

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

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

OSSE  
Office of Dispute Resolution  
June 12, 2019

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<i>Student</i> , <sup>1</sup>	)	Case No.: 2019-0071
through <i>Parent</i> ,	)	
<i>Petitioner</i> ,	)	Date Issued: 6/12/19
	)	
v.	)	Hearing Officer: Keith L. Seat, Esq.
	)	
District of Columbia Public Schools	)	Hearing Dates: 5/22/19 & 5/23/19
("DCPS"),	)	ODR Hearing Room: 423
Respondent.	)	
	)	

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**HEARING OFFICER DETERMINATION**

**Background**

Petitioner, Student’s Parent, pursued a due process complaint alleging that Student had been denied a free appropriate public education (“FAPE”) in violation of the Individuals with Disabilities Education Improvement Act (“IDEA”) because Student had been provided Individualized Education Programs (“IEPs”) that were too restrictive and Student was insufficiently evaluated. DCPS responded that the IEPs and evaluation were appropriate.

**Subject Matter Jurisdiction**

Subject matter jurisdiction is conferred pursuant to the IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations (“D.C.M.R.”).

**Procedural History**

Following the filing of the due process complaint on 3/15/19, the case was assigned to the undersigned on 3/18/19. On 3/25/19, Respondent filed a response and did not challenge jurisdiction. The resolution meeting occurred on 3/28/19, but did not resolve the case or shorten the 30-day resolution period, which ended on 4/14/19. A final decision in this matter must be reached no later than 45 days following the end of the resolution period,

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

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as extended by a 20-day continuance, which requires a Hearing Officer Determination (“HOD”) by 6/18/19.

The due process hearing took place on 5/22/19 and 5/23/19 and was closed to the public. Petitioner was represented by *Petitioner’s counsel*. DCPS was represented by *Respondent’s counsel*. Petitioner was present for part of the hearing and participated by telephone at other times.

Petitioner’s Disclosures, submitted on 5/16/19, contained documents P1 through P56, which were admitted into evidence over specified objections, except for P18 which was withdrawn by Petitioner. Respondent’s Disclosures, submitted on 5/15/19, contained documents R1 through R26, of which R1, R2, R3, R4, R10, R19, R21, R22, R23, R24 and R25 were offered into evidence, all of which were admitted without objection.

Petitioner’s counsel presented 3 witnesses in Petitioner’s case-in-chief (*see* Appendix A):

1. *Clinical Psychologist* (qualified without objection as an expert in Clinical Psychology and Review of Evaluations)
2. Parent
3. *Educational Advocate* (qualified over objection as an expert in Special Education Programming)

Respondent’s counsel presented 4 witnesses in Respondent’s case (*see* Appendix A):

1. *Manager of Special Education at Prior School* (qualified without objection as an expert in Special Education, Especially with Respect to IEP Development and Implementation)
2. Behavior & Education Support (“BES”) *Program Manager* at Central Office
3. *General Education Teacher* at Prior School
4. *School Psychologist* (qualified without objection as an expert in School Psychology)

Petitioner’s counsel recalled Parent as the sole rebuttal witness.

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

**Issue 1:** Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and/or placement/location of services on 1/7/19 or 1/23/19, due to not (a) providing specialized instruction in an appropriate setting, (b) placing Student in the least restrictive environment (“LRE”), (c) classifying Student’s disability appropriately, and/or (d)

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accommodating Student's needs with a Behavioral Intervention Plan ("BIP"). *Respondent has the burden of persuasion, if Petitioner establishes a prima facie case.*

**Issue 2:** Whether DCPS denied Student a FAPE by failing to timely and comprehensively evaluate in all areas of suspected disability during 2017/18<sup>2</sup> and 2018/19, when it did not conduct (a) a speech-language evaluation, (b) a neuropsychological evaluation, (c) an evaluation to confirm or rule out autism spectrum disorder, and/or (d) an adaptive evaluation. *Petitioner has the burden of persuasion on this issue.*

The relief requested by Petitioner is:

1. A finding that Student was denied a FAPE.
2. DCPS shall conduct (a) a neuropsychological evaluation, (b) a speech-language evaluation, (c) an evaluation to confirm or rule out autism, (d) an adaptive evaluation, and (e) any other assessments reasonably recommended by those specified here.
3. DCPS shall convene an MDT meeting to (a) review the evaluation reports and revise Student's IEP as appropriate, (b) determine an appropriate placement, with actual placement to be made within 10 days, and (c) determine any compensatory education that may be due.
4. Within 28 days, DCPS shall craft an appropriate IEP to include appropriate goals, baselines and specialized instruction in a full-time inclusion setting or, in the alternative, convene a meeting to determine an appropriate IEP.
5. DCPS shall provide all requested education records to Parents.
6. For any denials of FAPE, DCPS shall fund compensatory education at market rates to be performed by providers of Parent's choice, in amounts determined by the Hearing Officer or based on additional information gathered at DCPS's expense to develop a compensatory education plan.
7. Any other appropriate relief.

### **Findings of Fact**

After considering all the evidence, as well as the arguments of both counsel, the Findings of Fact<sup>3</sup> are as follows:

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<sup>2</sup> All dates in the format "2017/18" refer to school years.

