

**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 15, 2022

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<i>Student</i> , <sup>1</sup>	)	Case No.: 2022-0033
through <i>Parent</i> ,	)	
<i>Petitioner</i> ,	)	Date Issued: 6/15/22
	)	
v.	)	Hearing Officer: Keith L. Seat, Esq.
	)	
District of Columbia Public Schools	)	Hearing Dates (using Microsoft Teams):
("DCPS"),	)	6/1/22 & 6/2/22
Respondent.	)	
	)	

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**HEARING OFFICER DETERMINATION**

**Background**

Petitioner, Student's Parent, pursued a due process complaint alleging that Student had been denied a free appropriate public education ("FAPE") in violation of the Individuals with Disabilities Education Improvement Act ("IDEA") due to DCPS's failure to provide appropriate Individualized Education Programs ("IEPs") and placement or to implement Student's IEP. DCPS responded that Student's IEPs and placement were appropriate and the IEPs were implemented.

**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 2/25/22, the case was assigned to the undersigned on 2/28/22. Respondent filed a response on 3/15/22 and did not challenge jurisdiction. A resolution meeting took place on 3/18/22, but the parties did not

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

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settle the case or shorten the 30-day resolution period, which ended on 3/27/22. A final decision in this matter must be reached no later than 45 days following the end of the resolution period, as extended by a 35-day continuance, which requires a Hearing Officer Determination (“HOD”) by 6/15/22.

A prehearing conference was held on 5/10/22 and the Prehearing Order was issued on 5/13/22, addressing, among many other things, the use of a videoconference platform to conduct the due process hearing. The due process hearing took place on 6/1/22 and 6/2/22 and was open to the public. Petitioner was represented by *Petitioner’s counsel*. DCPS was represented by *Respondent’s counsel*. Petitioner participated in most of the hearing.

### Documents and Witnesses

Petitioner’s Disclosure, submitted on 5/24/22, contained documents P1 through P76, which were all admitted into evidence without objection. Respondent’s Disclosure, also submitted on 5/24/22, contained documents R1 through R45, of which R1, R2, R3, R6 through R11, R13, R16, R18, R19, R21, R24, R26, and R28 through R45 were offered and admitted into evidence without objection.<sup>2</sup>

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

1. Parent
2. *Educational Consultant* (qualified without objection as an expert in Special Education as It Relates to Programming and Placement)

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

1. *Resolution Specialist*
2. *Special Education Teacher* (qualified without objection as an expert in Special Education Programming and Planning)
3. *School Social Worker* (qualified without objection as an expert in School-Based Social Work)
4. *Speech-Language Pathologist* (qualified without objection as an expert in School-Based Speech-Language Services)
5. *Communication and Education Supports (“CES”) Coach*

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<sup>2</sup> Citations herein to Petitioner’s documents are indicated by a “P” followed by the exhibit number, followed immediately by a “p” (for page) and the Bates number with any leading zeros omitted, while Respondent’s documents are indicated in the same manner beginning with an “R.”

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Petitioner's counsel did not submit any rebuttal evidence.

### **Issues and Relief Requested**

The issues<sup>3</sup> 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 on or about 10/1/21, when it (a) repeated goals and baselines; (b) did not rely on comprehensive evaluations; (c) used seclusion without expediting a functional behavioral assessment ("FBA"); and/or (d) failed to provide an appropriately restrictive setting given the lack of academic progress and behavior. *(Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)*

**Issue 2:** Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and/or placement on or about 11/10/21, when it (a) failed to provide an appropriate behavioral intervention plan ("BIP"); (b) failed to provide appropriate behavior support services ("BSS") and speech-language services; and/or (c) failed to provide an appropriately restrictive setting given the lack of academic progress and behavior. *(Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)*

**Issue 3:** Whether DCPS denied Student a FAPE by failing to implement the IEP when it (a) failed to provide a dedicated aide as one-to-one support in the classroom, and/or (b) failed to provide a certified special education teacher to replace a teacher on leave. *(Petitioner has the burden of persuasion.)*

The relief requested by Petitioner is:

1. A finding that Student has been denied a FAPE.
2. Within 15 days, DCPS shall amend Student's IEP to provide appropriate amounts of BSS and speech-language services, and appropriate goals and baselines.
3. *Withdrawn.*<sup>4</sup>
4. DCPS shall provide compensatory education for any denials of FAPE.<sup>5</sup>

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<sup>3</sup> At the beginning of the due process hearing, Petitioner withdrew Issue 1(a) without prejudice, which stated "(a) failed to provide adequate support for transportation"; the undersigned permitted withdrawal based on the terms of the Prehearing Order and adjusted the letters of the remaining sub-issues.

<sup>4</sup> Petitioner withdrew without prejudice at the beginning of the due process hearing her request for the relief set forth in paragraph 3, which was that "DCPS shall provide Student with an appropriate program or placement."

<sup>5</sup> Petitioner's counsel was put on notice at the prehearing conference that, at the due process hearing, Petitioner must introduce evidence supporting the requested compensatory education, including evidence of specific educational deficits resulting from Student's alleged denial of FAPE and the specific compensatory measures needed to best correct those

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5. Any other just and reasonable relief.

