

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

<b>Parents on behalf of Student<sup>1</sup></b>	)	<b>Case No. 2020-0199</b>
	)	
<b>Petitioner,</b>	)	<b>Hearing Dates: April 22, 23, and 26, 2021</b>
	)	<b>and June 2, 2021</b>
	)	<b>Conducted by Video Conference</b>
<b>v.</b>	)	
	)	<b>Date Issued: June 14, 2021</b>
<b>District of Columbia Public Schools,</b>	)	
	)	<b>Terry Michael Banks,</b>
<b>Respondent.</b>	)	<b>Hearing Officer</b>

**HEARING OFFICER DETERMINATION**

**INTRODUCTION**

Petitioner is the father of an X-year-old student (“Student”) attending School A. On November 18, 2020, Petitioner filed a *Due Process Complaint Notice* (“*Complain*”) alleging that the District of Columbia Public Schools (“DCPS”) denied the student a free appropriate public education (“FAPE”) by failing to provide an appropriate Individualized Education Program (“IEP”) and placement for the 2020-21 school year. DCPS filed *District of Columbia Public Schools’ Response* (“*Response*”) on November 30, 2020, denying that it had failed to provide a FAPE in any way.

**SUBJECT MATTER JURISDICTION**

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the Individuals with Disabilities Education Improvement Act (“IDEIA”), 20 U.S.C. Section 1400 *et seq.*, its implementing regulations, 34 C.F.R. Sect. 300 *et seq.*, Title

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

38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-E, Chapter 30.

### PROCEDURAL HISTORY

Petitioner filed the *Complaint* on November 18, 2020 alleging that DCPS denied Student a FAPE by failing to provide an appropriate IEP and placement for the 2020-21 school year. DCPS filed its *Response* on November 30, 2020 and asserted that (1) due to COVID-19 restrictions imposed on or about March 16, 2020, DCPS facilities and School A had been closed, resulting in virtual instruction. “Therefore, issues regarding the number of hours of specialized instruction in general education, class size, building size, noise levels, etc., are no longer an issue in the virtual environment,” (2) DCPS issued a Prior Written Notice on November 2, 2020 that addressed the allegations in the *Complaint*, (3) the IEP proposed by DCPS on November 2, 2020 was appropriate and represented Student’s least restrictive environment (“LRE”), (4) Petitioner had not participated in good faith in the IEP process and had not provided appropriate notice of his decision to make a unilateral private placement, indicating no genuine intent to enroll Student in a DCPS school, warranting a reduction or denial of relief, and (5) School A is not Student’s LRE and thus, not an appropriate placement.

The parties participated in a resolution meeting on December 9, 2020 that did not result in a settlement. The resolution period ended on December 18, 2020. A prehearing conference was conducted by video conference on December 18, 2020, and the Prehearing Order was issued that day.

The due process hearing was convened on March 2, 2021. On February 26, 2021, Petitioner’s counsel had objected to a proposed Respondent expert witness on the grounds that Respondent disclosed the witness’ resume after the deadline set forth in the Prehearing Order. I sustained the objection and continued the hearing to the first mutually convenient dates, April 22, 23, and 26, 2021. During the last day of hearings on April 26, 2021, it was agreed that an additional day of testimony was required. The parties agreed that the additional day of hearings would be June 2, 2021. The parties also agreed to a continuance to extend the Hearing Officer Determination (“HOD”) due date to June 14, 2021.

The hearing was conducted on April 23, 23, and 26, 2021 and June 2, 2021 by video conference and was closed to the public. Respondent’s *Supplemental Disclosure Statement*, filed April 14, 2021, contained a witness list of ten witnesses and documents R-1 through R-23. On February 26, 2021, Petitioner filed objections to DCPS’ original set of disclosures, resulting ultimately in the continuance. The first objection, to Witness H testifying as an expert due to the failure to disclose a *curriculum vitae* was moot, as DCPS’ timely supplemental disclosure included that *curriculum vitae*. Petitioner also objected to expert testimony of Witness J on the same grounds. Respondent’s counsel stipulated that the witness would not be offered as an expert. Finally, Petitioner objected to R8 because it was incorrectly labeled as an IEP rather than an IEP cover page followed by Meeting Notes. I overruled this objection, indicating that I would address the mislabeling, if necessary, in the HOD. At the inception of Respondent’s direct case, Respondent’s Exhibits R-1 through R-23 were admitted into evidence.

Petitioner's Disclosures were also submitted on February 23, 2021, containing a list of five witnesses and documents P1-P32. DCPS objected to expert testimony from Witness A, but gave no reason for the objection. DCPS objected to expert testimony of Witness B on grounds that "the CV does not support testimony concerning evaluation of disabilities and needs." DCPS objected to expert testimony from Witness C as Student's speech and language needs are not at issue. DCPS objected to expert testimony from Witness I on the grounds that "her resume does not support expertise in special education, and OT services are not at issue." DCPS also objected to potential financial conflicts of interests was to all of Petitioner's witnesses, "if the evidence show that Petitioner has failed to properly disclose a potential financial interest which may create a conflict." Specifically, DCPS objected to any contingency arrangement between Petitioner and the witnesses. These objections were deferred until the witnesses' testimony was elicited. Respondent also objected to proposed Petitioner's Exhibits P2, P3, P20, P27, and P32. I deferred ruling on Petitioner's Exhibits P2 and P32,<sup>2</sup> sustained the objection to P20, and overruled the objections to P3 and P27.

Petitioner rested his direct case during the second day of hearings. Respondent moved for a directed verdict on the issue of the appropriateness of the 2020-21 IEP and placement. I denied the motion due to testimonial and written opinions in the record that Student requires a more restrictive setting than was offered by DCPS.

During the third day of hearings on April 26, 2021, it was agreed that an additional day of testimony was required. The parties agreed that the additional day of hearings would be on June 2, 2021. Petitioner's counsel indicated his intention to call a rebuttal witness. I advised Petitioner's counsel that if he intended to call a witness that was not disclosed in his February 23, 2021 disclosure statement, to file a memorandum of points and authorities to provide precedents for calling a previously undisclosed witness after a continuance.

On May 25, 2021, Petitioner filed a *Memorandum* in which Petitioner's counsel requested permission to add Student's grandmother to Petitioner's witness list. Petitioner also filed a revised disclosure statement, back-dated to February 23, 2021, adding Student's grandmother as a witness and proposed Exhibits P33-P35. On May 27, 2021, I issued an *Order* excluding Student's grandmother as a witness, as she had been allowed to attend the closed hearing, over DCPS' objection, with Petitioner's counsel's assurance that she would not be called as a witness. When the hearing resumed on June 2, 2021, Petitioner's proposed exhibits P33-P35 were admitted into evidence.

Petitioner presented as witnesses in chronological order: Witness A, Petitioner, Witness B, and Witness C. Petitioner offered Witness A as an expert in Psychology and Witness C was offered as an expert in Special Education. There was no objection to expert testimony in these categories and I allowed opinion testimony from each of these witnesses. Respondent presented as witnesses in chronological order: Witness D, Witness E, Witness F, Witness G and Witness H. Witness D and Witness E were offered as an experts in Special Education Programming and Placement, Witness F was offered as an expert in Psychology, Witness G was offered as an expert in General Education and Inclusion, and Witness H was offered as an expert in Special Education and Placement. Petitioner did not object to these

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<sup>2</sup> This Exhibit contained two evaluations, dated October 5, 2020 and January 22, 2021, respectively. The only objection was to the October evaluation.

witnesses' qualifications, and I allowed each to offer opinion testimony in their areas of expertise.

After the close of testimony on June 2, 2021, I authorized counsel to file pleadings providing the cases on which they rely on or before June 7, 2021. On June 7, 2021, Petitioner filed *Parents' Closing Authorities*, and Respondent filed *District of Columbia Public Schools' Case Citations*. After the close of testimony, I also sustained the objection to proposed Exhibit P2 and overruled the objection to proposed Exhibit P32. Thus, Petitioner's Exhibits P1, P3-P19, and P21-P35 were admitted into evidence.

## ISSUES

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

1. Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and placement for the 2020-21 school year.
2. Whether School A is an appropriate program.

## FINDINGS OF FACT

1. Student is X years old and was in grade F<sup>3</sup> at School A during the 2020-2021 school year.<sup>4</sup>

2. School A is a non-public, special education school in which all of the students have Specific Learning Disability ("SLD") as one of their classifications.<sup>5</sup>

3. On June 29, 2018, when Student was in grade C at School C, DCPS completed an Initial Comprehensive Psychological Evaluation of Student due to concerns with processing information, memory, speech, and below average scores on standardized tests.<sup>6</sup> Examiner A interviewed Student's teacher, Teacher A, who described him/her as confident, often willing to volunteer to read in class, "is very sweet and affectionate," is well behaved, follows directions, but has difficulty with social cues.<sup>7</sup> On the Reynolds Intellectual Assessment Scales ("RIAS-2"), Student scored in the Below Average range on the Composite Intelligence Index (81; 10<sup>th</sup> percentile), and the Nonverbal Intelligence Index (89; 23<sup>rd</sup>). S/he scored in the Borderline range on the Verbal Intelligence Index (78; 7<sup>th</sup>) and on the Composite Memory Index (73; 4<sup>th</sup>).<sup>8</sup> On the Woodcock-Johnson Test of Academic Achievement ("WJ-

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<sup>3</sup> Petitioner's Exhibit ("P:") 25 at page 1, electronic page 225. The exhibit number and page are followed by the electronic page number in the disclosure in parentheses, i.e., P25:1 (225).