<sup>3</sup> Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has

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1. Student is a resident of the District of Columbia; Petitioner is Student's Parent.<sup>4</sup> Student is *Age, Gender* and in *Grade at Public School*, where Student began in 4/2019, after being in Prior School for a few years.<sup>5</sup> Student has a great deal of potential, but requires intensive support.<sup>6</sup>

2. IEPs. Student's initial IEP on 1/7/19 provided for 5 hours/day of reading, written expression and math outside general education, along with 240 minutes/month of behavioral support services inside general education and 120 minutes/month of occupational therapy outside general education.<sup>7</sup> Parent consented in writing to the initial provision of special education and related services on 1/7/19.<sup>8</sup> Student's IEP was amended by agreement without a meeting on 1/23/19 to clarify that Student's behavior does impede Student's learning, and to provide specialized instruction generally, rather than a specified number of hours per subject area each day, among other changes.<sup>9</sup> Student's 1/23/19 IEP provided services of 25 hours/week of specialized instruction outside general education, along with 240 minutes/month of behavioral support services outside general education (rather than inside) and 120 minutes/month of occupational therapy outside general education.<sup>10</sup> Parent had planned to obtain an educational attorney from at least the development of an Intervention Plan on 12/12/18, but was not represented by counsel until 3/2019.<sup>11</sup>

3. The 1/23/19 IEP stated that Student would benefit from a setting that allows for "little or no distraction," and explained the reason services cannot be provided to Student in general education is that Student is easily distracted and engages in aggressive and combative behavior with peers and adults, while a smaller setting will allow Student to focus and receive academic support.<sup>12</sup> BES Program Manager explained that 25 hours/week outside general education would require a self-contained setting.<sup>13</sup> Student's IEP summed up the LRE analysis by stating that Student needed a smaller environment where Student is not easily distracted and cannot distract others; in a whole group general education classroom Student would not be able to receive the benefits that a smaller environment offers.<sup>14</sup>

4. Eligibility. A 12/9/18 comprehensive psychological evaluation of Student focused on the Other Health Impairment ("OHI") disability classification due to Attention Deficit

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taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

<sup>4</sup> Parent.

<sup>5</sup> Parent; P20-1.

<sup>6</sup> P9-8.

<sup>7</sup> P20-1,14.

<sup>8</sup> P34-1; Manager of Specialized Instruction.

<sup>9</sup> P22-2; P24-1; P25-1,3; Manager of Specialized Instruction (Parent agreed).

<sup>10</sup> P25-15.

<sup>11</sup> P33-1,2; Parent.

<sup>12</sup> P25-15,16.

<sup>13</sup> BES Program Manager.

<sup>14</sup> P25-17.

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Hyperactivity Disorder (“ADHD”).<sup>15</sup> At the 12/20/18 eligibility meeting the team discussed a disability classification of OHI due to ADHD.<sup>16</sup> School Psychologist was prepared to classify Student’s disability as OHI/ADHD, but Parent guided the team to talk about Emotional Disturbance (“ED”) and the significance of the just-completed Functional Behavioral Assessment (“FBA”).<sup>17</sup> The team was concerned about concluding ED for a student so young.<sup>18</sup> Parent was adamant about ED, based on her experience with an older daughter; Parent participated as part of the team in completing the disability worksheet for ED on 12/20/18 and pointed to the psychological evaluation report to substantiate ED.<sup>19</sup> The team listened to Parent and considered the rubric and shifted to ED; there was never any concern about autism.<sup>20</sup> The team, including Parent, agreed with the classification of ED for Student.<sup>21</sup> Manager of Specialized Instruction was very surprised to hear Parent later say she didn’t understand and had problems with the ED classification.<sup>22</sup>

5. Student needed specialized instruction outside general education to be in a smaller setting.<sup>23</sup> Moving directly to full-time for Student was a big step, but the team wanted to provide the best services possible to Student and help was needed immediately.<sup>24</sup> Co-teaching Student had been attempted at Prior School, but Student did not respond to inclusion or 1:1 as Student could not sit long enough for services to be effective.<sup>25</sup> In addition, Student was pulled out with up to 5 students for reading intervention, but Student had behavior problems and attendance issues and could not continue.<sup>26</sup> During 2018/19, Student was deteriorating emotionally and needed strong intervention or might have required hospitalization.<sup>27</sup> Student’s behavior was becoming worse by the day.<sup>28</sup>

6. Provision of Services. Until a suitable location of services was determined, Prior School attempted to implement the services on Student’s IEPs with at least 5 teachers who were each scheduled to provide an hour of specialized instruction/day to Student, along with occupational therapy (but no mention of behavioral support services).<sup>29</sup> Student would “travel” to different teachers at Prior School, with Manager of Specialized Instruction’s

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<sup>15</sup> P10-2,19; Clinical Psychologist.

<sup>16</sup> Manager of Specialized Instruction.

<sup>17</sup> School Psychologist.

<sup>18</sup> Manager of Specialized Instruction; School Psychologist.

<sup>19</sup> Manager of Specialized Instruction; P12-1.

<sup>20</sup> Manager of Specialized Instruction.

<sup>21</sup> School Psychologist.

<sup>22</sup> Manager of Specialized Instruction.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> School Psychologist.

<sup>28</sup> Manager of Specialized Instruction.

<sup>29</sup> P43-1; P40-1,2,3; Manager of Specialized Instruction.

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office as the drop-off area, for Student could not be in the classroom due to bullying issues by Student or of Student.<sup>30</sup>

7. Once the disability classification was determined, BES programming for Student was clear as Student couldn't be in a general education classroom and needed a smaller setting with individualized help.<sup>31</sup> The BES program was described to Parent, who understood that Prior School didn't have the full-time program Student needed and that efforts were underway to find a suitable location for Student.<sup>32</sup> BES classrooms have a teacher, an instructional aide and a behavior technician, with no more than 10 children; the classroom for Student at *Proposed 2018/19 School* also had a social worker and only 7 students at the time.<sup>33</sup> Student's general education class at Prior School in 2018/19 had 24 or 25 children with 1 teacher and a volunteer grandparent, with push-in at times from a special education teacher.<sup>34</sup>

8. DCPS sent a Location of Services ("LOS") letter to Parent dated 2/6/19 stating that Proposed 2018/19 School would be Student's LOS to implement Student's IEP.<sup>35</sup> Manager of Specialized Instruction took Parent to Proposed 2018/19 School to visit the school; Parent had concerns about that particular program (due to the all-male classroom, kids fighting and the school being filthy), but did not raise concerns about BES generally although refused to talk about other locations; Manager of Specialized Instruction (and others) tried to find another BES location for Student.<sup>36</sup> DCPS sent a Change in Placement Prior Written Notice ("PWN") on 3/1/19 stating that Prior School could no longer serve Student, thus Proposed 2018/19 School would be Student's LOS despite Parent's concerns; from 3/15/19 Student could no longer return to Prior School.<sup>37</sup>