### **Findings of Fact**

After considering all the evidence, as well as the arguments of counsel, the Findings of Fact<sup>6</sup> are as follows:

1. Background. Student is a resident of the District of Columbia; Petitioner is Student's Parent.<sup>7</sup> Student is *Age*, *Gender* and in *Grade* at *Nonpublic School*, where Student began on 5/16/22 after being in the CES program at *Public School* from 8/30/21, the beginning of 2021/22<sup>8</sup>, and in other DCPS schools prior to 2021/22.<sup>9</sup> Despite serious behavior issues, Student has a "happy demeanor" and often smiles and laughs throughout the school day.<sup>10</sup> Student does not take change well.<sup>11</sup>

2. IEPs. A draft IEP for Student dated 9/22/21 included statements that were removed from the final IEP (discussed next), including in the Positive Behavior Interventions and Supports ("PBIS") section that the classroom had been divided into 2 halves by a partition for students to be protected and that Student had "zero interaction" with peers; the draft included only 120 minutes/month of BSS.<sup>12</sup>

3. Following IEP meetings on 9/22/21 and 9/27/21, Student's first IEP at issue in this case was finalized on 10/1/21 (the "October IEP") and contained a disability classification of Other Health Impairment ("OHI") due to Attention Deficit Disorder ("ADD") or Attention Deficit Hyperactivity Disorder ("ADHD").<sup>13</sup> The October IEP provided for 25 hours/week of specialized instruction, along with 180 minutes/month each of Occupational

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deficits, i.e., to elevate Student to the approximate position Student would have enjoyed had Student not suffered the alleged denial of FAPE. Respondent was put on notice to be prepared at the due process hearing to introduce evidence contravening the requested compensatory education in the event a denial of FAPE is found.

<sup>6</sup> Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

<sup>7</sup> Parent.

<sup>8</sup> All dates in the format "2021/22" refer to school years.

<sup>9</sup> Parent; P14p144; P28p340.

<sup>10</sup> P14p155-56; P14p151 ("very happy disposition" and likes to dance and play basketball).

<sup>11</sup> Parent.

<sup>12</sup> P13p118,119,135.

<sup>13</sup> P42p482; P14p144.

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Therapy (“OT”), Speech-Language Pathology, and BSS, all outside general education; the IEP did not provide a dedicated aide.<sup>14</sup>

4. The PBIS section of the October IEP noted that Student demonstrated “highly aggressive behaviors” towards both staff and students with an aggression frequency of about every 25 seconds, including biting, kicking, throwing objects, and attempting to stab with pencils.<sup>15</sup> Student’s aggression was significantly reduced with fewer people in the room; the safety of other students was a major concern.<sup>16</sup> Even with a token board and First-Now-Then charts, Student demonstrated a lot of aggression, demanding nearly all of Special Education Teacher’s time, leaving him unable to run his classroom and relying on aides; Student had preferential seating directly next to Special Education Teacher’s desk.<sup>17</sup> Speech-Language Pathologist noted in the Communication section of the October IEP that Student’s Speech-Language deficits had a significant impact on communication in the educational setting.<sup>18</sup> The 10/1/21 Prior Written Notice (“PWN”) stated that the October IEP was finalized quickly to ensure that Student would have a 1:1 aide on the bus, which was an immediate need.<sup>19</sup>

5. Following an IEP meeting on 11/10/21, Student’s other IEP at issue in this case was finalized on 11/18/21 (the “November IEP”) with the disability classification changed to Autism Spectrum Disorder (“ASD”).<sup>20</sup> The PBIS, Communication, and many other sections were the same as the October IEP.<sup>21</sup> Student’s services in the November IEP were also the same as the October IEP, including the lack of a dedicated aide.<sup>22</sup>

6. Student’s IEP was amended on 5/13/22 with services to fit Student’s new program at Nonpublic School, specifically an increase of specialized instruction outside general education to 36.5 hours/week.<sup>23</sup>

7. Independent Educational Evaluations (“IEEs”). A settlement between the parties dated 4/15/21 provided among other things that DCPS would fund the following IEEs: Psychological, OT, Speech-Language, Audiological, and Assistive Technology (“AT”), along with conducting an FBA within 30 school days of DCPS reopening for in-person instruction.<sup>24</sup> Student’s IEP team reviewed the Psychological, Speech-Language, and OT IEE reports on 10/26/21.<sup>25</sup> Educational Consultant’s credibility was slightly impacted by

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<sup>14</sup> P14p161.

<sup>15</sup> P14p145.

<sup>16</sup> *Id.*

<sup>17</sup> P14p145; Special Education Teacher.

<sup>18</sup> P14p145.

<sup>19</sup> P42p482.

<sup>20</sup> P44p488; P16p178.

<sup>21</sup> P16p179, et seq.

<sup>22</sup> P14p161; P16p197.

<sup>23</sup> P18p218,238.

<sup>24</sup> P3p27,28; Educational Consultant.

