading system in the BES classroom after Educational Consultant’s 10/5/19 observation.⁶⁷

18. Token System. BES Teacher does not use a formal reward system, such as a point system or level system, due to lack of need with the high ratio of staff to students in the BES class, but the students can earn breaks for completing work; BES Teacher considers use of tokens or stickers as causing constant unhelpful comparisons between the students.⁶⁸ BES Teacher’s approach is not the proactive token economy or point system that would provide the structure Student needs.⁶⁹ Student can be highly incentivized by rewards.⁷⁰ Parent credibly testified that Proposed Public School staff on her observation of Proposed Public School, including BES Teacher, were “pretty firm” that a reward system was not needed.⁷¹

⁵⁸ Educational Consultant; BES Teacher.

⁵⁹ P29-1.

⁶⁰ *Id.*

⁶¹ P28-1.

⁶² LEA Representative at Proposed Public School.

⁶³ P29-1.

⁶⁴ Educational Consultant; Program Supervisor.

⁶⁵ LEA Representative at Proposed Public School.

⁶⁶ Educational Consultant.

⁶⁷ P29-1; R2p9; BES Teacher; LEA Representative at Proposed Public School.

⁶⁸ BES Teacher; P28-1; R2p8; Educational Consultant (no token economy or point system).

⁶⁹ P29-2,3.

⁷⁰ Therapist; Parent (Student likes rewards).

⁷¹ Parent.

Hearing Officer Determination

Case No. 2019-0215

At the due process hearing, BES Teacher testified that she was amenable to trying a token system; LEA Representative at Proposed Public School concurred that a behavior reward system could be provided.⁷²

19. Lunch. At Proposed Public School, the BES class had lunch with general education students in the cafeteria; the 2 children in the BES class had their own table, but the time was unstructured; 1 of the BES staff members was present.⁷³ Parent viewed the Proposed Public School cafeteria as “toxic” for Student, due to sensitivities to noise and many people.⁷⁴ In 2017/18, Student did not do well in a mainstream setting in the cafeteria due to frequent altercations with peers, so an alternate lunch schedule in a small group was developed.⁷⁵ In 2018/19, following the 5/2/19 meeting, Student had lunch every day with an adult out of the cafeteria.⁷⁶ Educational Consultant considered lunch with 65-70 children at Proposed Public School to be inappropriate for Student; Student’s IEP should specify that lunch is to be outside general education.⁷⁷

20. Recess. The BES class had recess with general education classes; there were about 65 children at recess, with 4 staff members, including 1 BES staff member.⁷⁸ Student’s 5/2/19 Reentry Plan proposed Student not having recess even with the small 2018/19 self-contained class.⁷⁹ Educational Consultant considered recess with 65-70 children at Proposed Public School to be inappropriate for Student; Therapist was concerned about the unstructured time for Student and the possible reaction.⁸⁰

21. Specials. At Proposed Public School, the BES class was with general education students for gym, but by themselves for other specials.⁸¹ Educational Consultant understood that staff were attempting to merge the BES gym class with the general education class.⁸² When the BES program attempted inclusion with some general education classes in the past it had not worked, due to the gap in performance.⁸³ DCPS witnesses agreed that the 5 hours/week of specialized instruction inside general education on Student’s 5/3/19 IEP was likely for specials.⁸⁴ In 2017/18, Student was not attending all specials due to being unsuccessful in unsupported mainstream specials.⁸⁵ On 2/28/19, Student discussed with

⁷² BES Teacher; LEA Representative at Proposed Public School.

⁷³ Therapist; P28-1; P29-1; School Social Worker B (not a small group setting).

⁷⁴ Parent.

⁷⁵ R21p171; P3-2.

⁷⁶ R57p401.

⁷⁷ Educational Consultant.

⁷⁸ P28-1; P29-1.

⁷⁹ P19-1.

⁸⁰ Educational Consultant.

⁸¹ Therapist.

⁸² P28-1; Educational Consultant.

⁸³ P29-1.

⁸⁴ LEA Representative at Proposed Public School; DJ; R1p3 (5 hours inside general education allowed Student to burn off energy by participating in gym each day with peers).