9. At the 3/28/19 resolution meeting with her counsel, Parent sought to "temporarily" revoke consent for special education and related services, while continuing Student's eligibility.<sup>38</sup> On 3/25/19, Parent withdrew Student from Prior School and moved Student to Public School.<sup>39</sup> In late 3/2019, Prior School was collecting data to initiate an involuntary safety transfer of Student, based on being a danger to self and other students and staff, and general education classrooms not being appropriate.<sup>40</sup> DCPS sent a new LOS letter on

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<sup>30</sup> Manager of Specialized Instruction.

<sup>31</sup> Manager of Specialized Instruction; BES Program Manager; General Education Teacher.

<sup>32</sup> Manager of Specialized Instruction.

<sup>33</sup> BES Program Manager.

<sup>34</sup> General Education Teacher.

<sup>35</sup> P35-1.

<sup>36</sup> Manager of Specialized Instruction; Parent.

<sup>37</sup> P26-1.

<sup>38</sup> P38-1; R2-4; P27-1 (3/28/19 PWN).

<sup>39</sup> P37-1.

<sup>40</sup> R2-4.

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4/26/19 specifying *Proposed 2019/20 School* for 2019/20, which is closer to Student's home and has space in the BES classroom.<sup>41</sup>

10. LRE. Educational Advocate considered 20 hours/week inside general education to be Student's LRE, with 25 hours/week outside general education too restrictive and possibly harmful to Student.<sup>42</sup> During the hearing Educational Advocate acknowledged that pull-out for specialized instruction in reading and math would be helpful, suggesting 10 hours/week inside general education and 10 hours/week outside general education; smaller classes would also be helpful.<sup>43</sup>

11. Cognitive. The 12/9/18 comprehensive psychological evaluation used the Reynolds Intellectual Assessment Scales, 2<sup>nd</sup> Edition ("RIAS-2") to measure cognitive ability and found that Student had a Composite Intelligence Index ("CIX") of 72, a Verbal Intelligence Index ("VIX") of 76, and a Nonverbal Intelligence Index ("NIX") of 75, all of which were Moderately Below Average; in addition, Student's Memory skills were 80, which was Below Average, and Processing Speed skills of 73 were Moderately Below Average.<sup>44</sup> Clinical Psychologist believed that Student's low cognitive scores were not accurate as ADHD and poor attendance can push cognitive scores down, as well as Student failing an eye exam.<sup>45</sup> Student's achievement scores being above IQ scores may indicate that the stated IQ may be too low.<sup>46</sup> School Psychologist was shocked by and skeptical of Student's low cognitive scores as Student presents as a bright child.<sup>47</sup>

12. Academics. The Wechsler Individual Achievement Test – Third Edition ("WIAT-III") found that a majority of Student's academic scores fell between the Below Average and Average range.<sup>48</sup> Clinical Psychologist considered Student's achievement levels to largely be average, while the detailed FBA found Student's academic skills to be very low; Student was reading far below grade level and did not meet beginning-of-year levels in math or reading.<sup>49</sup>

13. Social-Emotional. The Conners 3 indicated concerns with overall emotional functioning, in addition to attention problems; the comprehensive psychological evaluation noted concerns about Student's overall social-emotional functioning and found "irritable mood and oppositionality" along with ADHD.<sup>50</sup> On the Conners, the teacher rating scale was flagged for a Negative Impression score, indicating that the rater might have been overly negative; similarly, the validity scores on the Behavior Assessment System for

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<sup>41</sup> R1-1; BES Program Manager.

<sup>42</sup> Educational Advocate.

<sup>43</sup> *Id.*

<sup>44</sup> P10-20.

<sup>45</sup> Clinical Psychologist.

<sup>46</sup> *Id.*

<sup>47</sup> School Psychologist.

<sup>48</sup> P10-11,20.

<sup>49</sup> Clinical Psychologist; P9-5,8; P31-1 (report card).

<sup>50</sup> P10-13,20.

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Children, Third Edition (“BASC-3”) reflected F Indices in the Extreme Caution range on both Parent and teacher rating scales, which may indicate the raters were overly negative or may be reflecting the reality of Student.<sup>51</sup> Student’s 25 behavior incidents during a portion of 2018/19 support the F Indices.<sup>52</sup>

14. Requests for Evaluation. DCPS first received a referral for an initial evaluation of Student on 4/10/18, which led to a review of existing data by a group of qualified personnel.<sup>53</sup> The IEP team met on 4/19/18 to review the Analysis of Existing Data (“AED”) and determined not to proceed with the evaluation process due to Student’s chronic absenteeism which significantly impacted Student’s ability to consistently access the curriculum.<sup>54</sup> The team agreed to monitor Student’s progress and reconvene 30 days into 2018/19.<sup>55</sup> Parent had no behavior concerns about Student.<sup>56</sup>

15. Student’s pediatrician referred Student for evaluation in a 7/27/18 letter which DCPS received on 9/5/18; the team again reviewed existing data and proposed to proceed with evaluations that did not require reading glasses, which Student had not yet obtained; the pediatrician diagnosed Student with ADHD and recommended a psychiatric referral; the comprehensive psychological evaluator agreed that Student should have a psychiatric consult.<sup>57</sup> In a later 3/18/19 letter, Petitioner’s counsel requested comprehensive evaluations, including a neuropsychological, speech-language, adaptive assessment, and a confirmation or rule out of autism.<sup>58</sup>

16. Behavior. Student was moved to General Education Teacher’s class at Prior School on 10/2/18, after accusing Student’s previous teacher of misconduct; Student changed the classroom, trying to be in charge.<sup>59</sup> Student began attacking other children in the classroom after a couple of days; children in conflict with Student were moved out of the classroom, but Student found new targets.<sup>60</sup> Student would sometimes be doing fine in a small group (such as math), but then would get up and go bother someone.<sup>61</sup>

17. A thorough FBA dated 11/29/18 was conducted of Student, setting out Student’s problems and challenges in great detail; the challenges occurred daily and included physical aggression (throwing objects, kicking, fighting, slapping, punching, grabbing throats), defiance (curses, lies, verbally aggressive), being off task (constantly moving, getting in

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<sup>51</sup> P10-12,17; Clinical Psychologist.