<sup>25</sup> R13p189 (PWN).

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her testimony that the IEEs were not reviewed until November 2021, which is later than the PWN clearly states and other witnesses credibly testified.

8. In the October IEP, the IEEs were referenced in the Math, Reading, Communications, and Emotional-Social sections.<sup>26</sup> The 9/22/21 IEP meeting notes by DCPS record the review and reliance on the IEEs.<sup>27</sup> The 10/1/21 PWN notes that the 10/1/21 IEP was based on data from IEEs collected during the prior school year.<sup>28</sup>

9. Prior to the IEE, Student had a comprehensive psychological reevaluation dated 11/7/20, which suspected that Student had Multiple Disabilities (“MD”), including Intellectual Disability (“ID”) along with OHI due to ADHD.<sup>29</sup>

10. Independent Comprehensive Psychological Evaluation. Student had difficulties with communication even as a baby and still does not speak in full sentences.<sup>30</sup> Student has had substantial trouble with social relationships, as other children could not understand Student; since the pandemic began, Student had not had any peer interactions as of testing on 6/8/21.<sup>31</sup>

11. In the independent Comprehensive Psychological Evaluation, Student’s cognitive functioning could not be determined because Student could not comprehend directions and respond appropriately to the Wechsler Intelligence Scale for Children – Fifth Edition (“WISC-V”) and testing was discontinued.<sup>32</sup> The Comprehensive Test of Nonverbal Intelligence, 2<sup>nd</sup> Edition (“CTONI-2”) indicated that Student was in the Very Poor range of intellectual functioning, with a Full-Scale score of 58, which is less than the 1<sup>st</sup> percentile.<sup>33</sup> Student meets the criteria for severe ID; along with low cognitive abilities, Student has moderate to severe impairments in conceptual, social, and practical domains of functioning.<sup>34</sup> Student also indicated a pattern of behavior characteristic of a moderate autism spectrum condition, requiring substantial support.<sup>35</sup> Student was also diagnosed with unspecified ADHD.<sup>36</sup>

12. Academics. Student’s Woodcock-Johnson IV Tests of Achievement (“WJ-IV ACH”) were in the Very Low range, below the 0.1 percentile, in Broad Achievement, Broad Reading, Broad Math, and Broad Written Language.<sup>37</sup> Student has trouble counting more

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<sup>26</sup> P14p147,149,152,153,156.

<sup>27</sup> R26p219,220.

<sup>28</sup> P42p482.

<sup>29</sup> P23p268,288; P28p337.

<sup>30</sup> P28p339.

<sup>31</sup> P28p340.

<sup>32</sup> P28p341.

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

<sup>34</sup> P28p347,349.

<sup>35</sup> *Id.*

<sup>36</sup> P28p349.

<sup>37</sup> P28p342-44.

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than 5 objects; the beginning and middle of year iReady Math assessments both indicated that Student was 3 grade levels behind peers, at the 1<sup>st</sup> percentile.<sup>38</sup> In Reading, Student was only able to identify half the lower-case letters; the beginning and middle of year iReady Reading assessments both also indicated that Student was 3 grade levels behind peers, at the 1<sup>st</sup> percentile.<sup>39</sup> During the independent Comprehensive Psychological Evaluation, Student reported that “basketball” was Student’s favorite subject.<sup>40</sup>

13. Behavior. Student had serious behavior problems at Public School, with numerous incident/injury reports from the earliest days of 2021/22:

8/30/21 (the first day of school), Student was kicking and punching classmates and staff, and when taken to a staff office to cool off, began ripping the wallpaper off the walls and throwing objects;

8/30/21, Student became irate, hitting, kicking, biting, touching, spitting, throwing a computer on the floor, and injuring 2 adults’ fingers, requiring a visit to the nurse;

8/30/21, Student touched a female aide on her buttocks;

8/31/21, Student touched a female aide on her “buttocks and private area”;

9/1/21, Student grabbed and pulled female aide’s hair;

9/1/21, Student touched Special Education Teacher in an “inappropriate body area” and another adult on the buttocks;

9/2/21, in multiple incidents, Student bit another student, was throwing objects, grabbed staffers’ private areas, and after returning to the classroom, walked around kicking others.<sup>41</sup>

14. Special Education Teacher testified that Student’s behavior became better over time and Student made friends.<sup>42</sup> Student’s behavior improved and Student settled down by the end of October 2021.<sup>43</sup> By the time of the Nonpublic School observation of Student at Public School in March 2022, Student was participatory, answering questions, and wanted to engage.<sup>44</sup> Student continued to have some unacceptable behavior by the end of the year, but it was very much decreased after a lot of 1:1 counseling and Special Education Teacher talking with Student.<sup>45</sup>

15. On 9/8/21, CES Coach consulted with Public School about Student’s aggression, which included slapping, biting, kicking, and hitting staff; to minimize risk, staff was to ignore certain forms of aggression and block other attempts; one staff member was to be assigned to Student at all times to ensure the safety of other students.<sup>46</sup> Furniture was to be set up in a corner of the room to create a partition and visual block, which was to be empty

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<sup>38</sup> P14p147; P39p446; R37p302; Special Education Teacher.