⁸⁵ P3-2.

Hearing Officer Determination

Case No. 2019-0215

School Social Worker A anxiety that arises when going to specials with general education children outside Student's classroom.⁸⁶ By 4/12/19, Student refused to go to specials and was doing computer-based work during specials.⁸⁷ Specials continue to take a lot of prompting at Nonpublic School and most of the time Student does not go to specials.⁸⁸

22. Overall. Parent hired Educational Consultant in May 2019 for guidance in finding an appropriate school for Student; Educational Consultant emphasizes to parents that he cannot be hired to reach a predetermined outcome if not merited by the facts.⁸⁹ Educational Consultant's well-grounded perspective was that Student needed a highly specialized special education program that could address Student's needs in academics, behavior and social skills; the BES program at Proposed Public School would not provide an opportunity for meaningful progress for Student.⁹⁰ Specifically, Educational Consultant's expert opinion was that the BES program proposed for Student at Proposed Public School was not appropriate and failed to take Student's unique needs into account, as Student has significant learning disabilities and needed to receive evidence-based interventions in all academic areas; Student also needed instruction in social skills, which was lacking in the proposed program, as well as having limited opportunities for social interaction.⁹¹ Therapist's main concerns with the BES program were the location of the program, access to general education classrooms/area, transitions to those areas, and combined lunch/recess with general education, due to Student's anxiety about new/unfamiliar situations.⁹² Therapist testified that it would be hard on Student to be near and see the general education groups of children that Student was not part of at Proposed Public School.⁹³

23. Nonpublic School. On 9/19/19, Nonpublic School offered placement to Student with a start date of 9/23/19, which Parent accepted.⁹⁴ Nonpublic School is a full-time special education day school without any general education students; Nonpublic School has a Certificate of Approval from OSSE and costs about \$46,000/year; Student is a "private pay" child at Nonpublic School.⁹⁵ Nonpublic School addresses both behavioral issues and learning disabilities, making it a great option for Student, without the need for a choice of focus as with most other schools.⁹⁶ Nonpublic School has evidence-based interventions for academic and social skills.⁹⁷

⁸⁶ R75p654.

⁸⁷ P17-2,4.

⁸⁸ P31-4.

⁸⁹ Parent; Educational Consultant.

⁹⁰ P29-3; Educational Consultant.

⁹¹ P29-2,3; Educational Consultant.

⁹² P28-1,2.

⁹³ Therapist.

⁹⁴ P27-1; Parent.

⁹⁵ Program Supervisor; Parent.

⁹⁶ Educational Consultant.

⁹⁷ *Id.*

Hearing Officer Determination

Case No. 2019-0215

24. Student's main class at Nonpublic School has 10 children and 5 adults (a teacher, an assistant, and 3 dedicated aides for other children).⁹⁸ Educational Consultant observed Student at Nonpublic School in a reading class of 8 with a teacher and an assistant; Student had attended for about 5 weeks and was making friends in class; Student had goals to continue to develop social skills.⁹⁹ Nonpublic School uses a Level System and a token economy through which Student has bought computer time and can make purchases at the school store.¹⁰⁰ Lunch at Nonpublic School is in the classroom (there is no cafeteria), art is just Student's class, while gym is Student's class plus another.¹⁰¹

25. Student has not been a behavior problem at Nonpublic School with either aggression or elopement and has responded favorably to the Level System used by Nonpublic School, with 100% success.¹⁰² Peers like Student and Student is showing progress in being more social and building and maintaining friendships in the classroom.¹⁰³ While school refusal had been a big problem prior to Nonpublic School, Student has been willing to go to Nonpublic School with little pushback.¹⁰⁴ Parent views Student as "blossoming" at Nonpublic School, which is small and structured; Student is consistently available for education at Nonpublic School.¹⁰⁵ Student is benefitting from Nonpublic School and is appropriately placed there.¹⁰⁶

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.'" *Endrew 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." *Endrew F.*, 137 S. Ct. at 994,

⁹⁸ Program Supervisor.