<sup>52</sup> Clinical Psychologist.

<sup>53</sup> P5-1.

<sup>54</sup> P15-1,2 (page missing); P5-1 (Student missed 43 of 144 days of school); P16-1 (PWN).

<sup>55</sup> P15-2.

<sup>56</sup> Parent.

<sup>57</sup> P48-1; P10-1,22; P17-1 (PWN).

<sup>58</sup> P49-1.

<sup>59</sup> Parent; General Education Teacher (has 25 years of general education teaching experience).

<sup>60</sup> General Education Teacher.

<sup>61</sup> *Id.*

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others' personal space), and emotional dysregulation (explosive outbursts, self-injurious behavior, poor anger control, screaming).<sup>62</sup>

18. The FBA included 3 formal classroom observations totaling over 8 hours, during which Student was displaying problematic and disruptive behaviors 60% of the time, including physical aggression 38% of the time.<sup>63</sup> In one observation, Student hit other students without provocation on 19 different occasions, and taunted and called 3 different male peers derogatory names and yelled at them at least 7 times; Student repeatedly tried to engage several male peers in conflicts.<sup>64</sup> In another observation, Student repeatedly engaged in aggressive behaviors without provocation; during a 3.5 hour period, Student had 45 incidents of physical aggression and displayed disruptive behaviors 59% of the time.<sup>65</sup>

19. Student was more likely to remain on task when working 1:1 with adults and more likely to move about and become restless and aggressive when working in a larger group; Student's class typically had 22 students.<sup>66</sup> When not getting attention, Student became aggressive, cursed, yelled and provoked others.<sup>67</sup> Student was able to stay on task by self for no more than 1-2 minutes without redirection.<sup>68</sup> Student was more inclined to be emotionally calm if allowed to do as Student pleased, and dysregulated if not.<sup>69</sup>

20. Student tended to have more challenges in the classroom with male students, becoming aggressive and provocative; Student had conflict with females on the playground.<sup>70</sup> Student cannot be taught or controlled when dysregulated; Student could not stand to be in class all day; Student was not available to learn due to emotional instability.<sup>71</sup> Prior School's principal saw a great deal of potential in Student, but noted that Student required intensive supports to be successful.<sup>72</sup>

21. Student may dissociate or be out of touch with reality at times, or misread what is actually happening in the environment; Student is known for talking to self, which at times does not appear to be reality-based.<sup>73</sup> Student may have auditory and visual hallucinations and complained of seeing people who are not visible to others and of others hitting and punching Student in the back at home when there was no evidence of such.<sup>74</sup> Student's family history is significant for bipolar disorder, PTSD, anxiety and depression with Parent

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<sup>62</sup> P9-1.

<sup>63</sup> P9-2.

<sup>64</sup> P9-9.

<sup>65</sup> P9-9,10.

<sup>66</sup> P9-1,8.

<sup>67</sup> P9-1.

<sup>68</sup> P9-9.

<sup>69</sup> P9-1.

<sup>70</sup> P9-1,8.

<sup>71</sup> P9-7,8.

<sup>72</sup> P9-8.

<sup>73</sup> P9-5,6; School Psychologist (such conduct is a red flag).

<sup>74</sup> P9-6.

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and a much older sister.<sup>75</sup> Student had significant exposure to familial conflict where Student was taught that aggression was a way to resolve conflict, and to significant mental illness in the nuclear family.<sup>76</sup> Student is an emotionally fragile child who is emotionally needy and has low self-esteem and self-confidence.<sup>77</sup>

22. Parent reported Student can be exhausting and difficult at home because of tantrums, profanity, hitting family members, constant fidgeting and moving, being overly emotional, and yelling, screaming, and calling family members obscene names when upset.<sup>78</sup> Parent noted that Student's behavior can be peculiar and nonsensical; Parent sometimes referred to Student as "dumb or stupid" or made other disparaging comments; Student sometimes referred to self as "stupid and dumb."<sup>79</sup>

23. Parent believes that Student's behavior has progressively worsened each year; Prior School's principal agrees.<sup>80</sup> Student stated that the Prior School's principal is Student's best friend and that Student has no other friends because they are all bullies.<sup>81</sup> Student sometimes wanted to bring a knife to school (apparently to open security cameras).<sup>82</sup>

24. Parent believes that Student has been the victim of bullying in 2018/19 and was beaten by a teacher early in the year; the allegations were investigated by both school officials and the police and not substantiated; as noted, Student was transferred to General Education Teacher on 10/2/18 and Parent was seeking transfer to another school.<sup>83</sup> In addition to reassigning teachers for Student, Prior School reassigned students with whom Student had conflicts to other classes.<sup>84</sup>

25. Prior School staff stated that Student "often" lied and made up fantastical stories and allegations about others.<sup>85</sup> Student told Parent that Student was being bullied, but the other children were scared of Student and cringed when Student was near.<sup>86</sup> Student threatened to make up lies about adults at school, by telling Parent they hit or pushed Student.<sup>87</sup> Parent believed anything Student said.<sup>88</sup>

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<sup>75</sup> *Id.*

<sup>76</sup> P9-10.

<sup>77</sup> *Id.*

<sup>78</sup> P9-6.