<sup>39</sup> P14p149; P40p458; R38p304; Special Education Teacher.

<sup>40</sup> P28p340.

<sup>41</sup> P20p247-61.

<sup>42</sup> Special Education Teacher.

<sup>43</sup> Parent.

<sup>44</sup> Resolution Specialist.

<sup>45</sup> Special Education Teacher.

<sup>46</sup> P19p243,244.

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of material except a table and 2 chairs.<sup>47</sup> The school used block-redirect-ignore to keep Student apart from peers, but was providing Student 1:1 instruction.<sup>48</sup> Block-redirect-ignore strategy is for managing aggression.<sup>49</sup>

16. The evaluator for the independent OT evaluation noted that when responding to brief but serious aggression (throwing, kicking, biting, spitting, grabbing/throwing evaluator's glasses) with a stern look and direction not to hit her, Student's behavior became worse, but when the evaluator walked away and said she would wait until Student was done, the aggression quickly stopped and Student "became very sweet."<sup>50</sup>

17. Partition. Student had difficulty transitioning to Public School at the beginning of 2021/22; maladaptive behavior included frequently throwing objects, so a partition was put in place as a temporary safety measure to keep other students (whose parents were complaining) and Student safe; the partition was supposed to be for "emergencies."<sup>51</sup> The partition was a movable wall on wheels.<sup>52</sup> Student sat next to Special Education Teacher when the barrier was used and could not interact with peers.<sup>53</sup> Public School didn't use any restrictive measures to keep Student behind the partition; if Student tried to leave the space there was nothing that Public School could do to restrictively keep Student in that space.<sup>54</sup> On 9/28/21, Petitioner's counsel wrote that a partition preventing Student from interacting with peers was too restrictive and was opposed by Parent; the partition was removed promptly after use of only a week or two.<sup>55</sup> The partition was used at most 2 hours/day, during instruction.<sup>56</sup> DCPS's *Guidelines for Physical Restraint and Seclusion (August 2011)* define "seclusion" as placing an individual "in a location where he or she is alone, and where he or she is physically prevented from leaving that environment."<sup>57</sup>

18. Speech-Language. The independent Speech-Language Evaluation was conducted on 5/5/21 and recommended that Student be given 60 minutes/week (240 minutes/month) of direct Speech-Language services to address noted areas of deficit, along with 60 minutes/month of consultative Speech-Language services for collaboration and training.<sup>58</sup> Speech-Language Pathologist credibly testified that Student did not need more than 180 minutes/month, based on Student's communication needs and the academic setting in the

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<sup>47</sup> P19p244.

<sup>48</sup> P58p573,574.

<sup>49</sup> P58p574; CES Coach.

<sup>50</sup> P27p324.

<sup>51</sup> P56p545,549; P58p573 (LEA Representative); Educational Consultant; Special Education Teacher.

<sup>52</sup> P21p263.

<sup>53</sup> Educational Consultant.

<sup>54</sup> P58p574 (CES Coach).

<sup>55</sup> P22p265; Educational Consultant; Special Education Teacher.

<sup>56</sup> Special Education Teacher.

<sup>57</sup> P70p632,636.

<sup>58</sup> P24p293,301.



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CES classroom.<sup>59</sup> Based on communication with Parent, Speech-Language Pathologist understood that Student was also receiving speech therapy outside school, in addition to 180 minutes/month in school, but did not know the details.<sup>60</sup> Educational Consultant's notes of the 11/10/21 IEP meeting did not indicate that Educational Consultant asked for Speech-Language services to be increased.<sup>61</sup>

19. BSS. In the 9/27/21 IEP meeting, Educational Consultant sought an increase in BSS from 120 to 240 minutes/month as the IEE recommended; School Social Worker agreed with an increase to 180 minutes/month because Student was adapting to a new school.<sup>62</sup> In the 11/10/21 IEP meeting, the Public School team disagreed with increasing Student's BSS from 180 to 240 minutes/month, due to the increase of services the previous month and the improvement of Student's behavior, so 240 minutes/month was not warranted.<sup>63</sup>

20. Goals and Baselines. Educational Consultant wrote Special Education Teacher on 9/20/21 stating that the academic goals and baselines in Student's draft IEP were taken verbatim from Student's 11/2020 IEP; the goals and baseline were modified between the draft 9/22/21 IEP and the final 10/1/21 IEP.<sup>64</sup> Math goal 1 was to count up to 20 objects.<sup>65</sup> Math goal 3 was to add or subtract numbers within 20.<sup>66</sup> Reading goal 1 was to trace Student's name, while goal 2 was to name all the letters of the alphabet, both upper and lower-case.<sup>67</sup> Resolution Specialist asked what goals and baselines concerned Parent and she would like to see addressed; Petitioner's counsel responded in part that reading goal 1 had been repeated since 2019, and that the baseline for reading goal 2 did not indicate which letters Student knows.<sup>68</sup> Changes to Student's goals and baselines were made during the 9/27/21 IEP meeting.<sup>69</sup> The 10/1/21 IEP modified reading goal 1, although it continued to try to teach Student's name, and the letters Student knows were included in the reading present levels of performance.<sup>70</sup> Educational Consultant testified that if a student has not mastered a goal, the team can keep it on the IEP.<sup>71</sup>

21. FBA. Student's independent Comprehensive Psychological Evaluation noted that Student's school team should conduct an FBA and develop a BIP to target critical

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<sup>59</sup> Speech-Language Pathologist.