<sup>4</sup> P27:1 (252).

<sup>5</sup> Testimony of Witness B.

<sup>6</sup> P4:1 (25).

<sup>7</sup> *Id.* at 3 (27).

<sup>8</sup> *Id.* at 4-5 (28-29). The range was described as "Moderately Below Average" in the text, but "Borderline" on the "Classification of RIAS Standard Scores." *Id.* at 5 (29).

IV”), Student’s Reading scores were Low Average in Broad Reading (86), Letter-Word Identification (86), Sentence Reading Fluency (85), Passage Comprehension (89), and Word Attack (83), and Average in Oral Reading (90). In Written Language, Student scored Low Average in Broad Written Language (85), Spelling (83), Writing Samples (88), and Sentence Writing Fluency (89). In Math, s/he was Average in Broad Math (91), Math Facts Fluency (97), and Applied Problems (92), and Low Average in Calculation (85).<sup>9</sup> On the Gray Oral Reading Tests (“GORT-5”), his/her performance resulted in Poor overall reading skills.<sup>10</sup>

Though [his/her] overall Broad reading skills were in the Low Average range, [his/her] functional reading skills, including phonemic awareness ability was below age and grade expectations...<sup>11</sup> [Student’s] test results indicate that [s/he] has unevenly developed cognitive skills with weaknesses in verbal as evidenced by the RIAS-2. [S/he] earned Moderately Below Average scores on the Verbal Intelligence Index and Below Average scores on the Nonverbal Intelligence Index. An analysis of [her/his] cognitive and academic results reveal that there is a pattern of strength and weakness of at least two standard deviations below [her/his] cognitive ability in reading as evidence by [his/her] performance on the [GORT-5].<sup>12</sup>

Examiner A concluded that Student met the criteria for a Specific Learning Disability (“SLD”):

[Her/his] cognitive academic profile suggests that [s/he] may experience difficulty acquiring and retaining information. Specifically, [his/her] challenges with memory and crystalized verbal intelligence, impact [her/his] overall academic performance. Deficits connected to [his/her] verbal or crystalized intelligence directly impact [her/his] ability to efficiently use skills, knowledge, and experience. Though this does not equate to memory, memory skills are necessary as [Student] will often need to access information from long-term memory. These challenges may serve as an obstacle for [her/him] to optimally perform academically. Additionally, [s/he is performing below age and grade expectation with a Specific Learning Disability (SLD)].<sup>13</sup>

4. On August 2, 2018, DCPS developed Student’s initial IEP as a student with an SLD.<sup>14</sup> Reading was the only Area of Concern, and the Present Levels of Academic Achievement and Functional Performance (“PLOP”) included findings from the June 29, 2018 Psychological Evaluation. The Reading baselines were: (1) His/her difficulty retaining information that s/he has just read prevents him/her from comprehending what s/he has read, (2) The 2018 psychological evaluation indicated his/her need for explicit instruction in making inferences, poor overall reading and comprehension skills, and (3) His/her results on the GORT-5 indicate Poor overall reading skills. The goals were: (1) When given an

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<sup>9</sup> *Id.* at 6-8 (30-32).

<sup>10</sup> *Id.* at 7 (31).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 9 (33).

<sup>13</sup> *Id.* at 11 (35).

<sup>14</sup> P6:1 (55).

independent or instructional level text, and provided with a vocabulary word banks and/or sentence starts, Student will read 5 chunked sections of text, one section of text at a time, and stop at the end of each section to summarize what s/he has just read, identifying w important details from each section, (2) After reading an independent level text, Student will make an inference, select 2 details from the text to support the inference, and verbally explain how the details support her/his understanding of the inference, and (3) After reading an independent level test, s/he will identify the main idea and two key details that support the main idea. The IEP team prescribed three hours per week of specialized instruction in general education and one hour outside general education,<sup>15</sup> and numerous “Other Classroom Aids and Services” to address his/her reading deficits.<sup>16</sup>

5. Student enrolled at School B for the 2018-19 school year.<sup>17</sup>

6. On October 15, 2018, when Student was in grade F at School B, the IEP team convened a meeting to revise Student’s IEP.<sup>18</sup> Math was added as an Area of Concern. The Present Levels of Academic Achievement and Functional Performance (“PLOP”) provided that Student was performing at grade level H (three grades below his/her current grade) on the fall 2018 IReady Diagnostic, in Numbers and Operations, and Geometry, and grade A (two grades below his/her current grade) in Algebra and Algebraic Thinking and Measurement. S/he “is able to count objects, create equal groups, and accurately add and subtract most single-digit numbers. With support, [Student] can skip count by 2s, 5s and 10s to 100. [S/he] can also build arrays to match a multiplication expression, although [s/he] has difficulty expressing what an array’s rows and columns represent. [Student] is developing an understanding of place value by identifying tens and ones in a two-digit number... With support, [Student] is able to read and interpret one-step word problems.”<sup>19</sup> The baselines were: (1) In a recent untimed assessment, Student accurately solved 78% if addition and subtraction problems, (2) S/he requires graphic organizers and support from a teacher to determine the correct operation needed to solve a problem, (3) In a recent assessment, Student identified more or less than a given number with 70% accuracy, (4) Starting at 0, Student is able to skip count by 2s, 5s, and 10s to 100 with minor mistakes, (5) In a recent assessment, Student accurately solved 2 multiplication problems in 4 minutes. The goals were: (1) Student will be able to solve 20 addition and 20 subtraction problems in 3 minutes with 90% accuracy, (2) After a word problem is read to her/him, Student will be able to determine the correct operation needed to solve the problem by writing an equation or modeling the problem with a tape diagram, (3) Given any two or three digit number, Student will be able to identify what is ten more, ten less, one hundred more or one hundred less, (4) Starting at any number, Student will be able to count by 5s, 10s or 100s, (5) Student will solve 15 mixed-factor multiplication problems in 3 minutes.<sup>20</sup>

In Reading, the PLOP reported Student’s Reading scores from the 2018 WJ-IV test. It also indicated that s/he was reading Level D texts independently according to the Fountas

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<sup>15</sup> *Id.* at 7 (61).

<sup>16</sup> *Id.* at 8 (62).

<sup>17</sup> Testimony of Petitioner.

<sup>18</sup> P7:1 (67). Subsequent pages of the IEP were marked “DRAFT,” but the Progress Report that was issued on June 12, 2019 reveals that it was implemented.

<sup>19</sup> *Id.* at 3 (69).

<sup>20</sup> *Id.* at 3-4 (69-70).

and Pinnell (“F&P”) Assessment System.<sup>21</sup> While reading aloud, s/he “often omits word endings and sometimes omits whole words and phrases... [S/he] requires prompting to apply [his/her] knowledge of vowel patterns and attention to the last letter to accurately solve... [S/he] is able to read a [grade A]<sup>22</sup> level passage at a rate of 99 words per minute...”<sup>23</sup> The baselines were: (1) Student reads primarily word-by-word, (2) In a recent assessment, Student accurately read 13% of Wilson Assessment of Decoding and Encoding (“WADE”) high-frequency words, (3) When retelling a story independently, Student can name one or two pieces of information from the story, (4) S/he is able to identify when a character feels happy or sad, but often confuses traits and feelings, (5) S/he does not yet revise his/her work. The goals were: (1) Student will be able to fluently read a text in 3-4 word phrase groups with appropriate phrasing and intonation, (2) When presented with the WADE sight word list, Student will correctly identify 90% of high-frequency words in 2/3 trials, (3) After reading a text at his/her independent level, Student will retell a story in sequence and include character names, the setting, important events, the problem, and the solution or resolution, (4) After reading a text at his/her independent level, Student will be able to name a main character and correctly identify/attribute at least one character trait and one feeling to the character, and (5) After completing a written narrative, Student will reread and revise his/her work for clarity and elaborate by adding details.<sup>24</sup>

Written Expression was added as an Area of Concern. The PLOP provided that “[S/he] requires teacher support to plan a chosen idea with a clear beginning, middle and end. When given a graphic organizer, [Student] is able to sketch story scenes in order. [S/he] is also able to write short sentences to describe what happened in each scene. [Student] is not yet able to organize [his/her] ideas independently.” The baselines were: (1) S/he has difficulty generating genre-appropriate ideas for writing, (2) S/he requires support to plan an organized piece, (3) In a recent assessment, Student wrote 3 sentences containing CVC words that had been dictated to him/her, and s/he spelled 54% correctly, but omitted many words and did not use ending punctuation, (4) S/he requires support to edit his/her work. The goals were: (1) Student will be able to generate 2-3 genre-appropriate ideas by using sentence stems, (2) After generating his/her ideas, Student will use a graphic organizer to plan a piece that follows a logical sequence, (3) S/he will encode common spelling patterns including CVC, CVVC, CVCe words to construct and read back sentences that express complete thoughts, and (4) Given a draft of his/her writing, Student will edit his/her work for complete sentences, appropriate capitalization of proper nouns, and ending punctuation.<sup>25</sup>

The IEP team prescribed 7.5 hours of specialized instruction per week in general education and two hours per week outside general education. The “Other Classroom Aids and Services” prescribed were preferential seating, manipulatives, graphic organizers, read aloud higher-level texts, frequent movement breaks, and access to a computer for supplemental instruction.<sup>26</sup>

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<sup>21</sup> In the F&P System, Level D equates to a grade H grade equivalent level, three grades below Student’s grade during the 2018-19 school year. <https://www.fountasandpinnell.com/textlevelgradient>.