<sup>79</sup> *Id.*

<sup>80</sup> P9-7,8.

<sup>81</sup> P9-8.

<sup>82</sup> *Id.*

<sup>83</sup> P6-7; Parent; General Education Teacher.

<sup>84</sup> P9-8.

<sup>85</sup> P9-7.

<sup>86</sup> General Education Teacher.

<sup>87</sup> Manager of Specialized Instruction; General Education Teacher.

<sup>88</sup> School Psychologist.

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26. Prior School's List of Incidents by Student listed and described some 25 incidents from 10/4/18 through 2/27/19.<sup>89</sup> Among many other incidents were the following:

- a. On 10/11/18, Manager of Specialized Instruction observed Student being very aggressive in Spanish class and called Parent, who scolded Student and told Student to apologize; at the due process hearing, Parent disputed she was ever called by Prior School about Student and did not recall the incident.<sup>90</sup>
- b. On 10/14/18, Student was punching and kicking other children until removed by the assistant principal kicking and screaming; the school psychologist was called to assist, along with school security; when Parent was called by the principal, Parent stated that Student was no more a threat than Student's teacher and Parent refused to pick up Student.<sup>91</sup>
- c. On 10/16/18, Student was running around the classroom and going up to children and punching them until the principal removed Student from the classroom kicking and screaming; when the principal shared the incident with Parent who arrived for a meeting, she responded that Student was defending self due to being tired of being bullied.<sup>92</sup>
- d. On 10/18/18, Student hit, kicked and punched the special education teacher and students in the classroom, until removed by school security; Student continued to kick the door and bang and kick the glass in Manager of Specialized Instruction's office even with security present until Parent picked Student up.<sup>93</sup>
- e. A mediation was held on 10/25/18 by the police between Parent, Student and other parents and children; Student accused the other children of "hogtying" and beating Student on the playground; the accusations were not substantiated by the police or a grievance officer.<sup>94</sup>
- f. On 12/6/18, Student went wild and became belligerent when school security prevented Student from hitting two classmates; the teacher called Parent who said that Student does not trust anyone at school and neither does Parent.<sup>95</sup>
- g. After an extended 12/10/18 incident in the gym when Student was out of control and was hitting and spitting at adults among many other things, Parent arrived and did not accept Manager of Specialized Instruction's summary of events but

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<sup>89</sup> P44.

<sup>90</sup> P45-53; Parent.

<sup>91</sup> R21-46.

<sup>92</sup> P45-37; P45-43 (similar response re fighting older girl on playground).

<sup>93</sup> R21-33.

<sup>94</sup> Manager of Specialized Instruction; R22-23.

<sup>95</sup> R22-11.

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immediately began accepting Student's less than truthful version.<sup>96</sup> On 12/11/18 the male PE teacher recounted that he had had too many incidents with Student, with nearly 10 meetings with Student and Parent, and had been threatened with bodily harm on numerous occasions, so did not feel comfortable with Student continuing in his class.<sup>97</sup>

- h. On 12/17/18 Manager of Specialized Instruction spoke to Parent to enlist her help in redirecting Student, but Parent reinforced the negative behavior by stating to Student, "If someone disrespects you, then you disrespect them right back," and told Student that none of the adults in the school building could be trusted; Parent made threats of bodily harm to school staff.<sup>98</sup>
- i. On 12/18/18, Student attacked children in the lunchroom, hitting and choking them.<sup>99</sup>
- j. ChAMPS was involved with Student and Parent after a 1/8/19 incident in which Student was completely out of control; in a Contract for Safety, Student promised to "not pick up any sharp objects and chase any students."<sup>100</sup>
- k. On 2/27/19 Student was misbehaving by throwing a ball that was taken away and Student then threatened to kill the school staff member involved, called her an "ugly monkey" and repeatedly grabbed the staff member's arm and shirt; Parent was called.<sup>101</sup>

27. ██████ Parent testified that Student began at ██████ after Spring break (which would have been on or after 4/22/19) and had been there almost a month as of her testimony on 5/22/19.<sup>102</sup> Parent stated that Student is doing great at ██████ in general education and was progressing and functioning well with some help.<sup>103</sup> Educational Advocate acknowledged that it is "always a possibility" that Student is enjoying a "honeymoon" in the first weeks at the new school.<sup>104</sup>

28. Clinical Psychologist heard from Parent that Student is not exhibiting the same emotional behaviors at ██████ as had been seen at Prior School.<sup>105</sup> Parent thinks Student does not need to be removed from general education and needs fewer supports than

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<sup>96</sup> P45-22.

<sup>97</sup> R22-13.

<sup>98</sup> P21-11.

<sup>99</sup> R12-15.

<sup>100</sup> Manager of Specialized Instruction; P47-2; R21-13.

<sup>101</sup> P45-2,4.

<sup>102</sup> Parent.

<sup>103</sup> *Id.*

<sup>104</sup> Educational Advocate.

<sup>105</sup> Clinical Psychologist.

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proposed (25 hours/week of specialized instruction outside general education).<sup>106</sup> Clinical Psychologist believed that Student might not be ED and instead just ADHD if Student had no problem with ██████ during 2018/19 to date; Clinical Psychologist acknowledged confusion over when Student transferred to ██████ thinking it was at the beginning of 2018/19 or at least midway, rather than late in 4/2019.<sup>107</sup> Clinical Psychologist had never met Student and had never been in any meetings or talked to any teachers about Student.<sup>108</sup>

29. BIP. The 11/29/18 FBA recommended a comprehensive BIP to address emotional dysregulation and compliance, consistent implementation of a safety plan to address unsafe behaviors, and other therapeutic interventions (such as medications) to supplement therapy.<sup>109</sup> A 6-page BIP Level II was developed for Student on 12/20/18, based on the targeted behaviors of defiance, off-task behavior and physical aggression.<sup>110</sup> A Targeted Student Safety Plan had initially been developed on 10/2/18 and focused on any bullying activity that was directed toward Student or occurred by Student.<sup>111</sup>