<sup>60</sup> Speech-Language Pathologist; P58p565 (Parent).

<sup>61</sup> P56p541.

<sup>62</sup> P54p528; School Social Worker.

<sup>63</sup> P44p488; P56p549; School Social Worker; Resolution Specialist (Student showed improvement).

<sup>64</sup> P60p587; P12p100-03; P13p121-25; P14p147-51.

<sup>65</sup> P14p147.

<sup>66</sup> P14p148.

<sup>67</sup> P14p150.

<sup>68</sup> P67p623,624.

<sup>69</sup> Resolution Specialist.

<sup>70</sup> P14p149-150.

<sup>71</sup> Educational Consultant.

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behaviors.<sup>72</sup> An initial draft of an FBA-Level 1 on 10/1/21 stated that Student's inappropriate physical touching was "sexually provocative," which Parent considered an incorrect and offensive description given Student's young age and innocence.<sup>73</sup> The final FBA-Level 1 dated 10/1/21 omitted the objectionable language.<sup>74</sup>

22. BIP. A BIP-Level I was completed on 10/1/21, listing 3 problems: physical aggression towards staff and peers, physical aggression with property, and inappropriate physical touch, along with replacement behaviors and methods.<sup>75</sup> The behaviors functioned to gain attention (problems 1 and 3) or escape (problem 2).<sup>76</sup>

23. Dedicated Aide. The IEP team agreed that Student needed a dedicated aide, but an aide was not added to Student's IEP.<sup>77</sup> Student's school team was clear that Student required a dedicated aide for both behavior and Speech-Language and prepared a Dedicated Aide Request; the packet for DCPS was promised by Thanksgiving, although the team was ultimately to make the decision.<sup>78</sup> In the absence of an formal dedicated aide, Special Education Teacher served as Student's "1:1/Dedicated Aide."<sup>79</sup> At the 11/10/21 IEP meeting the school team agreed to continue collecting data for the dedicated aide request; Student does better academically when 1:1.<sup>80</sup>

24. In the 11/10/21 IEP meeting, Special Education Teacher stated that the team decided that before trying a more restrictive placement as Parent just requested, a dedicated aide should be tried.<sup>81</sup> Special Education Teacher worked 1:1 with Student, but couldn't instruct his class at the same time.<sup>82</sup> Educational Consultant noted on 2/4/22 that Special Education Teacher continued to act "pretty much" as Student's 1:1, but there was still no dedicated aide.<sup>83</sup> OSSE stated that Special Education Teacher acting as Student's dedicated aide "wasn't appropriate," as it didn't allow Special Education Teacher to carry out his responsibilities as classroom instructor; Student should have been assigned a dedicated aide.<sup>84</sup> As of 2/4/22, the school team agreed to a special education day school for Student, along with a dedicated aide.<sup>85</sup>

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<sup>72</sup> P14p156.

<sup>73</sup> P33p382,386,387; Educational Consultant.

<sup>74</sup> P34p389,392,394.

<sup>75</sup> P15p170.

<sup>76</sup> P15p170,172.

<sup>77</sup> Special Education Teacher; R2p44.

<sup>78</sup> P17p206-07; P56p544,545.

<sup>79</sup> P17p206.

<sup>80</sup> P45p491, P56p544.

<sup>81</sup> P56p543.

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

<sup>83</sup> P58p563.

<sup>84</sup> P58p564.

<sup>85</sup> P58p576.

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25. Nonpublic Placement. As a student in the CES program, Student was already in the most restrictive environment possible in the DCPS system, according to LEA Representative; Student was with CES peers for “specials” (art, P.E., etc.), but with general education peers for recess.<sup>86</sup> On 11/10/21, Parent requested a more restrictive setting with a nonpublic placement; the school team agreed to begin the process to request a nonpublic placement; the team agreed to continue the dedicated aide process while requesting the nonpublic placement.<sup>87</sup>

26. Progress. Student made progress, even with regard to speech, based on data as of 2/4/22.<sup>88</sup> Student made progress on most IEP goals in the first period of 2021/22, as well as later periods.<sup>89</sup> Student made overall progress from September to May (2021/22), as academics improved (although Student still cannot write own name).<sup>90</sup> Student made progress in overall behavior at Public School, with a turnaround by the time Student left for Nonpublic School so that Student “became delightful” and was the most social child in the classroom; Student was a “success story.”<sup>91</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).

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<sup>86</sup> P56p551; P57p557.

<sup>87</sup> P45p491; P56p552; P57p559.

<sup>88</sup> P58p568; R6; R7; R8; Speech-Language Pathologist (Student made progress through the year).