⁹⁹ P30-1,2,3; P31-2 (enrolled 9/23/19).

¹⁰⁰ Program Supervisor.

¹⁰¹ *Id.*

¹⁰² P30-3; P37; Educational Consultant.

¹⁰³ P31-4; Program Supervisor.

¹⁰⁴ Parent.

¹⁰⁵ Parent; Program Supervisor.

¹⁰⁶ Program Supervisor; Therapist.

Hearing Officer Determination

Case No. 2019-0215

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(a)(14); *Endrew 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 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.

In addition, the 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 ex rel. A.M. v. Dist. of Columbia*, Civ. No. 17-2455 (CKK), 2018 WL 4623572, at *3 (D.D.C. 9/26/18).

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*

Hearing Officer Determination

Case No. 2019-0215

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). “Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether . . . sufficient evidence [was presented] to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE.” 5-E D.C.M.R. § 3030.3.

Issue 1: *Whether DCPS denied Student a FAPE by failing to propose an appropriate IEP for 2019/20, as Student developed serious and severe behaviors in February 2019 and needed more support to make educational progress. (Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)*

Petitioner established a prima facie case on this issue through expert testimony and documents, shifting the burden to Respondent, which did not meet 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 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 is 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; *S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 66 (D.D.C. 2008). Moreover, the analysis is not about achieving a perfect IEP, but simply an IEP reasonably calculated to enable Student to make appropriate progress. *Endrew F.*, 137 S. Ct. at 1001; *Z.B.*, 888 F.3d at 519 (the IDEA “stops short of requiring public schools to provide the best possible education”). *See also Hill v. Dist. of Columbia*, No. 14-cv-1893 (GMH), 2016 WL 4506972, at *21 (D.D.C. 2016), *quoting Leggett v. Dist. of Columbia*, 793 F.3d 59, 70 (D.C. Cir. 2015). The appropriateness of Student’s IEP is analyzed by considering the specific concerns raised by Petitioner, which are considered next.¹⁰⁷ *See* 34 C.F.R. § 300.320(a); *Honig*, 484 U.S. at 311.

Here, there is no dispute that Student had significant behavioral issues in the spring of 2018/19, which caused Student to miss a great deal of instruction time. All agreed that something must be done. While Student had behavioral challenges in 2017/18 initially,

¹⁰⁷ 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 violations were not specifically alleged in this matter.

Hearing Officer Determination

Case No. 2019-0215

Student was doing well in Prior Public School in 2018/19 until March 2019 when the situation changed. Student's behaviors worsened significantly with verbal and physical aggression that got so bad that Student could not ride the bus with other children, even with a dedicated aide. From March-May 2019, Student had 12 incidents requiring crisis intervention due to destruction of property, trying to harm others, and efforts to elope, resulting in multiple suspensions. ChAMPS and the police were each called twice. Student was psychiatrically hospitalized for a short period with ongoing monitoring to see whether Student should return to a psychiatric hospital. Student's level of aggression was alarming. Student was attacking both children and adults and threatening far worse. Student seemed to have significant problems with general education students, both in school and older students passing Student's home. Prior Public School could not address that level of behavior, so another school program was clearly needed.

In the midst of this aggression, Student received the annual update to the IEP and then a few weeks later an amendment to provide for private transportation with an aide. Notably, despite Student's significant and growing needs, the IEP continued to provide 5 hours/week of specialized instruction inside general education. In fact, the only modification in the 5/3/19 IEP services was to increase BSS from 180 to 240 minutes/month (and shift it to outside general education), which is a significant level but well below the 90 minutes/week (360 minutes/month) on Student's IEP in early 2017/18. Moreover, as Petitioner's counsel emphasized, Student's IEP left Student without support for a large portion of the time – some 6 hours/week – as lunch and recess were unsupported on the IEP.