30. Attendance. In 2017/18, Student had 43 excused absences and 10 unexcused; in 2018/19, Student had 6 excused absences and another 10 unexcused as of 11/15/18.<sup>112</sup> An attendance Intervention Plan was developed on 12/12/18.<sup>113</sup> Parent testified that she sometimes kept Student home from Prior School because Student felt bullied and unsafe at school.<sup>114</sup>

31. Autism. Parent was concerned about autism based on Student's difficulty with self-care skills, rocking back and forth, and chewing on clothing.<sup>115</sup> School Psychologist explained that repetitive motions or chewing on clothing could have other causes and do not necessarily demonstrate autism.<sup>116</sup> Based on the Behavioral Symptoms Index of the BASC-3, School Psychologist had no concerns that Student was on the autism spectrum.<sup>117</sup>

32. Student's pediatrician recommended numerous areas on which an evaluation of Student should focus; autism was not mentioned, although an area in which a pediatrician would have performed early screening if needed.<sup>118</sup> School Psychologist saw no signs of a red flag for autism, for Student seeks attention while autistic children run from attention.<sup>119</sup>

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<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> P9-11; School Psychologist.

<sup>110</sup> R10-1.

<sup>111</sup> P46-2; General Education Teacher.

<sup>112</sup> P10-1.

<sup>113</sup> P33-1.

<sup>114</sup> P9-5.

<sup>115</sup> R2-3.

<sup>116</sup> School Psychologist.

<sup>117</sup> P10-16; School Psychologist.

<sup>118</sup> P48-1; School Psychologist.

<sup>119</sup> School Psychologist.

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Prior School has 5 Communication & Education Support (“CES”) classrooms containing mostly autistic children, so school staff knows what to look for.<sup>120</sup> When the Prior School team met and discussed areas of disability based on data, no one raised concerns about autism despite the team’s great familiarity with autism.<sup>121</sup>

33. Petitioner sought both adaptive and neuropsychological evaluations to provide insight into whether Student was on the autism spectrum.<sup>122</sup> Neuropsychological evaluations are generally used outside the school setting as they provide little in the way of educational recommendations.<sup>123</sup> Student’s pediatrician could have directly referred Student for a neuropsychological evaluation if needed, as they are not provided in school.<sup>124</sup> Student did not need an adaptive evaluation as Student was making gains academically and had no signs of Intellectual Disability (“ID”); Student quickly responds to stimuli, unlike children with ID.<sup>125</sup>

34. Speech-Language Evaluation. Petitioner did not request a speech-language evaluation initially, but Prior School agreed in 10/2018 to do a speech-language screening; the speech-language evaluator observed Student and didn’t need to do further testing; Parent also had no concerns.<sup>126</sup> In the resolution meeting, the school team agreed to proceed with a full speech-language evaluation.<sup>127</sup>

35. Credibility. Parent’s credibility was impacted with the undersigned by Parent’s repeated assertions that Prior School did not call her about incidents involving Student; Manager of Specialized Instruction credibly testified that Parent was contacted about Student’s behavior incidents “frequently,” often every day.<sup>128</sup> Parent stated that all the incident reports about Student were made up by DCPS as part of a cover up.<sup>129</sup> Parent claimed that DCPS “built a case” against Student and developed a restrictive IEP in order to “get” Parent for raising concerns about Student being bullied.<sup>130</sup>

36. Parent’s credibility was also harmed by her testimony that Student’s pediatrician “made up” the statement in the 7/27/18 evaluation referral that Student had been having school problems for some time; Parent incredibly asserted that Student has had no school problems at all.<sup>131</sup> Similarly, Parent asserted she has no concerns about Student at home, where Student has many friends and the community loves Student; Parent testified that to

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<sup>120</sup> Manager of Specialized Instruction.

<sup>121</sup> *Id.*

<sup>122</sup> Educational Advocate.

<sup>123</sup> School Psychologist.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> Manager of Specialized Instruction.

<sup>127</sup> R2-3; Manager of Specialized Instruction.

<sup>128</sup> Parent; Manager of Specialized Instruction.

<sup>129</sup> Parent; P44; R22.

<sup>130</sup> Parent.

<sup>131</sup> Parent; P48-1.

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the extent that the BASC indicates otherwise about concerns at home, “they misconstrued” that on the test, which Parent said was not valid because the testers didn’t know Student as Parent does.<sup>132</sup>

### Conclusions of Law

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

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

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

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

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<sup>132</sup> Parent.

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more than *de minimis*’ progress from year to year can hardly be said to have been offered an education at all.” *Andrew F.*, 137 S. Ct. at 1001.

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

Petitioner carries the burden of production and persuasion, except on issues of the appropriateness of an IEP or placement on which Respondent has the burden of persuasion, if Petitioner establishes a prima facie case. D.C. Code Ann. § 38-2571.03(6); *Z.B. v. Dist. of Columbia*, 888 F.3d 515, 523 (D.C. Cir. 2018) (party seeking relief bears the burden of proof); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005). “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 provide an appropriate IEP and/or placement/location of services on 1/7/19 or 1/23/19, due to not (a) providing specialized instruction in an appropriate setting, (b) placing Student in the least restrictive environment, (c) classifying Student’s disability appropriately, and/or (d) accommodating Student’s needs with a BIP. (Respondent has the burden of persuasion, if Petitioner establishes a prima facie case.)*

Petitioner established a prima facie case on this issue, shifting the burden to Respondent, which met its burden of persuasion, as discussed below.

The applicable legal standard for analyzing the appropriateness of the IEPs 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.” *Andrew 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, *Andrew 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.*, 190 F. Supp. 3d at 51 (IEP must be “reasonably calculated to produce meaningful educational benefit”).