<sup>89</sup> R6p130-40; R7p141-51; R8p152; Special Education Teacher (progress on goals developed).

<sup>90</sup> Special Education Teacher.

<sup>91</sup> School Social Worker.

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Once a child who may need special education services is identified and found eligible, Respondent must devise an IEP, mapping out specific educational goals and requirements in light of the child's disabilities and matching the child with a school capable of fulfilling those needs. *See* 20 U.S.C. §§ 1412(a)(4), 1414(d), 1401(a)(14); *Endrew F.*, 137 S. Ct. at 994; *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385 (1985); *Jenkins v. Squillacote*, 935 F.2d 303, 304 (D.C. Cir. 1991); *Dist. of Columbia v. Doe*, 611 F.3d 888, 892 n.5 (D.C. Cir. 2010).

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

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

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

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

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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 on or about 10/1/21, when it (a) repeated goals and baselines; (b) did not rely on comprehensive evaluations; (c) used seclusion without expediting an FBA; and/or (d) failed to provide an appropriately restrictive setting given the lack of academic progress and behavior. (Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)*

Petitioner established a prima facie case on this issue through testimony and documents, shifting the burden to DCPS, which met its burden of persuasion on all aspects of the issue, as discussed below.

The applicable legal standard for analyzing the appropriateness of the IEPs at issue in this case (here and in Issue 2) was articulated by Chief Justice Roberts for a unanimous Supreme Court as whether they were “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S. Ct. at 1001. As the U.S. Court of Appeals for the District of Columbia emphasized in *Z.B.*, 888 F.3d at 517, *Endrew F.* “raised the bar on what counts as an adequate education under the IDEA,” requiring more than “merely some” educational benefit. *See also Damarcus S. v. Dist. of Columbia*, 190 F. Supp. 3d 35, 51 (D.D.C. 2016) (IEP must be “reasonably calculated to produce meaningful educational benefit”). The measure and adequacy of the 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; *A.T. v. Dist. of Columbia*, CV 16-1086 (CKK), 2021 WL 1978792, at \*12 (D.D.C. 2021); *S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 66 (D.D.C. 2008). The appropriateness of Student’s IEPs are analyzed by considering the specific concerns raised by Petitioner, which are considered in turn.<sup>92</sup> *See* 34 C.F.R. § 300.320(a); *Honig*, 484 U.S. at 311.

(a) Repeated Goals and Baselines. IEPs are required to contain measurable annual goals pursuant to 34 C.F.R. § 300.320(a)(2). While the IDEA does not expressly require “baselines” in IEPs, it does require a description of how progress toward meeting a student’s IEP goals will be measured, in 34 C.F.R. § 300.320(a)(3). That measurement is typically in the form of baselines stating the level at which a student begins so one can determine whether the special education services provided were sufficient to bring about the desired improvement.

Here, Educational Consultant asserted that the academic goals and baselines in Student’s draft October IEP were taken verbatim from Student’s 11/2020 IEP. However,

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<sup>92</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. Certain procedural concerns were raised and are discussed herein.

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careful review indicates that the goals and baselines were modified between the draft 9/22/21 IEP and the final 10/1/21 IEP, although the intent of the goals may not always have changed, such as Student needing to learn all upper and lower-case letters. Further, Public School asked what goals and baselines concerned Parent, and changes to Student's goals and baselines were made during the 9/27/21 IEP meeting. While not achieving goals and carrying over the same goals from year to year may indicate failure to make meaningful progress, *see Endrew F.*, 137 S. Ct. at 994, lack of progress is not necessarily the fault of IEPs. Indeed, Educational Consultant acknowledged that if a student has not mastered a goal, the team can keep it on the IEP. For these reasons, the undersigned finds no violation here.

(b) Comprehensive Evaluations. 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). The D.C. Circuit Court explained in *Z.B.*, at 524, that failing to conduct adequate assessments is 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)); 34 C.F.R. § 300.304(c)(4).

Here, a series of IEEs had been conducted and the issue was whether DCPS had relied on the evaluations to update the October IEP. However, the facial language of the IEP itself, along with other evidence, shows that the IEP team did in fact rely on the IEEs in developing the IEP. Specifically, in the October IEP, the IEEs are referenced in the Math, Reading, Communications, and Emotional-Social sections. DCPS’s 9/22/21 IEP meeting notes record the review of and reliance on the IEEs. Further, the 10/1/21 PWN notes that the 10/1/21 IEP was based on data from the IEEs collected during the prior school year. While there was evidence that Student’s IEP team reviewed the psychological, Speech-Language, and OT IEEs on 10/26/21, the undersigned notes that the October IEP was quickly finalized in order to get Student an aide on the bus, which was quickly followed by the November IEP, which undeniably relied on thorough IEE reviews. Accordingly, for multiple reasons, this Hearing Officer finds no violation here.