<sup>22</sup> Grade A is two grades below Student’s grade during the 2018-19 school year.

<sup>23</sup> P7:5 (71).

<sup>24</sup> *Id.* at 5-6 (71-72).

<sup>25</sup> *Id.* at 7-8 (73-74).

<sup>26</sup> *Id.* at 9 (75).

7. On February 12, 2019, Examiner B completed an Occupational Therapy Assessment Report.<sup>27</sup> Examiner B interviewed Student, Petitioner, and Teacher B, observed Student in the classroom, and conducted clinical examinations. Examiner B concluded that Student's strengths were range of motion, strength and bilateral coordination, static and dynamic balance, oculomotor skills, sensory processing – auditory and tactile, and average visual motor integration. Examiner B concluded that Student needed support in grasp and fine motor control and coordination, producing legible handwriting and handwriting fluency, postural integration, sensory processing – movement and visual information, visual perceptual skills, and attention skills.

[Student] presents as a sweet and engaging [grade F] [REDACTED]. [S/he] has many skills that support [her/his] participation and learning in the school environment. [S/he] has strong physical skills: strength, range of motion and gross motor coordination. [S/he] presents with oculomotor skills within normal limits. [Student] presents with deficits in fine motor control and coordination, postural integration and visual perceptual skills. These deficits impact [her/his] ability to produce legible written work in the expected timeframes that reflects [her/his] understanding of the content. [Student] struggles to direct and maintain [his/her] attention long enough to gain new skills to support [his/her] learning. [S/he] struggles to maintain the expected postural sets while sitting at [his/her] desk or during group instruction times when [s/he] is expected to sit on the carpet. [S/he] has the strength and coordination necessary to sit and may be moving around in order to help [her/him] pay attention.<sup>28</sup>

Examiner B recommended the following schoolroom accommodations for Student: testing accommodations – extra time, directions read out loud, small group and familiar proctor testing situation, access to voice-to-text with prediction software for spelling, preferential seating, and pencil grips and other modified papers as needed.<sup>29</sup>

8. On February 25, 2019, DCPS issued a Prior Written Notice (“PWN”) changing Student's classification to Multiple Disabilities, adding OHI to his/her existing SLD, due to the effect of ADHD on his/her academic performance.<sup>30</sup>

9. On March 13, 2019, DCPS convened a meeting to revise Student's IEP.<sup>31</sup> The Math PLOP, baselines, and goals were unchanged from the previous IEP.<sup>32</sup> In Reading, the PLOP and the first four baselines and goals were unchanged, but the fifth, regarding work revision, was eliminated.<sup>33</sup> In Written Expression, the only change was an additional baseline s/he resists editing drafts, and goal, after completing a written narrative, Student will reread

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<sup>27</sup> P8:1 (80).

<sup>28</sup> *Id.* at 10 (89).

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

<sup>30</sup> P18:1 (200).

<sup>31</sup> Respondent's Exhibit (“R:”) 13 at page 1, electronic page 110. The exhibit number and page are followed by the electronic page number in the disclosure in parentheses, i.e., R12:1 (110).

<sup>32</sup> *Id.* at 3-4 (112-13).

<sup>33</sup> *Id.* at 5-6 (114-15).



his/her work for clarity and elaborate by adding details.<sup>34</sup>

Motor Skills/Physical Development (“Motor Skills”), was added as an Area of Concern. The PLOP indicated that Student’s strengths were in overall strength, range of motion and gross motor coordination. Her/his deficits were in the areas of fine motor control and visual motor skills, which impact her/his ability to produce timely, legible written work. S/he is able to write a four-sentence paragraph in 10 minutes with three redirects. S/he sometimes struggles to maintain attention long enough to gain new skills to support her/his learning. The baselines were: (1) S/he had 47% adherence with a Tripod grasp with heavy pressure, and (2) S/he can write 2 sentences in 10 minutes. The goals were: (1) Student will demonstrate improved visual motor coordination by producing written text with a functional grasp and adherence of 60%, and (2) S/he will demonstrate an improved rate of written production by writing 5 sentences in 10 minutes with 2 verbal prompts.<sup>35</sup>

Student’s specialized instruction was not changed from the previous IEP and the IEP team added two hours per month of occupational therapy (“OT”) services. The “Other Classroom Aids and Services” prescribed were preferential seating, manipulatives, graphic organizers, read aloud higher-level texts, frequent movement breaks, and access to a computer for supplemental instruction.<sup>36</sup>

10. On June 12, 2019, DCPS issued an IEP Progress Report for the 2018-19 school year.<sup>37</sup> In Math, Student was reported to have progressed on her/his first, second, and fifth goal, and mastered her/his third and fourth goals. In Reading, s/he had mastered the first two goals, and progressed on the third and fourth. In Written Expression, Student was progressing on all four goals, and on a fifth goal that was not on the October 2018 IEP: demonstrating an improved rate of written production by writing 5 sentences in 10 minutes with 2 verbal prompts.<sup>38</sup>

11. On February 7, 2020, DCPS issued an IEP Progress Report for the first two reporting periods of the 2019-20 school year.<sup>39</sup> In Math, Student was reported to have mastered his/her first and fourth goals, and was progressing on the other three goals.<sup>40</sup> In Reading, Student was reported to have mastered the first four goals and was progressing on the fifth. Witness E noted that during a January 2020 F&P assessment at a level L, Student read with appropriate fluency, phrasing, and with 98% accuracy, retold stories in order with all key information, and accurately described character traits.<sup>41</sup> When presented with the WADE word list, s/he correctly identified 90% of the words.<sup>42</sup> In Written Expression, Student had mastered the first goal, and was progressing on the remaining four goals.<sup>43</sup> In Motor

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<sup>34</sup> *Id.* at 6-8 (115-17).

<sup>35</sup> *Id.* at 8-9 (117-18).

<sup>36</sup> *Id.* at 10 (119).

<sup>37</sup> P9: 1 (90).

<sup>38</sup> *Id.* at 1-7 (90 – 96).

<sup>39</sup> R21:38 (247).

<sup>40</sup> *Id.* at 38-40 (247-49).

<sup>41</sup> In the F&P System, Level L is mid-grade C,

<sup>42</sup> *Id.* at 40-41 (249-50).

<sup>43</sup> *Id.* at 42-44 (251-53). Witness E testified that she should have reported that Student also mastered the second goal.

Skills, s/he was progressing on both goals.<sup>44</sup>

12. On February 11, 2020, when Student was in grade E at School B, DCPS convened an IEP Annual Review meeting.<sup>45</sup> The Math PLOP reported iReady testing in January 2020 that showed Student was performing two grades below current level Overall, at grade level in Numbers and Operations, three grades below in Algebra and Algebraic Thinking, one grade below in Measurement and Data, and two grades below in Geometry.

[Student] has made a lot of progress in math this year. Without support, [Student] is able to add five-digit numbers that require regrouping, as well as round to the greatest place value to check for reasonableness. With limited prompting, [Student] is able to subtract five-digit numbers that require regrouping, as well as round to the greatest place value to check for reasonableness. With support and with use of a multiplication chart, [Student] is able to multiply multidigit numbers using the partial product strategy. With limited support and with use of a multiplication chart, [Student] is able to divide use a place value strategy, as well as check [her/his] work with multiplication, including adding on the remainder... Student's addition and subtraction fast facts are strong. [S/he] is still working on [her/his] multiplication facts... is able to make equivalent fractions by multiplying by a whole... is able to compare fractions using models and finding common denominators.

The baselines were: (1) on the most recent assessment, s/he solved 2 of 2 multidigit addition problems requiring regrouping, 2 of 2 multi-digit subtraction problems requiring regrouping, accurately rounded four problems, with support was able to solve a 2-digit by 2-digit and a 1-digit by 4-digit multiplication problem, and 2 multi-digit division problems; (2) Using a multiplication chart, Student accurately solved 28 of 20 mixed-factor multiplication problems in under two minutes; (3) Student accurately solved 2 of 2 multi-step word problems after having the problem read to her/him; and (4) Student showed a good understanding of comparing fractions and finding equivalent fractions. The goals were: (1) S/he will accurately solve multi-digit addition and subtraction problems that require regrouping, and multi-digit multiplication and division problems, (2) With the use of a multiplication chart, Student will solve 60 multiplication facts in under five minutes and 60 division facts in under five minutes, (3) After a multi-step word problem is read to her/him, Student will identify the important information in the question and the appropriate operations needed, draw models, and solve with equations using efficient strategies, and (4) With support, s/he will compare fractions with different denominators using appropriate strategies including but not limited to finding equivalent fractions, common denominators, using halves, and using models.<sup>46</sup>

In Reading, October 2019 testing found Student to be Average in Word Identification (90), Below Average in Fundamental Literacy Ability Index (86), and Very Poor in Sound-

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<sup>44</sup> *Id.* at 44-45 (253-54).

<sup>45</sup> P10:1 (97).

<sup>46</sup> *Id.* at 3-5 (99-101).