The measure and adequacy of the IEPs are determined as of the time they were 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 perfect IEPs, but simply IEPs reasonably calculated to enable Student to make appropriate progress. *Andrew F.*, 137 S. Ct. at 1001; *Z.B.*, 888 F.3d at 519

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(the IDEA “stops short of requiring public schools to provide the best possible education”). See also *Hill v. Dist. of Columbia*, 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 IEPs is analyzed by considering the specific concerns raised by Petitioner, which are considered below in turn.<sup>133</sup> See 34 C.F.R. § 300.320(a); *Honig*, 484 U.S. at 311.

(a) Appropriate Setting. As an initial matter, the applicable legal standard for educational placement/location of services 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, DCPS reasonably found that Student needed a BES classroom which would address Student’s severe behavioral issues (and ED classification). Student clearly needed the smaller classroom setting and high adult/student ratio, for Student was more likely to remain on task when working 1:1 with adults and more likely to become aggressive when working in a larger group. The BES classroom proposed for Student had 3-4 adults for 7 children, while Student’s general education class had just 1 teacher and a volunteer grandparent for 24-25 children. When not getting attention, Student became aggressive, cursed, yelled, provoked others, and was able to stay on task by self for no more than 1-2 minutes without redirection. DCPS offered a location to which Parent objected, but Parent then refused to engage further and was unwilling to discuss other possible locations. The undersigned concludes that DCPS met its burden on placement/location of services, as well as showing that the BES program was appropriate given Student’s ED disability classification and many behavioral issues, as discussed further below.

(b) Least Restrictive Environment. The law is clear that DCPS 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; *Andrew 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*, 2018 WL 4623572, at \*3 (D.D.C. 9/26/18).

Here, DCPS acknowledged that the IEP team moved with unusual speed in providing a full-time IEP outside general education to Student as an initial IEP, but credibly explained that DCPS sought to provide all the assistance possible to Student based on the substantial needs demonstrated. School Psychologist emphasized that Student was

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<sup>133</sup> A Hearing Officer must also determine whether “the State complied with the procedures” set forth in the IDEA. *A.M. v. Dist. of Columbia*, 933 F. Supp. 2d 193, 204 (D.D.C. 2013), quoting *Rowley*, 458 U.S. at 206-07. Procedural violations were not specifically alleged in this matter.

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deteriorating emotionally and needed strong intervention by the team or might have been facing hospitalization and inability to access the curriculum altogether. By contrast, Petitioner's expert considered 20 hours/week inside general education to be Student's LRE, but acknowledged during the hearing that pull-out for specialized instruction in reading and math would be helpful, ultimately suggesting 10 hours/week inside general education and 10 hours/week outside general education. Educational Advocate further acknowledged that smaller classes would be helpful for Student, moving significantly in the direction of DCPS's IEP. Importantly, co-teaching had already been attempted with Student at Prior School, but Student did not respond well to inclusion. The undersigned is thus convinced based on the steps tried and the severity of Student's emotional needs that Student's IEPs were reasonable and, under the circumstances, were not overly restrictive for Student at the time they were developed.

(c) Classification of Disability. Petitioner disagreed with the ED classification of Student, suggesting it should be OHI or possibly another category such as autism spectrum disorder. In theory, LEAs are not required to classify children by their disability as long as they have been found eligible to receive the special education and related services they need. *See* 20 U.S.C. § 1412(a)(3)(B); 34 C.F.R. § 300.111(d). It is a student's identified needs, not the disability category, that determine the services that must be provided to the child. 34 C.F.R. § 300.320(a)(2)(i); *Letter to Anonymous*, 48 IDELR 16 (OSEP 2006); *Heather S. v. State of Wis.*, 125 F.3d 1045, 1055 (7th Cir. 1997) (the "IDEA charges the school with the responsibility of developing an appropriate education, not with coming up with a proper label").

In practice, the disability classification can be quite important to the education the child receives, as here, where DCPS was clear that with a proper ED classification Student should be placed in a BES classroom, while an OHI/ADHD determination would likely have pointed toward a different placement. Indeed, *Smith v. Dist. of Columbia*, 2018 WL 4680208 (D.D.C. 9/28/18), highlights the importance of proper disability classification when needed to provide for the unique needs of each student. In *Smith*, the Court held that placing a student in a Specific Learning Support ("SLS") classroom if the child was known to be classified as ED was a denial of FAPE, for the classroom needed to be tailored to the student's needs. *Smith*, 2018 WL 4680208 at \*6-7, *citing Z.B.*, 888 F.3d at 523.

Here, Student had very serious behavioral challenges pointing to ED that were worsening in the view of both school staff and Parent. The thorough FBA described Student's problems and challenges in persuasive detail, including physical aggression (kicking, fighting, slapping, punching, grabbing throats), defiance (curses, lies, verbally aggressive), and emotional dysregulation (explosive outbursts, self-injurious behavior, poor anger control, screaming). In one observation, Student repeatedly engaged in aggressive behaviors without provocation and had 45 incidents of physical aggression during a 3.5 hour period, displaying disruptive behaviors 59% of the time. Student could not be taught or even controlled when dysregulated, and was not available to learn due to emotional instability. In addition, Student may have auditory and visual hallucinations and had exposure to significant mental illness in the nuclear family.

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The undersigned is convinced by DCPS's evidence that no error was made when determining Student's classification of ED. The team had focused on the classification of OHI/ADHD, but Parent encouraged the team to consider ED, based on the detailed FBA. The team was concerned about a classification of ED for a student so young, but Parent was adamant about ED based on her experience with an older daughter. The team, including Parent, completed the disability worksheet for ED, and based on the rubric shifted to ED, with which the entire team, including Parent, was in agreement.