(c) Seclusion Without FBA. Much advocacy in this case was devoted to the use of a barrier or wall in Student’s first weeks at Public School in September 2021. Student had great difficulty transitioning to the new school. Student had not been to school in person in many months, as DCPS schools had closed in March 2020 for in person instruction due to the pandemic. Student’s independent Comprehensive Psychological Evaluation explained that Student has had substantial trouble with social relationships, as other children could not understand Student, and Student had few social interactions over the long course of the pandemic. Upon arriving at Public School, Student had an aggression frequency of about every 25 seconds for biting, kicking, attempting to stab with pencils, and throwing objects. A partition was put in place as a temporary safety measure to keep other students – whose parents were complaining – and Student safe. The partition was to be for emergencies, but was used 2 hours/day during instruction, as Student was very aggressive toward peers and adults alike. Use of the partition was discontinued when Petitioner’s counsel complained

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about it soon after school began, by which time Student was apparently becoming less aggressive.

Notably, the actual claim asserted here is that an FBA needed to be expedited prior to use of so-called seclusion. *See Long v. Dist. of Columbia*, 780 F. Supp. 2d 49, 61 (D.D.C. 2011) (BIP/FBA essential because “the quality of a child’s education is inextricably linked to that child’s behavior”). Student’s independent Comprehensive Psychological Evaluation also noted that Student’s school team should conduct an FBA and develop a BIP to target critical behaviors. In fact, an FBA was developed on 10/1/21, just over a month after Student began at Public School (on 8/30/21). It is widely recognized that teachers and staff need to know a child before they can usefully conduct the assessment, which is presumably why the settlement between Petitioner and DCPS agreed on an FBA being conducted 30 school days after Student began in person at Public School. The 10/1/21 FBA was completed in 25 school days. The initial draft FBA-Level 1 stated that Student’s inappropriate physical touching was “sexually provocative,” which Parent considered an incorrect and offensive description given Student’s young age. The final FBA-Level 1 dated 10/1/21 omitted the objectionable language.

Moreover, DCPS’s formal *Guidelines for Physical Restraint and Seclusion* (August 2011) defined “seclusion” as placing an individual “in a location where he or she is alone, and where he or she is physically prevented from leaving that environment.” Here, the uncontroverted evidence was that Student was not alone, as Special Education Teacher was with Student as a 1:1 or dedicated aide, and Student was not physically prevented from leaving Student’s side of the barrier, according to CES Coach. Accordingly, the undersigned concludes that the barrier did not meet the definition of “seclusion,” and that in any case, DCPS did promptly conduct an FBA to address Student’s very serious behavioral issues. Despite the troubling image of a barrier between Student and the rest of the class, the undersigned does not find a violation here.

(d) Insufficiently Restrictive Setting. DCPS provided Student a highly restrictive setting in a CES classroom with a high ratio of adults to students from the beginning of 2021/22. Student had only CES peers for “specials” (art, P.E., and the like), although not for recess. 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, rather than complain about the lack of restrictiveness in Student’s setting, the concerns raised by Petitioner’s advocates leading up to the October IEP were that the barrier and extensive 1:1 with Special Education Teacher were too restrictive for Student. Yet when Petitioner did raise her desire for a nonpublic setting for Student on 11/10/21, Public School was open to that change and began to formally pursue the process towards a more restrictive setting. While that process proceeded slowly over a period of months, the subsequent delays do not retroactively make the October IEP (and/or November IEP) insufficient. Nor would it be reasonable to expect that Public School would have sought to

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shift Student to a nonpublic school within weeks of Student arriving at Public School, even before Petitioner or her advocates raised concerns. Indeed, Student made progress on most IEP goals in the first period of 2021/22, and made overall progress from September to May (2021/22), as academics improved and behavior progressed. Thus, there is no violation here.

FAPE. In carefully considering the concerns raised above individually and as a group, the undersigned is cognizant of the fact that the analysis is not about achieving perfection. Instead, an IEP and placement simply need to be reasonably calculated to enable Student to make appropriate progress in the circumstances, which DCPS achieved here. *See Endrew F.*, 137 S. Ct. at 1001; *Z.B.*, 888 F.3d at 519 (IDEA “stops short of requiring public schools to provide the best possible education”). *See also Leggett v. Dist. of Columbia*, 793 F.3d 59, 70 (D.C. Cir. 2015); *S.M. v. Dist. of Columbia*, CV 19-2096 (RC), 2020 WL 7230266, at \*5 (D.D.C. 2020). On balance, this Hearing Officer concludes that DCPS met its burden of persuasion by a preponderance of the evidence on Issue 1.

**Issue 2:** *Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and/or placement on or about 11/10/21, when it (a) failed to provide an appropriate behavioral intervention plan (“BIP”); (b) failed to provide appropriate BSS and speech-language services; and/or (c) failed to provide an appropriately restrictive setting given the lack of academic progress and behavior. (Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)*

Petitioner also established a prima facie case on this issue through testimony and documents, shifting the burden to DCPS, which met its burden of persuasion on all aspects of the issue, as discussed below. The applicable legal standard for analyzing the appropriateness of the November IEP is the same as in Issue 1, above: whether the IEP was “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S. Ct. at 1001. The specific concerns raised by Petitioner are considered in turn.