Symbol Knowledge (65). S/he is currently reading at F&P level M.<sup>47</sup> In a January 2020 inventory of 50 single-syllable real words and 50 single-syllable nonsense words, s/he read 92% of the single syllable real words correctly, 64% of the single syllable nonsense words, and 76% of real and nonsense single syllable words. In an inventory of 70 multisyllabic real words and 70 multisyllabic nonsense words, s/he read 77% of the multisyllabic real words correctly, 46% of the multisyllabic nonsense words, and 61% of real and nonsense words. The baselines repeated the inventory scores from the PLOP. Additionally, (1) Student is beginning to describe the ways in which a character changes across an independent level text, and (2) When prompted, s/he will stop and jot character traits, feelings or important facts or events. S/he does not yet read in chunks, pausing to think about what is happening or envision the story. The goals were: (1) When given a list of 50 single-syllable nonsense words, Student will accurately decode nonsense words with 85% accuracy, (2) When given a list of 50 two-syllable real words, Student will accurately decode words with 85% accuracy, (3) After reading or listening to an independent level text, Student will identify how and why a character changed across the text, and how the character was different after they changed, and (4) While reading a “just-right-level” text, s/he will demonstrate close reading strategies and monitor his/her thinking, noticing when s/he is confused, envisioning re-reading when needed, chunking the text, and using note-taking and annotation strategies.<sup>48</sup>

In Written Expression, the PLOP reported that s/he is able to generate multiple genre-appropriate ideas for writing, planned narratives that followed a logical sequence in the first advisory, began to write essays in the second advisory, is able to write a claim or thesis, and with support s/he was able to show reasons and evidence to support her/his claim. The baselines were: (1) S/he does not yet independently create a plan and organize her/his ideas before s/he drafts, (2) S/he requires support to plan and draft organized paragraphs, does not independently use transition words or include conclusion sentences in her/his paragraphs, (3) In recent assessments on CVC words, s/he correctly spelled 80% of the words, (4) S/he requires support to edit her/his work, often writing in fragmented or run-on sentences and (5) S/he requires prompting to reread and revise her/his work. The goals were: (1) After generating ideas for writing, Student will use prewriting strategies like completing a graphic organizer and verbally rehearsing, to create a plan before drafting, (2) S/he will follow his/her writing plan to draft an organized five-sentence informational or opinion paragraph with its component parts, (3) S/he will encode common spelling patterns including CVC, CVVC, CVCe words in isolation or in context, (4) Student will write a complete sentence with a subject and predicate, using correct capitalization and punctuation 85% of the time, and (5) After completing a written narrative, s/he will reread and revise the work for clarity and add details.<sup>49</sup>

In Motor Skills/Physical Development (“Motor Skills”), the PLOP indicated that Student’s strengths were in overall strength, range of motion and gross motor coordination. Her/his deficits were in the areas of fine motor control and visual motor skills, which impact her/his ability to produce timely, legible written work. S/he is able to write a four-sentence paragraph in 10 minutes with three redirects. S/he sometimes struggles to maintain attention

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<sup>47</sup> In the F&P System, Level M equates to the end of grade C, 1.5 grades below Student’s current level. <https://www.fountasandpinnell.com/textlevelgradient>.

<sup>48</sup> *Id.* at 5-7 (101-03).

<sup>49</sup> *Id.* at 8-11 (104-107).

long enough to gain new skills to support her/his learning. The baselines were: (1) S/he had 47% adherence with a Tripod grasp with thumb wrap, and (2) S/he can write 3-4 sentences in 10 minutes. The goals were: (1) Student will demonstrate improved visual motor coordination by producing written text with a functional grasp and adherence of 75%, and (2) S/he will demonstrate an improved rate of written production by writing five sentences in ten minutes with two verbal prompts.<sup>50</sup>

The IEP team reduced Student's specialized instruction inside general education from the previous IEP from 7.5 hours to five hours per week, increased the instruction outside general education from two to 2.5 hours per week, and added two hours per month of occupational therapy ("OT") services.<sup>51</sup> The team also prescribed a number of Classroom Accommodations.<sup>52</sup>

13. On May 13, 2020, School B issued Student's third term report card. Student was graded Proficient in Speaking and Listening, Social Studies, Science, Music, Art, and Health & Physical Education, and Basic in Reading, Writing & Language, and Math. In Work Habits, personal and social skills, Student completed tasks "Independently" or "With Limited Prompting" in the twelve observed categories.<sup>53</sup>

14. On June 10, 2020, DCPS issued an IEP Progress Report for the four reporting periods of the 2019-20 school year.<sup>54</sup> In Math, Witness D reported that Student progressed on her/his four goals during the third and fourth periods.<sup>55</sup> In Reading, Witness E reported that Student progressed on her/his four goals in the third period, and on all but her/his third goal in the fourth period. On the third goal, accurately identifying changes in a character over time, "[Student] did not engage in this goal during the fourth advisory of Distance Learning."<sup>56</sup> In Written Expression, Witness E reported that Student progressed on all five goals during the third reporting period, but "did not engage" on any of her/his goals during the fourth reporting period in distance learning.<sup>57</sup> In Motor Skills, Student's two goals were "Just Introduced" in the third period and s/he was reported to have progressed on both in the fourth quarter.<sup>58</sup>

15. On July 29, 2020, Witness A completed a Comprehensive Psychological Evaluation of Student at Petitioner's request.<sup>59</sup> Petitioner related Student's relevant academic history to Witness A: in grade C at School C, the staff noticed that Student "was not performing well as [his/her] peers in spelling and other academic abilities." Petitioner enrolled Student in School B for grade F for the 2018-19 school year, at which time was reading at a grade H level, three grades below grade F. By the end of grade F, Student was reading at a level one year below grade F. Petitioner reported that Student had trouble keeping

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<sup>50</sup> *Id.* at 11 (107).

<sup>51</sup> *Id.* at 12 (108).

<sup>52</sup> *Id.* at 14 (110).

<sup>53</sup> P12:1 (122).

<sup>54</sup> P13:1 (126).

<sup>55</sup> *Id.* at 1-3 (126-28).

<sup>56</sup> *Id.* at 3-5 (128-30).

<sup>57</sup> *Id.* at 6-8 (131-33).

<sup>58</sup> *Id.* at 8-9 (133-34).

<sup>59</sup> P14:1 (135).

up in Grade E, struggling to follow multi-step directions and with maintaining stamina throughout the school day. S/he fell even further behind when the COVID-19 pandemic led to virtual learning.<sup>60</sup>

On the Weschler Intelligence Scale for Children (“WISC-V”), Student’s full-scale IQ (85) and Global Ability (89) were in the Low Average range. His/her highest WISC-V score was in Verbal Comprehension (98 – Average), “indicating an area of personal strength.” Student was also Average in Fluid Reasoning (91) and Processing Speed (95), and was Low Average in Visual Spatial (86) and Working Memory (88).<sup>61</sup> Witness A evaluated Student’s attention and executive functioning using the Test of Variables of Attention (“TOVA”), which requires the student to focus intensely for 21 minutes. Student’s performance on the TOVA was “Not Within Normal Limits.” Her/his score on the Attention Performance Index “indicates significant difficulty sustaining attention over time.”<sup>62</sup> Witness A examined Student’s ability to process information efficiently, to shift attention, to inhibit responses, and to display cognitive flexibility on the Delis Kaplan Executive Functioning System (“D-KEFS”). On the Inhibition task of the Color Word Interference Test (“CWIT”), Student’s “performance indicates difficulty with inhibition and task-monitoring (i.e., monitoring one’s own work for mistakes).”<sup>63</sup>

Examiner analyzed Student’s behavior through rating scales completed by Student, Petitioner, Witness D, Witness E, and Witness G,<sup>64</sup> including the Behavior Rating Inventory of Executive Functioning (BRIEF-2)<sup>65</sup> and the Conners Comprehensive Behavior Rating Scale (Conners),<sup>66</sup> The testing indicated that Student met the diagnostic criteria for Attention Deficit/Hyperactivity Disorder (“ADHD”):

[Student] has difficulty sustaining attention during conditions of low arousal (i.e., tedious, non-preferred tasks) and controlling [her/his] attention during conditions of high arousal (i.e., novel, stimulating tasks). [Student] can become restless, bored, distractible, and fidgety. [S/he] has difficulty maintain consistent attention over time. [S/he] also has difficulty with inhibition and can make impulsive mistakes in [her/his] work. [Her/his] executive functioning difficulties include difficulties with initiation, emotional control, task-monitoring (i.e., observing [her/his] work for mistakes), planning/organization, organization of materials, and overall cognitive regulation. [S/he] demonstrates difficulty with auditory working memory...<sup>67</sup>

[Student’s] ADHD impacts [him/her] in the following ways: (1) Fluctuating attention during complex tasks (e.g. reading text, writing essays), (2) Distractibility (e.g. missing verbal directions), (3) Difficulty with auditory working memory, (4) Weak task-monitoring skills (i.e., careless errors,

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<sup>60</sup> *Id.* at 3 (137).

<sup>61</sup> *Id.* at 6-10, 33 (140-144, 167)

<sup>62</sup> *Id.* at 10 (144).

<sup>63</sup> *Id.* at 11-12 (145-46).

<sup>64</sup> *Id.* at 12-14, 36 -38, 423-43 (146-48, 170-72, 176-77).

<sup>65</sup> *Id.* at 37 (171).

<sup>66</sup> *Id.* at 42 (176).