(d) Behavioral Intervention Plan. The IDEA requires in the case of a student whose behavior impedes the student's own learning, as here, that the IEP team consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. 34 C.F.R. § 300.324(a)(2)(i). *See Middleton*, 312 F. Supp. 3d at 146. Here, the 11/29/18 FBA recommended a comprehensive BIP to address emotional dysregulation and compliance, and a 6-page long BIP Level II was developed for Student on 12/20/18, based on the targeted behaviors of defiance, off-task behavior and physical aggression. The BIP was timely as it was prepared at the time Student's eligibility for special education services was determined. Nor would more detail have prevented the need for a robust IEP and full-time placement. The undersigned reviewed the BIP and found it suitable and not in violation of IDEA requirements.

Whether the concerns above are considered individually or as a whole, this Hearing Officer concludes that the IEPs were reasonably calculated to enable Student to make appropriate progress in Student's circumstances, and that the placement/locations of service were also appropriate.

**Issue 2:** *Whether DCPS denied Student a FAPE by failing to timely and comprehensively evaluate in all areas of suspected disability during 2017/18 and 2018/19, when it did not conduct (a) a speech-language evaluation, (b) a neuropsychological evaluation, (c) an evaluation to confirm or rule out autism spectrum disorder, and/or (d) an adaptive evaluation. (Petitioner has the burden of persuasion on this issue.)*

Petitioner failed to meet her burden on the issue of timely and comprehensive evaluations of Student.

The importance of assessing children in all areas of suspected disability was emphasized in *Z.B.*, 888 F.3d at 518, *quoting* 20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.301. The Appellate Court explained in *Z.B.*, 888 F.3d at 524, that failing to conduct adequate assessments was a procedural violation that could have substantive effects by preventing the IEP team from obtaining necessary information about the student. *See also Long v. Dist. of Columbia*, 780 F. Supp. 2d 49, 60-61 (D.D.C. 2011) ("in the absence of necessary and appropriate evaluations the district cannot develop a program that is tailored to the student's unique needs and reasonably calculated to enable [the student] to receive educational benefits" (citation omitted)); *Hill*, 2016 WL 4506972, at \*18; 34 C.F.R. § 300.304(c)(4).

On the other hand, the IDEA does not require a public agency to administer every test requested by a parent or recommended in an evaluation, as the public agency has the

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prerogative to choose assessment tools and strategies to gather relevant information based on the suspected needs of the child. *Z.B.*, 888 F.2d at 518; Office of Special Education and Rehabilitative Services, U.S. Department of Education, *Analysis of Comments and Changes*, 71 Fed. Reg. 46643 (2006); *James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 143 (D.D.C. 2016). The specific evaluations sought by Petitioner are considered in turn.

As an initial matter, it is clear to the undersigned that there is no violation due to not conducting an evaluation when initially requested in 2017/18. DCPS received the first referral for an initial evaluation of Student on 4/10/18, which resulted in a review of existing data by the IEP team on 4/19/18. The team determined not to proceed with the evaluation process due to Student's chronic absenteeism, with some 53 missed days in 2017/18, which significantly impacted Student's ability to consistently access the curriculum. The team agreed to monitor Student's progress and reconvene in 2018/19, which it did in order to also respond to a referral from Student's pediatrician early in 9/2018.

(a) Speech-Language Evaluation. Although Petitioner did not initially request a speech-language evaluation Prior School agreed in October to do a speech-language screening, which determined that no further testing was needed, and Parent reportedly had no concerns. However, in Petitioner's counsel's 3/18/19 letter a full speech-language evaluation was requested and at the resolution meeting the school team agreed to proceed with a full speech-language evaluation, a commitment with which the undersigned expects DCPS to follow through.

(b) Neuropsychological Evaluation. Petitioner sought a neuropsychological evaluation (and adaptive evaluation, below) to provide insight into whether Student was on the autism spectrum. Neuropsychological evaluations are generally used outside the school setting, as they provide little in the way of educational recommendations. Student's pediatrician could have directly referred Student for a neuropsychological evaluation if needed, as they generally are not provided in school, but the pediatrician did not.

(c) Evaluation to Confirm or Rule Out Autism Spectrum Disorder. Apart from the neuropsychological and adaptive evaluations discussed and found unnecessary herein, the undersigned is convinced that no other evaluation is needed for purposes of determining if Student is on the autism spectrum. In testimony, School Psychologist addressed Parent's concerns about autism, explaining that repetitive motions or chewing on clothing could have causes other than autism, and that based on the Behavioral Symptoms Index of the BASC-3, School Psychologist had no concerns that Student was on the autism spectrum. School Psychologist saw no signs of a red flag for autism, for Student seeks attention while autistic children avoid attention. Further, Student's pediatrician flagged numerous areas of possible concern for Student, but did not mention autism, an area in which a pediatrician would have performed early screening, if warranted. Moreover, Prior School has 5 CES classrooms for (mostly) autistic children, so Prior School's staff knew what to look for when the team met and discussed areas of disability, but no one raised concerns about autism despite their familiarity with it.

(d) Adaptive Evaluation. Petitioner also sought an adaptive evaluation to provide insight into whether Student was on the autism spectrum. Student did not need an adaptive

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evaluation as Student was making gains academically, and Student had no indication of autism, as discussed above. Nor was an adaptive evaluation needed due to signs of ID, for Student quickly responds to stimuli, unlike children with ID. Moreover, Student’s CIX score was 72, which is above the cutoff, and both Clinical Psychologist and School Psychologist thought the score was likely too low for Student.

In sum, this Hearing Officer is not persuaded that any further evaluations are needed to provide a FAPE to Student at this time. *See Smith v. Dist. of Columbia*, 2010 WL 4861757, at \*4,5 (D.D.C. 2010) (no relief warranted where petitioner has not shown that the child’s “education would have been different” but for the violation). However as noted above, DCPS is expected to follow through on its commitment to provide a full speech-language evaluation.

**ORDER**

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

**IT IS SO ORDERED.**

Dated in Caption

*/s/ Keith Seat*

Keith L. Seat, Esq.  
Hearing Officer

**NOTICE OF RIGHT TO APPEAL**

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

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