DCPS witnesses agreed that the 5 hours/week of specialized instruction inside general education on Student's 5/3/19 IEP was likely for specials, including gym, art, and the like. Yet, specials had been quite challenging for Student by that time. In 2017/18, Student was unsupported in general education specials, so was not attending all specials. On 2/28/19, just a couple of months prior to the IEP at issue, Student discussed with School Social Worker A the anxiety that arose when going to specials with general education children outside Student's classroom. By the time Student's IEP was updated on 4/12/19, Student refused to go to specials and was doing computer-based work during time for specials, yet the 5 hours/week inside general education remained on Student's IEP.

Lunch and recess accounted for most, if not all, of the remainder of the unsupported time on Student's IEP. Parent described the cafeteria as toxic to Student, due to sensitivities to noise and many people. In 2017/18, Student did not do well in a mainstream setting in the cafeteria due to frequent altercations with peers, so an alternate lunch schedule with a small group was developed. In 2018/19 at the end of the year, Student had lunch every day with an adult out of the cafeteria. Student's IEP should have reflected the need for lunch to be outside general education. Recess was also a problem for Student, and the 5/2/19 Reentry Plan proposed Student not having recess even with the small SLS self-contained class. Educational Consultant was credible in his testimony about the need for Student not to be in a general education setting for lunch and recess, which the undersigned finds persuasive. *See N.W. v. Dist. of Columbia*, 253 F. Supp. 3d 5, 16 (D.D.C. 2017) (the omission of needed lunch and recess supports is more than a mere procedural error); *Jones v. Dist. of Columbia*, Civ. No. 17-1437, 2019 WL 532671, at *3 (D.D.C. Feb. 11, 2019)

Hearing Officer Determination

Case No. 2019-0215

(“DCPS’s 2015-2016 IEP denied D.M. a FAPE by failing to account for every school hour and to describe his LRE”).

Thus, this Hearing Officer concludes on balance that Respondent failed to meet its burden of persuasion as Student’s 5/3/19 IEP was not reasonably calculated to enable Student to make appropriate progress in Student’s circumstances due to the 5 hours/week of specialized instruction continuing to be inside general education and leaving the remainder of Student’s hours in lunch and recess unsupported in Student’s IEP. This is a substantive violation and a denial of FAPE, resulting in the remedy set forth below. However, even if viewed as procedural, the lack of support on the IEP deprived Student of educational benefit and may have impeded Parent’s decision-making, so was a denial of FAPE. 34 C.F.R. § 300.513(a).

Issue 2: *Whether DCPS denied Student a FAPE by failing to timely propose an appropriate educational placement for 2019/20, as Student needed a therapeutic program but the proposed BES program at Proposed Public School was not appropriate due to: lack of any behavioral reward system; exposure to general education children in a low performing school; lack of social interaction with the small number of BES children; insufficient movement during the day, apart from recess; and/or lack of specific reading strategies and other evidence-based academic interventions required by Student’s learning disabilities. (Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)*

Turning to the concerns about placement at Proposed Public School, Petitioner also established a prima facie case through expert testimony and documents, shifting the burden to Respondent, which did not meet its burden of persuasion, as discussed below.

The applicable legal standard for educational placement is that 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). See also *Johnson v. Dist. of Columbia*, 962 F. Supp. 2d 263, 267 (D.D.C. 2013) (DCPS “must place the student in a setting that is capable of fulfilling the student’s IEP”). Here, Petitioner raised a number of concerns which are considered in turn.

Timing. A significant problem here is that DCPS neglected to provide placement information to Parent in a timely manner so that she could see the proposed program in action and assess whether it would be suitable for Student. Parent sought to observe the BES program promptly when it was proposed in May 2019. Quite reasonably, Parent sought to view it before the end of the school year, but DCPS slowed the process by awaiting assignment of Student to a BES classroom in a particular school. The assignment was actually made prior to the end of 2018/19, for BES Teacher was informed before the end of the school year that Student was on the roster for her BES classroom at Proposed Public School for 2019/20. Inexplicably, this information was not provided to Parent at the same time, so that she could have viewed the school. The uncontroverted evidence was that Parent did not receive the LOS letter stating Student’s school assignment until 7/22/19 by email, despite the letter being dated 6/25/19. But even notice on 6/25/19 would have been

Hearing Officer Determination

Case No. 2019-0215

too late to see the program and seek the guidance of her educational consultant to make a timely decision. Absent information about where Student would be placed by DCPS, Parent had little choice but to turn to other options, ending up at Nonpublic School.