<sup>67</sup> *Id.* at 14 (148).

undetected errors, mixing signs in math (+/-), (5) Difficulty approaching a task strategically, (6) ‘Losing the thread’ while solving a math problem writing an essay, or taking a test, (7) Low stamina (i.e., fading attention as time wears on or tasks become more difficult, (8) Fidgety, restlessness, and (9) Impulsive mistakes in [his/her] work (i.e., responding too quickly before carefully considering all of the information.”<sup>68</sup>

Student completed the Phonological Processing subtest of the Kaufman Tests of Educational Achievement (“KTEA-3”) and scored (74) in the Borderline range. S/he had difficulty blending sounds to make a new word, matching words that end with the same sound, making meaning out of words, and breaking down words into sound segments. “Phonological processing abilities provide the foundation for successful reading.”<sup>69</sup> Student was also Impaired in Letter Recognition Facility (69), was Borderline in Nonsense Word Decoding (73), Decoding Fluency (76), and Silent Reading Fluency (79), and Low Average in Letter and Word Recognition (87) and Word Recognition Fluency (87).<sup>70</sup> The Borderline score in Decoding Fluency “would mean that [s/he] reads instructional materials in [his/her] classroom at the ‘frustration level.’”<sup>71</sup> “Orthographic Processing is the process of converting graphic information in words (orthography) directly into meaning (semantics).”<sup>72</sup> On the Orthographical Processing subtest of the Feifer Assessment of Reading (“FAR”), Student scored (67) in the Impaired range, indicating “significant orthographic processing delays.”<sup>73</sup> On the Gray Oral Reading Test (GORT-5), Student scored in the Average range in Reading Rate in Reading Rate, but was Low Average in Reading Accuracy and Reading Fluency, and Borderline in Reading Comprehension and on the Oral Reading Index.<sup>74</sup> His/her Comprehension score indicates that “reading and understanding grade level material will still challenge him.”<sup>75</sup> Witness A concluded that Student met the diagnostic criteria for an SLD in Reading, or Dyslexia.

[Student] demonstrates severe impairments in [his/her] ability to process phonemes, recognize letters, decode, and recognize sight words. [Her/his] basic reading skills are inadequate for grade level text, leaving [her/him] struggling to read classroom materials at the ‘frustration level.’ [Student] needs intensive, systemic daily remediation with a phonics program designed for students with Dyslexia... *Treating [her/his] Dyslexia must be a primary educational priority.*<sup>76</sup>

In Written Language, Student scored in the Average range on the KTEA-3 in Spelling (90), Word Count (97), and Writing Fluency (90), but was Borderline in Essay Composition (78), and Impaired in Theme Development and Text Organization (62). Witness A concluded that Student met the diagnostic criteria for an SLD in Written Expression or Dysgraphia. “As was

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<sup>68</sup> *Id.* at 24 (158).

<sup>69</sup> *Id.* at 16 (150).

<sup>70</sup> *Id.* at 39-40 (173-74).

<sup>71</sup> *Id.* at 18 (152).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 17, 39 (151, 173).

<sup>74</sup> *Id.* at 41 (175).

<sup>75</sup> *Id.* at 18 (152).

<sup>76</sup> *Id.* at 19 (153), emphasis supplied in the text.

the case with reading, [his/her] basic skills (e.g., letter/word formation, spelling, punctuation, capitalization, writing sentences) are significant obstacles to [her/his] ability to express [her/his] thoughts and ideas. [S/he] will need intensive daily instruction in order to make progress in writing.”<sup>77</sup> In Math, Student scored in the Low Average range in Mathematics Concepts and Applications (80) and Mathematics Fluency (80), and Borderline in Mathematics Computation (78).<sup>78</sup> Witness A concluded that Student had an SLD in Mathematics, or Dyscalculia.

[Student’s] language delays have a clear negative impact on [her/his] ability to comprehend ‘word problems’ and convert them to algorithms. [S/he] also demonstrates weaknesses with calculation, mathematical reasoning, and number sense, which makes it hard for [her/him] to evaluate the quality of [her/his] own work. Executive functioning difficulties, specifically attentional control and working memory have an increasingly negative impact on mathematics achievement as a student advances through the curriculum. [Student] will need intensive support for mathematics.<sup>79</sup>

Student’s Social and Emotional functioning was assessed through the Millon Pre-Adolescent Clinical Inventory (“M-PACI”), a self-response checklist that synthesized the individual’s personality patterns, the concerns they express about themselves, and current clinical signs. Her/his responses led Witness A to conclude that Student met the diagnostic criteria for Generalized Anxiety Disorder. “Beneath [his/her] typical surface appearance of calm and control, [Student] is experiencing anxiety that manifests as worry, fear, indecisiveness, and possible psychosomatic (physical) problems. [S/he] also feels badly about himself and [her/his] abilities.”<sup>80</sup>

Examiner A offered nine recommendations for school, three Reading recommendations, five Written Expression recommendations, eight Mathematics recommendations, and five Home and Community Recommendations including, *inter alia*, the following:

Appropriate Educational Environment: ...Because of [his/her] ADHD, multiple Specific Learning Disabilities, and Generalized Anxiety Disorder, [Student] will require small classes with a low student-to-teacher ratio in ALL subjects in order for [her/him] to make academic progress.

Intervention in Reading, Writing, and Math: [Student] will require intensive, systematic phonics instruction for no less than 30 minutes daily... [S/he] should have language arts taught by a special educator/reading specialist in a small class environment (a general education class with 60 minutes per week of ‘pull out’ services will not provide adequate intensity as shown by [her/his] current rate and level of progress.) [Student] needs specialized instruction as soon as possible. Otherwise, [s/he] will continue to fall further behind in ALL

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<sup>77</sup> *Id.* at 19-20 (153-54).

<sup>78</sup> *Id.* at 40 (174).

<sup>79</sup> *Id.* at 21 (155).

<sup>80</sup> *Id.* at 21-22 (155-56).

academic subjects.

Accommodations: ...no penalty for spelling/mechanical errors (unless on spelling tests), extended time for class work, homework, projects, and all tests... preferential seating in the front of the classroom, breaks during instructional time, being allowed to do written work on a computer whenever possible, use of laptop/tablet to take notes... use of assistive technology for reading and written expression...

Systemic Phonics Instruction: ... [Student] will require a systematic phonics instruction program to help [her/him] identify common word 'codes' (e.g. -ake, -own, -all) [S/he] also needs to build [her/his] sight word bank to improve [her/his] fluency. [Student] should receive daily intensive reading instruction with an evidence-based method that addresses these deficits...

Penmanship: [Student] continues to struggle to produce letters and has yet to develop letter writing automaticity. In the opinion of this psychologist, [Student] should continue to meet with the Occupational Therapist for 45 minutes per week to improve letter writing fluency and automaticity.<sup>81</sup>

16. On August 18, 2020, Petitioner's counsel notified DCPS that Petitioner would enroll Student at School A for the 2020-21 school year and requested DCPS to fund the placement, indicating that "We do not believe that an appropriate special education program has been identified or offered by DCPS for the upcoming year..." but agreed to continue to participate in the eligibility and IEP process that was currently underway.<sup>82</sup> DCPS declined to fund the placement through a letter emailed on August 19, 2020.<sup>83</sup>

17. On September 8, 2020, Witness F completed a Review of Witness A's Psychological Evaluation.<sup>84</sup> Witness F also reviewed Examiner A's June 29, 2018 psychological evaluation. Witness F found no fault with Witness A's diagnoses:

Overall test data indicate that [Student] struggles with various neuropsychological processes that impact [his/her] proficiency in reading and writing and that [s/he] continues to perform well below grade level expectations in these areas. [His/her] issues with phonological processing also impact [his/her] math reasoning by compromising [her/his] comprehension of word problems, and memory issues may be playing a role in [his/her] difficulty retaining multiplication facts. Information from [Witness A's] evaluation along with school-based academic data strongly support [Student's] continued eligibility for special education services as a student with a Specific Learning Disability.

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<sup>81</sup> *Id.* at 26-31 (160-65).

<sup>82</sup> P16:1 (179).

<sup>83</sup> *Id.* at 2 (180).

<sup>84</sup> P17:1 (182).



Given [Student's] diagnoses of Attention Deficit Hyperactivity Disorder, Predominantly Inattentive Presentation and Generalized Anxiety Disorder, along with teacher observations, suggest that the disability classification of Other Health Impairment (OHI) should also be considered... Data from [Witness A] and [Student's] teachers suggest that [her/his] difficulties with sustained attention have interfered with [her/his] academic performance by compromising [his/her] access to the curriculum, ability to complete tasks, and problem-solve. While symptoms of an anxiety disorder were not explicitly seen at school, [Student's] task avoidance (especially during distance learning) could be interpreted as a symptom of anxiety given [her/his] history of being easily overwhelmed and failing to advocate for [REDACTED]. Given this situation, the classification of OHI appears appropriate at this time. Since [Student] meets criteria for Specific Learning Disability and Other Health Impairment, the classification of Multiple Disabilities should ultimately be considered...

In addition to targeted intervention to ameliorate [Student's] academic challenges, overall test data suggest that [Student] would benefit from a high degree of structure and classroom accommodations such as guided reading, audiobooks, read aloud opportunities, speech-to-text opportunities, and keyboarding along with frequent breaks, preferential seating, and teacher check-ins to ensure on-task behavior, task completion, and appropriate self-regulation.

However, Witness F did not adopt Witness A's recommendation of a full-time setting outside general education:

...[t]he extent to which [Student] requires complete isolation from [his/her] nondisabled peer during the academic day is unclear. The growth that [Student] has shown in reading, writing, and math during [her/his] short two years at [School B] (with intervention after entering the school with such delayed skills) attests to [his/her] intellectual prowess and skill development, and [Student's] ability to verbally communicate [her/his] knowledge in special subject classes such as Social Studies and Science attests to [his/her] ability to understand and communicate grade level academic content...<sup>85</sup>

Witness F offered the following recommendations:

[Student] might benefit from the implementation of Behavioral Support Services to address [her/his] anxiety and help [her/him] to develop improved coping skills.

Provide [Student] with a balanced reading intervention program that emphasizes phonological processing and text orthography skills and that also develops fluency and comprehension skills. A combination of reading programs as well as contextual-based reading strategies will likely be needed.

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<sup>85</sup> *Id.* at 14 (195).

Furthermore, multiple reading strategies reinforcing various aspects of the reading process will most likely need to be implemented.<sup>86</sup>

Witness F recommended a multisensory approach to address Student's Dyslexia, and extensive, specific approaches for instruction in reading, writing, and math.<sup>87</sup>

18. On November 2, 2020, when Student was in grade D at School A, DCPS convened an IEP Annual Review meeting.<sup>88</sup> The Math PLOP reported assessment scores from January 2020: IReady – two grades below grade level at that time, Numbers and Operations – at grade level, Algebra and Algebraic Thinking – 3 grades below level, Measurement and Data – one grade below level, and Geometry – two grades below level. The PLOP also reported on the progress Student made in grade E in effectuating various math operations.<sup>89</sup> The baselines were: (1) Student solved 2/2 multi-digit addition problems requiring regrouping, 2/2 subtraction problems, 2-digit by 2-digit and 1-digit by 4-digit multiplication problem, and 2 multi-digit division problems, (2) Using a chart, s/he solved 28 of 30 mixed-factor multiplication problems in under two minutes, (3) Student solved 2/2 multi-step word problems after having the problem read to her/him, (4) S/he demonstrated a good understanding of comparing fractions and finding equivalent fractions, (5- 10) IXL Real Time Diagnostic Fall 2020. The goals were: (1) S/he will accurately solve multi-digit addition and subtraction problems with and without regrouping, and using a chart, multi-digit multiplication and division problems, (2) Using a chart, s/he will solve 60 multiplication facts in under five minutes, and 60 division facts in under five minutes, (3) After a multi-step word problem is read to him, s/he will solve the problem using efficient strategies, (4) With support, s/he will compare fractions with denominators using appropriate strategies, (5) S/he will identify and draw models of fractions and locate them on a number line, (6) When solving word problems involving fractions, [Student] will identify and model parts of a group and then solve the problem, (7) When given a pictorial representation of an object, Student will determine the correct metric unit appropriate for measurement, (8) When given a pictorial representation of an analog clock, s/he will accurately match it to a pictorial representation of a digital clock, (9) Given a pictorial representation of a three-dimensional shape, s/he will accurately name the shape, and (10) given a variety of geometric shapes, s/he will accurately identify any of the shapes that are rhombuses.<sup>90</sup>

In Reading, the PLOP reported the KTEA-3, GORT-5, and FAR scores from Witness A's evaluation. September 2020: Level M at 90 wcpm with 97% accuracy independent level, Level P<sup>91</sup> 63 wcpm 96% accuracy instructional level, and in the second half of grade E, s/he was reading at an F&P level M with 98% accuracy, used appropriate phrase groups, and demonstrated increased oral reading accuracy. In a January 2020 inventory of 50 single-syllable real words and 50 nonsense words, s/he read 46/50 single syllable real words and 32/50 nonsense words accurately. In a January 2020 inventory of 70 multisyllabic real words and 70 multisyllabic nonsense words, s/he read 50/70 multisyllabic real words and 36/70

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<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 14-18 (195-99).

<sup>88</sup> P25:1 (225).

<sup>89</sup> *Id.* at 3 (227).

<sup>90</sup> *Id.* at 4-7 (228-31).

<sup>91</sup> In the F&P System, Level P equates to an end of grade F grade equivalence. <https://www.fountasandpinnell.com/textlevelgradient>.

nonsense words accurately.<sup>92</sup> The baselines were: (1-2) a repeat of information from the PLOP, (3) Student can describe the ways in which a character changes across an independent text, but does not always explain it in a clear way, (4) When prompted, Student will jot character traits, feelings, or important facts/events, does not yet monitor his/her thinking for understanding or realize with s/he is confused when reading, (5) S/he is able to describe the main topic of a section of an independent level non-fiction text, (6-7) not provided, (8) S/he is currently reading at an independent level M and instructional level P in leveled reading texts. The goals were: (1) Given a list of 50 single-syllable nonsense words, s/he will accurately decode nonsense words with a 90% accuracy, (2) Given a list of 50 two-syllable real words, Student will accurately decode words with 90% accuracy, (3) After reading or listening to an independent level text, s/he will accurately infer about the character and identify how and why a character changed across the text, (4) While reading a just-right-level text, s/he will demonstrate reading strategies and monitor her/his thinking for understanding by noticing when s/he is confused, (5) When reading or listening to a section of nonfiction text at his/her independent level, Student will accurately infer the main idea, (6) Given a list of 15 words that contain certain vowel groups, s/he will correctly read 13/15, (7) Given a list of 15 word containing trigraphs, silent letters, suffixes, consonant-le, or soft consonant sounds, S/he will correctly read 13/15, and (8) Given a research-based reading intervention program, Student will advance minimum of three reading levels in independent and instructional reading.<sup>93</sup>

In Written Expression, the PLOP reported relevant scores from Witness A's evaluation, that during the second half of grade E, s/he demonstrated the ability to generate multiple genre-appropriate ideas for writing, began to write essays, worked on revising his/her work, and is efficient at using spellcheck when editing.<sup>94</sup> The baselines were: (1) S/he does not yet independently create a plan and organize his/her ideas before drafting, (2) S/he requires support to plan and draft paragraphs, and does not use transition words or include conclusion sentences in his/her paragraphs, (3) S/he correctly spelled 80% of single-syllable words with short vowels, digraphs, and blends, (4) S/he requires support to edit his/her work, (5) S/he requires prompting to re-read and revise her/his work, and (6) not provided. The goals were: (1) After generating ideas for writing, Student will use prewriting strategies to create a plan before drafting, (2) S/he will follow his/her writing plan to draft an organized 5-sentence informational or opinion paragraph with its component parts, (3) S/he will correctly encode common spelling patterns with 90% accuracy, (4) S/he will write a complete sentence with a subject, predicate, using correct capitalization and punctuation 85% of the time, (5) After completing a written narrative, s/he will reread and revise his/her work, and (6) When given an list of multi-syllable words, s/he will correctly spell 90%.<sup>95</sup>

In Behavior, the PLOP reported on selected findings from the TOVA, D-KEFS and BRIEF-2 from Witness A's evaluation. The baselines were: (1) Student sometimes struggles to understand what to do for assignments and task initiation, (2) Student struggles to get started on tasks and work to completion, (3) S/he sometimes finds her/himself anxious and overwhelmed, (4) His/her anxiety sometimes prevents her/him from taking risks and

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<sup>92</sup> P25:7-8 (231-32).

<sup>93</sup> *Id.* at 8-12 (232-36).

<sup>94</sup> *Id.* at 12-13 (237-38).

<sup>95</sup> *Id.* at 13-15 (237-39).

beginning tasks that s/he perceives as challenging, (5) S/he struggles to maintain attention to lessons and tasks, (6) S/he sometimes loses stamina with tasks that are challenging, and (7) none provided. The goals were: (1) With assignments broken into chunks and teacher check-ins, Student will demonstrate his/her understanding of what to do, where to start, and how to proceed, (2) Given a behavior plan to incentivize her/him, Student will independently begin an assigned task and work steadily for a predetermined period of time, (3) With fading adult support, when feeling anxious or emotionally overwhelmed by assignments, Student will use strategies learned via behavior support counseling to manage his/her frustration and take reasonable risks to problem solve, (4) With fading adult support, s/he will accurately identify tasks that are easy/difficult and implement learned strategies to accomplish them, (5) Given direct instruction and visual supports, s/he will attend in independent, small group, and whole class instruction and activities with no more than two verbal prompts, (6) With fading adult support, if s/he believes that s/he is unable to accomplish a task in its entirety, s/he will identify how much s/he can finish and create a plan for its completion, and (7) Using learned strategies and fading adult support, when given a complex assignment, Student will organize the task on paper.<sup>96</sup>

In Motor Skills, the PLOP reported that Student presents with deficits in the areas of fine motor control and visual motor skills, which impact his/her ability to produce legible written work in the expected time frames. In a grade E writing sample, s/he adhered to the baseline in 55% of opportunities. The baselines were: (1) Baseline adherence 47% Tripod grasp with thumb wrap, and (2) Student can write 3-4 sentences in 10 minutes. The goals were: (1) S/he will demonstrate improved visual motor coordination by producing written text with a functional grasp and baseline adherence of 75%, and (2) S/he will demonstrate an improved rate of written production by writing five sentences in ten minutes with two verbal prompts.<sup>97</sup>

The IEP team prescribed six hours per week of specialized instruction in general education, 90 minutes outside general education, and two hours per month of OT and two hours per month of behavioral support services outside general education. The team also prescribed Other Classroom Aids and Services including, *inter alia*, preferential seating, graphic organizers, read aloud or audio texts, frequent movement breaks, access to a computer for supplemental instruction, access to a computer or human scribe for longer assignments, and multiplication charts.<sup>98</sup>

19. On November 11, 2020, School A developed an IEP for Student.<sup>99</sup> In the Current Levels of Functioning for Reading, School A indicated that Student was performing at the mid-grade C instructional level<sup>100</sup> with needs in the following areas: vocabulary development, comprehension, reading fluency, organization of tasks, integration of new information, word retrieval, organization of language, phonemic awareness, code knowledge (phonograms), decoding, and encoding.<sup>101</sup> In Written Expression, Student was reported to be

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<sup>96</sup> *Id.* at 15-17 (239-41).