Behavioral Reward System. Student could be highly motivated by rewards, so Student's 5/3/19 IEP required a token economy and reiterated in several IEP areas of concern that a token economy was key for Student to feel successful in the classroom. BES Teacher did not use such a system at Proposed Public School based on the needs of the 2 students in her class, which would have failed to provide the structure Student needed. Yet, instead of reassuring Parent during the observation that Student's IEP could be implemented in this regard, Proposed Public School staff, including BES Teacher, were "pretty firm" that a reward system was not needed, as Parent credibly testified, conveying to Parent that Student's IEP requirements for a token economy would not be implemented at Proposed Public School. The fact that months later BES Teacher testified at the due process hearing that she was amenable to trying a token system, as well as LEA Representative at Proposed Public School's statements that a behavior reward system could be provided, are much too late to influence decisions that would normally be made at a timely observation.

Social Interaction. Student would have had very few peers in the BES program at Proposed Public School, which would have harmed important social aspects of Student's education. Student's significant social needs were made clear in this case both by Student's IEP and by the serious behavioral problems when Student frequently attacked peers during periods of dysregulation. Student's IEP goal for social interaction was that "[d]uring peer or adult interactions (lunch, recess, small group projects, free time in class, bus), [Student] will engage appropriately with peers (e.g. initiate positive interactions, engage in reciprocal conversation and play), rather than engage in verbal or physical aggression." This would be very difficult to carry out appropriately with only 1 other child in Student's grade and a total of 2 other children in the entire BES class. *See N.W.*, 253 F. Supp. 3d at 18 (inadequate social engagement makes selected public school inappropriate). Particularly where the BES program did not include a formal social skills program, working on the social interactions goal in the IEP required a cohort of some 10 students. Proposed Public School was lacking in this regard and the proposed solution by LEA Representative at Proposed Public School of simply increasing Student's exposure to general education students in specials, lunch, recess, field trips, and even other classes failed to recognize the challenges of Student being in general education.

Evidence-Based Academic Interventions. In addition to behavior, Student's learning disabilities were a significant concern, raising the need for evidence-based interventions. Student needed to have both behavior issues and learning disabilities addressed at the same time. The testimony of BES Teacher was reassuring about the quality of teaching in the BES classroom, where each child certainly received a great deal of attention with such a high staff-to-student ratio. Yet the only evidence-based academic intervention in the BES class was the Wilson Reading System, in which BES Teacher had only begun training in October 2019 and would not finish training until June 2020. Even if the reading system was already being used in the BES classroom, other such interventions would have been desirable.

Hearing Officer Determination

Case No. 2019-0215

Low Performing School; Insufficient Movement. LEA Representative at Proposed Public School testified that being in a low performing school would not harm Student and that children below standards are given academic support at Proposed Public School, just as Student would. As for the assertion of lack of physical movement, witnesses noted the large size of the school and a self-contained classroom by its nature would tend to limit movement between classes. Thus, the undersigned is persuaded that the performance of other children and the physical movement accompanying a self-contained classroom would not keep Student from making appropriate progress in light of Student's own circumstances.

In Sum. The undersigned concludes that on balance Respondent has failed to carry its burden of persuasion on the placement issue. Other than the assertions of a low performing school and insufficient movement, all of the other concerns raised above – the timing of involving Parent, the lack of a token economy, the lack of suitable social interaction with peers, and unavailability of evidence-based interventions – persuade this Hearing Officer that the placement was not appropriate. There was a material failure in the ability of Proposed Public School to provide the services required by Student's IEP, and the placement proposed would not have afforded Student the opportunity to make appropriate progress in Student's particular circumstances. *See N.W.*, 253 F. Supp. 3d at 17, *quoting James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 139 (D.D.C. 2016). This failure is a substantive violation and a denial of FAPE, with the remedy addressed below.