<sup>97</sup> *Id.* at 17-18 (241-42).

<sup>98</sup> *Id.* at 19 (243).

<sup>99</sup> P27:1 (252).

<sup>100</sup> However, the Leveled Reading Assessment indicates that his/her instructional level in Reading was 1.5 grades higher. P21:3 (216).

<sup>101</sup> *Id.* at 2-3 (253-54).

performing at the mid-grade A level with needs in the following areas: inconsistent use of complete sentence structure, inconsistent use of capitalization and punctuation, maintaining attention, paragraph structure, editing, and revision.<sup>102</sup> In Math, Student was performing at the grade C level with needs in place value word problems, whole number addition and subtraction with regrouping, multiplication facts, fractions, measurements (metric, a.m./p.m., clocks), rhombuses, identifying attributes of three-dimensional shapes.<sup>103</sup>

In Academic Behavior, Student was reported to be an active participant in class, enjoying sharing his/her thoughts and making connections with others. S/he follows one-step directions well but has difficulty with two and three step directions. His/her needs were: turn-taking, independence, following two-step directions, task planning, task initiation, completing tasks, organizing his/her work space, and considering the perspective of others.<sup>104</sup> In Social Behavior, Student was described as a kind classmate who takes responsibility for her/his behavior, but who has difficulty orally expressing her/his thoughts. S/he has difficulty working with a partner or in a group, tending to be competitive rather than working cooperatively.<sup>105</sup> In Speech/Language, Student was reported to have the following needs: language organization, social pragmatics, verbal problem solving, written language, and articulation.<sup>106</sup> In Occupational Therapy, Student's most recent standardized testing in 2020 indicated age-appropriate visual motor speed, visual scanning, and gaze shifting involving symbols, and was average in Block Design. Testing in 2018 indicated adequate strength and tone, range of motion, and static and dynamic balance. Her/his needs were: anxiety, attention/focus, body awareness, copying skill, cursive handwriting skills, excessive force when handwriting, fine motor coordination, following verbal multi-step directions, hand development, impulsivity, keyboarding, manuscript handwriting accuracy/legibility/spatial organization, organization of materials, planning multi-step tasks, postural control for seated tasks, sensory processing, scissors skills, sensory regulation/modulation, task initiation, task monitoring for errors, touch typing, visual motor integration, visual/ocular motor control, visual perception, visual spatial organization, and visual spatial memory.<sup>107</sup> The IEP provided goals and objectives in each of these areas of concern.<sup>108</sup>

School A prescribed 33.5 hours per week of specialized instruction, three hours per month of speech/language services, and three hours per month of occupational therapy.<sup>109</sup> It also provided the following classroom accommodations: advance notice and extended time for tests, calculator, extra time for processing information and formulating oral/written responses, test taking mechanics, location of testing with minimal distractions, movement breaks during instruction and tests, preferential seating, repetition of oral and written directions, small group setting, use of assistive technology and electronic devices, and use of a computer for written work.<sup>110</sup>

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<sup>102</sup> *Id.* at 5 (256).

<sup>103</sup> *Id.* at 6-7 (257-58).

<sup>104</sup> *Id.* at 7 (258).

<sup>105</sup> *Id.* at 8 (259).

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

<sup>107</sup> *Id.* at 9-10 (260-61).

<sup>108</sup> *Id.* at 12-26 (263-77).

<sup>109</sup> *Id.* at 1 (252).

<sup>110</sup> *Id.* at 27 (278).

20. In her testimony, Witness A reaffirmed the opinion in her evaluation of Student that s/he requires specialized instruction in all courses in a small group environment.

21. School A is on the District of Columbia Office of the State Superintendent of Education (“OSSE”) list of Approved Nonpublic Day Schools as of June 1, 2021.<sup>111</sup> All of its students have a classification of SLD. The student to teacher ratio in most classes is no more than 5:1. During up to three periods per day at School A, Student’s teacher is not certified in the District of Columbia as a special education teacher. Witness B opined that Student was capable of doing grade level work, but s/he needs to be in a full-time special education setting due to her/his need for “significant remediation” in a small group environment.<sup>112</sup>

22. Witness D, Student’s grade E special education math teacher at School B, opined that Student was making “great progress” during the 2019-20 school year, and was doing grade E level work with support. Witness D reported that Student engaged well in class during the first two terms. Once virtual learning was initiated in March 2020, Student often did not attend, and did not engage when s/he did attend. Witness D estimated that Student did not attend 14-15 of 20 sessions. During one-on-one sessions, Student would not always activate her/his camera and microphone.<sup>113</sup>

23. Witness E, Student’s grade E English Language Arts special education teacher, uses the Wilson Just Words program, a research-based reading intervention program and Teachers’ College reading intervention programs. She worked with Student as a co-teacher, 90 minutes every day, more than any other student.<sup>114</sup> Student’s reading level just prior to the initiation of virtual level was “M,” end of grade C, 1.5 grade levels below her/his current level, but s/he was making steady progress. Student entered School A in 2018 at Level D on the Leveled Reading Assessment. By September 2019, s/he was at level J, but progressed to M by February 2020, where s/he was also assessed to be by School A in September 2020.<sup>115</sup> Student was able to handle the general education curriculum due to his/her oral proficiency. S/he was also able to engage appropriately with her/his general education peers. During virtual instruction, Student did not complete his/her assignments. There were numerous messages between Witness E and Petitioner regarding Student’s lack of attendance.<sup>116</sup>

24. Witness G, Student’s general education Reading teacher during the 2019-20 school year, taught him/her in homeroom and “pushed-in” with him/her in Science and Social Studies. Student was able to perform grade level work in these general education courses with support. Student grew as a reader as shown by his/her improvement from J to M in the F&P System before the “shutdown.”<sup>117</sup>

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<sup>111</sup> <https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/NP%20Day%20List%20-6.1.21.pdf>.

<sup>112</sup> Testimony of Witness B.

<sup>113</sup> See, e.g., R19 (182), cited by Witness D as evidence of Student’s progress.

<sup>114</sup> Testimony of Witness E.

<sup>115</sup> Testimony of Witness E and Witness F. P21:3 (216).

<sup>116</sup> Testimony of Witness E.

<sup>117</sup> Testimony of Witness G.

25. Student's Leveled Reading Assessment on January 22, 2021 revealed that his/her independent level was P. On February 23, 2021, it was Q on one passage and R on a second, 1.5 and 1.0 grade levels below Student's current grade level, respectively.<sup>118</sup>

## CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, and this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows: The burden of proof in District of Columbia special education cases was changed by the local legislature through the District of Columbia Special Education Student Rights Act of 2014. That burden is expressed in statute as the following:

In special education due process hearings occurring pursuant to IDEA (20 U.S.C. § 1415(f) and 20 U.S.C. § 1439(a)(1)), the party who filed for the due process hearing shall bear the burden of production and the burden of persuasion; except, that: Where there is a dispute about the appropriateness of the child's individual educational program or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided, that the party requesting the due process hearing shall retain the burden of production and shall establish a prima facie case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence.<sup>119</sup>

Here, DCPS bears the burden of persuasion on the issues of the appropriateness of the IEP and placement for the 2020-2021 school year; Petitioner bears the burden as to the propriety of School A as the placement for Student.<sup>120</sup>

### **Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and placement for the 2020-21 school year.**

The Supreme Court's first opportunity to interpret the predecessor to IDEA, The Education of the Handicapped Act ("EHA"), came in *Board of Education of the Hendrick Hudson Central School District v. Rowley*.<sup>121</sup> The Court noted that the EHA did not require that states "maximize the potential of handicapped children 'commensurate with the opportunity provided to other children.'"<sup>122</sup> Rather, the Court ruled that "Implicit in the congressional purpose of providing access to a 'free appropriate public education' is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child...<sup>123</sup> Insofar as a State is required to provide a handicapped child with a 'free appropriate public education,' we hold that it satisfies this

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<sup>118</sup> P32:3 (292). On the F&P System, Level P equates to the end of grade F, Q equates to the beginning of grade E, and R equates to the middle of grade E.

<sup>119</sup> D.C. Code Sect. 38-2571.03(6)(A)(i).

<sup>120</sup> *Schaffer v. West*, 546 U.S. 49 (2005).

<sup>121</sup> 458 U.S. 176, 187 (1982).

<sup>122</sup> *Id.* at 189-90, 200

<sup>123</sup> *Id.* at 200.

requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction... In addition, the IEP, and therefore the personalized instruction should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public school system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.”<sup>124</sup>

More recently, the Court considered the case of an autistic child under IDEA who, unlike the student in *Rowley* was not in a general education setting.<sup>125</sup> The Tenth Circuit had denied relief, interpreting *Rowley* “to mean that a child’s IEP is adequate as long as it is calculated to confer an ‘educational benefit [that is] merely... more than *de minimis*.”<sup>126</sup> The Court rejected the Tenth Circuit’s interpretation of the state’s obligation under IDEA. Even if it is not reasonable to expect a child to achieve grade level performance,

... [h]is educational program must be appropriately ambitious in light of [his/her] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives... It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom, but is satisfied with barely more than *de minimis* progress for those who cannot.<sup>127</sup>

In *Endrew*, the Supreme Court held that an IEP must be designed to produce more than minimal progress in a student’s performance from year to year:

When 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. For children with disabilities, receiving instruction that aims so low would be tantamount to ‘sitting idly... awaiting the time when they were old enough to drop out...’ The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”<sup>128</sup>

Petitioner notified DCPS on August 18, 2020 that he would enroll Student in School A for the 2020-21 school year because “We do not believe that an appropriate special education program has been identified or offered by DCPS for the upcoming year.”<sup>129</sup> Petitioner agrees with the PLOPs, goals, and objectives in DCPS’ November 2, 2020 IEP, but disagrees with the service hours prescribed for specialized instruction.<sup>130</sup> In his closing argument, Petitioner’s counsel conceded that Student had made progress at School B, but

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<sup>124</sup> *Id.* at 203-04.

<sup>125</sup> *Endrew F. ex rel. Joseph F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (2017).

<sup>126</sup> *Id.* at 997.

<sup>127</sup> *Id.* at 1000-01 (citations omitted).

<sup>128</sup> 137 S.Ct. at 1000-01.

<sup>129</sup> P16:1 (179).

<sup>130</sup> P1:10 (13).



argued that the progress was not “meaningful.” As discussed just above, the Supreme Court has established the standard for meaningful progress: the IEP must be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade, and to enable his/her to make progress appropriate in light of his/her unique circumstances.

Thus, the issue to be determined is whether DCPS prescribed sufficient service hours to afford him/her a reasonable opportunity to make progress. Neither Petitioner nor his attorney specified the minimum number of hours per week that would be acceptable. However, they rely heavily on the Psychological Evaluation and testimony of Witness A, as well as Witness B, who recommended that Student receive specialized instruction in a small group environment, in all academic subjects. Consistent with those recommendations, Petitioner enrolled Student in School A for the 2020-21 school year.

When Student entered School B in 2018 for grade F, s/he was performing in overall Math, Numbers and Operations, and Geometry at a grade H level, three grades below his/her grade level, and at a grade A level in Algebra and Algebraic Thinking and Measurement and Data. In Reading, Student was reading grade H level texts independently, which were three grades below his/her grade level. When DCPS developed its February 11, 2020 IEP for Student, the Math PLOP indicated that s/he was performing at a grade C level overall, at grade level in Numbers and Operations, three grades below level in Algebra and Algebraic Thinking, and one grade below in Measurement and Data. Thus, in less than 18 months, Student had progressed two grade levels overall, four grade levels in Numbers and Operations, one grade level in Algebra and Algebraic Thinking, and two grade levels in Geometry. In Reading, Student was at the F&P level M, which equates to the end of grade C. This also represented a growth of two full school years.

Student’s IEP Progress Report for the first two reporting periods of the 2019-20 school year revealed that s/he had mastered his/her first and fourth goals, and was progressing on the other three goals. In Reading, Student was reported to have mastered the first four goals and was progressing on the fifth. In Written Expression, Student had mastered the first goal, and was progressing on the remaining four goals, but Witness E testified that she should have indicated that Student had mastered the second goal as well. Student’s third term report card for the 2019-20 school year reflected Proficient grades in Speaking and Listening, Social Studies, Science, Music, Art, and Health & Physical Education, and Basic in Reading, Writing & Language, and Math. In Work Habits, personal and social skills, Student completed tasks “Independently” or “With Limited Prompting” in the twelve observed categories. Neither party submitted a year-end report card. However, the year-end Progress Report Witness D reported that Student progressed on her/his four goals during the third and fourth periods, in Reading Witness E reported that Student progressed on her/his four goals in the third period, and on all but his/her third goal in the fourth period. On the third goal, “[Student] did not engage in this goal during the fourth advisory of Distance Learning.” In Written Expression, Witness E reported that Student progressed on all five goals during the third reporting period, but “did not engage” on any of her/his goals during the fourth reporting period in virtual learning.

Petitioner’s counsel emphasized the number of subtests described in Witness A’s evaluation in which Student had low percentile ratings, and the Clinically Significant ratings on the behavior scales. I concur with Petitioner’s counsel, Witness A, and Witness F that

many of the subtest scores were “alarming.” *However, despite these scores, Petitioner was able to exceed annual grade level growth in Reading and Math in a general education setting with the support provided in DCPS’ March 13, 2019 and February 11, 2020 IEPs. S/he was successful in handling grade level instruction in a general education setting and in engaging with his/her peers without significant reported behavioral problems.*

While the subtest scores are quite relevant to confirm Student’s continuing need for services, they do not mirror the student’s actual performance in the classroom. In this regard, I place greater weight on annual standardized testing, grades, and teacher comments. Witnesses D, E, and G, Student’s teachers during the 2019-20 school year, were unanimous in their testimony that Student was a charming, personable, and eager student until virtual learning was initiated. Thereafter, Student’s participation in group and individual lessons varied from inconsistent to nonexistent. All three teachers testified that Student was being instructed on grade level material and making progress. Witness E opined that Student was on a trajectory to be reading one grade below his/her grade level had the pandemic not interrupted in-person classes, having entered School B two years previously reading at a level three years below his/her grade level at that time. Witness D, Student’s grade E special education math teacher at School B, opined that Student was making “great progress” during the 2019-20 school year, and was doing grade E level work with support. However, once virtual learning was initiated in March 2020, Student missed 75% of his/her classes.

Petitioner testified that Student is thriving at School A, is happier there, and Student told Petitioner that sending him/her to School A was the best decision Petitioner ever made. I do not doubt that Student is thriving in a smaller group environment with a greater level of individual attention. However, the issue is whether DCPS is obligated to fund this more restrictive placement. I have concluded that it is not. First, Despite Witness A’s thorough and well documented evaluation, I am not persuaded that Student requires specialized instruction in all of his/her academic courses to make the progress required by the Supreme Court. Had there been no history of Student’s progress in general education, my conclusion would likely have been different. However, Student earned Proficient grades in all of his/her non-core courses, and Basic grades in Math, Reading, and Writing & Language. His/her three grade E teachers all testified to his/her capability to handle grade level instruction and to make steady progress. The standardized testing confirmed that Student progressed two or more grade levels in Reading and aspects of Math in less than 18 months. This evidence supports the conclusion that Student’s IEPs at School B were reasonably calculated to enable Student to achieve passing marks and advance from grade to grade, as mandated in *Rowley*. As the *Rowley* court stated, “...[t]he requirement that a State provide specialized educational services to handicapped children generates no additional requirement that the services so provided be sufficient to maximize each child’s potential ‘commensurate with the opportunity provided other children.’”<sup>131</sup>

Finally, I am guided by the history of the Act, that mainstreaming is preferable to highly restrictive settings. In fact, it was *the* primary motivation for IDEA’s predecessor, the

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<sup>131</sup> 458 U.S. at 198. *See also, Anderson v. District of Columbia*, 606 F.Supp.2d 86, 93 (D.D.C. 2009), citing *Shaw v. District of Columbia*, 238 F.Supp.2d 127, 139 (D.D.C. 2002) and *Kerkam v. McKenzie*, 862 F.2d 884, 886 (D.C. Cir. 1988)(proof that loving parents can craft a better program than a state offers does not, alone, entitle them to prevail under the Act.)

EHA, and the statute requires mainstreaming in the absence of proof that the child cannot make satisfactory progress in that environment:

*To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.*<sup>132</sup>

For all of these reasons, I conclude that DCPS has met its burden of proving, by a preponderance of the evidence, that it offered an appropriate IEP and placement to Student for the 2020-21 school year.

**Whether School A is an appropriate program.**

In light of my conclusion as to the first issue, this issue is moot.

**RELIEF**

For relief, Petitioner requests (1) an order requiring DCPS to fund Student's placement at School A for the 2020-21 school year, and (2) reimbursement for tuition and related services already paid by Petitioner.

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<sup>132</sup> 20 U.S.C. §1412(a)(5)(A), emphasis added.

**ORDER**

Upon consideration of the *Complaint*, DCPS' *Response*, the exhibits from the parties' disclosures that were admitted into evidence, the testimony presented during the hearing, and the post-hearing submissions by the parties' counsel, it is hereby

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

**APPEAL RIGHTS**

This decision is final except that either party aggrieved by the decision of the Impartial Hearing Officer shall have ninety (90) days from the date this decision is issued to file a civil action, with respect to the issues presented in the due process hearing, in a district court of the United States or the Superior Court of the District of Columbia as provided in 34 C.F.R. §303.448 (b).

*Terry Michael Banks*  
Terry Michael Banks  
Hearing Officer

Date: June 14, 2021

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