Issue 3: *Whether Nonpublic School is a proper placement. (Petitioner has the burden of persuasion on this issue.)*

Petitioner demonstrated that Nonpublic School, where Student is doing well this school year, is proper and appropriate for Student. The legal standard for proper placement should be comparable for school districts and for parents. *Leggett*, 793 F.3d at 70. Under the formulation of *Endrew F.*, 137 S. Ct. at 1001, the question is whether Parent's unilateral private placement was reasonably calculated to enable Student to make appropriate progress given Student's circumstances. *Cf. Leggett*, 793 F.3d at 71, *quoting Rowley*, 458 U.S. at 207, 102 S. Ct. 3034. *See also Wirta v. Dist. of Columbia*, 859 F. Supp. 1, 5 (D.D.C. 1994), *quoting Rowley*, 458 U.S. at 176, 102 S. Ct. at 3034; *N.G. v. Dist. of Columbia*, 556 F. Supp. 2d 11, 37 (D.D.C. 2008).

Student is doing well and has not been a behavior problem at Nonpublic School, which is small and structured. Student is showing progress in being more social and building friendships, with little pushback about attending school. Student is consistently available for education and has made progress at Nonpublic School. In short, Nonpublic School is providing meaningful educational benefit and Student is making progress appropriate in Student's circumstances. For these reasons, this Hearing Officer concludes that Nonpublic School is proper and appropriate for Student. *See* 34 C.F.R. § 300.148.

Remedy

As the remedy for the denials of FAPE concerning Student's IEP and placement, Petitioner now seeks placement and funding of Student at Nonpublic School for the entire 2019/20 school year, with all related costs and fees. Judge Colleen Kollar-Kotelly last year

Hearing Officer Determination

Case No. 2019-0215

confirmed that “if there is no public school which is suitable, the school district ‘must pay the cost of sending the child to an appropriate private school.’” *Montuori*, 2018 WL 4623572, at *3, quoting *Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 519 (D.C. Cir. 2005). See also *Jenkins v. Squillacote*, 935 F.2d 303, 304-305 (D.C. Cir. 1991) (if a public school program were available to enable student to receive educational benefits, DCPS would not need to consider nonpublic placement).

Under the IDEA, however, parents who unilaterally place their disabled children in a private school, without obtaining the consent of local school officials, “do so at their own financial risk.” *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15, 114 S. Ct. 361, 126 L. Ed. 2d 284 (1993), quoting *Burlington*, 471 U.S. at 374. The Court of Appeals explained in *Leggett v. Dist. of Columbia*, 793 F.3d 59, 66-67 (D.C. Cir. 2015), that,

As interpreted by the Supreme Court, IDEA requires school districts to reimburse parents for their private-school expenses if (1) school officials failed to offer the child a free appropriate public education in a public or private school; (2) the private-school placement chosen by the parents was otherwise “proper under the Act”; and (3) the equities weigh in favor of reimbursement – that is, the parents did not otherwise act “unreasonabl[y].”

Here, the first prong of *Leggett* is met due to the denials of FAPE by DCPS failing to provide Student an appropriate IEP and appropriate placement, as discussed at length in the first and second issues, above. The second prong of *Leggett* focuses on whether Nonpublic School is proper for Student, which is addressed and satisfied in the third issue, above. The final prong of *Leggett* is to consider whether the equities weigh in favor of reimbursement or whether Petitioner acted unreasonably. Here, Parent interacted reasonably with DCPS throughout the process. There was no serious assertion by DCPS that the third prong is not satisfied.

Accordingly, this Hearing Officer concludes that DCPS should fund Student at Nonpublic School for the 2019/20 school year, with all related costs and fees.

Hearing Officer Determination

Case No. 2019-0215

ORDER

Petitioner has prevailed on the issues in this case, as set forth above. Accordingly, **it is hereby ordered that:**

Within 30 days, DCPS shall fund tuition and all related costs and fees for Student at Nonpublic School for the 2019/20 school year.

Any and all other 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)

OSSE-SPED (due.process@dc.gov)

ODR (hearing.office@dc.gov)

██████████@k12.dc.gov

██████████@k12.dc.gov