(a) Need for BIP. The IDEA requires in the case of a student whose behavior impedes the student’s own learning or that of others, 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). Here, a draft BIP was developed to which Parent raised concerns about the characterization of Student’s inappropriate touching that resulted in changes in the final BIP on 10/1/21. Other changes could have been made if Petitioner had raised concerns, but did not. The undersigned determines that there is no flaw here, for a BIP-Level I was completed on 10/1/21, listing 3 problems: physical aggression towards staff and peers, physical aggression with property, and inappropriate physical touch. The BIP included replacement behaviors and methods, along with other needed details. The behaviors functioned to gain attention or escape. The undersigned is persuaded that the BIP was appropriate.

(b) BSS and Speech-Language Services. “Related services” must be provided if required to assist a student with a disability to benefit from special education. *See* 34 C.F.R. § 300.34(a); *Irving Independent Sch. Dist. v. Tatro*, 468 U.S. 883, 890, 104 S. Ct. 3371, 82



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L. Ed. 2d 664 (1984). The issue for each related service raised by Petitioner is whether as written the IEP for Student was “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S. Ct. at 1001. *See also Z.B.*, 888 F.3d at 517; *Damarcus S.*, 190 F. Supp. 3d at 51.

BSS. As discussed above, Student needed a great deal of support at Public School at the beginning of 2021/22. In the 9/27/21 IEP meeting, Educational Consultant sought an increase in BSS from 120 to 240 minutes/month, based on the IEE recommendation. But School Social Worker only agreed to an increase to 180 minutes/month because Student was adapting to a new school. Then, in the 11/10/21 IEP meeting, Petitioner’s advocates again sought an increase to 240 minutes/month, but the school team disagreed based on the increase of services the previous month and the fact that by then Student’s behaviors were beginning to improve. Giving careful consideration to all the evidence, the undersigned finds DCPS’s arguments persuasive.

Speech-Language. Petitioner next challenged the amount of Speech-Language services, where Student’s IEP provided 180 minutes/month of direct services, but Petitioner sought 240 minutes/month based on the IEE recommendation and her Special Education expert. While Petitioner did not offer a Speech-Language expert, DCPS did present a qualified Speech-Language expert who credibly testified that Student did not need more than 180 minutes/month based on Student’s communication needs, along with the academic setting in the CES classroom. In addition, Student was receiving Speech-Language services outside school which increased services above the 180 minutes/month on the IEP. Taken together, the undersigned relies on Public School’s Speech-Language expert and is persuaded by DCPS’s arguments.

(c) Insufficiently Restrictive Setting. Finally, Petitioner makes the same assertion of an insufficiently restrictive setting in considering the November IEP as she made when challenging the October IEP. The claim is no more persuasive here than when raised in Issue 1(d), for Student was already in a very restrictive setting when Student arrived at Public School. Moreover, DCPS began working on shifting Student to a nonpublic setting as soon as Petitioner raised the issue. As in subpart (d) in Issue 1, there is no violation here.

In sum, Student’s November IEP and placement simply needed to be reasonably calculated to enable Student to make appropriate progress in the circumstances, which DCPS achieved here.

**Issue 3:** *Whether DCPS denied Student a FAPE by failing to implement the IEP when it (a) failed to provide a dedicated aide as one-to-one support in the classroom, and/or (b) failed to provide a certified special education teacher to replace a teacher on leave. (Petitioner has the burden of persuasion.)*

Petitioner did not meet her burden of persuasion on her implementation claims. With a failure to implement claim, the IDEA is only violated when a school district deviates materially from a student’s IEP. *See Middleton*, 312 F. Supp. 3d at 144; *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007). A material deviation requires more than a minor discrepancy or a “*de minimis* failure to implement all elements

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of [the student's] IEP.” *Johnson*, 962 F. Supp. 2d at 268, *quoting Catalan ex rel. E.C. v. Dist. of Columbia*, 478 F. Supp. 2d 73, 75 (D.D.C. 2007). Courts are clear that it is “the proportion of services mandated to those provided that is the crucial measure for purposes of determining whether there has been a material failure to implement.” *Turner v. Dist. of Columbia*, 952 F. Supp. 2d 31, 41 (D.D.C. 2013), *citing Wilson v. Dist. of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011). Notably, there is “no requirement that the child suffer educational harm in order to find a violation” in a failure to implement claim. *James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 139 (D.D.C. 2016).

(a) Dedicated Aide. Quite simply, DCPS could not fail to implement Student’s IEP by not providing a dedicated aide unless that was actually a requirement on the IEP. It was not. There was a great deal of discussion about the need for a dedicated aide, but a dedicated aide was never actually added to Student’s IEP. However, despite not being required, Student’s primary teacher, Special Education Teacher, did provide a great deal of 1:1 support for Student in 2021/22, even though he was out on leave for a period early in 2022.

Specifically, Student’s school team was clear that Student needed a dedicated aide to assist with both behavior and Speech-Language. But the team did not add a dedicated aide to Student’s IEP, as the team’s first step was to prepare a Dedicated Aide Request to send to DCPS, although the team was to make the final decision about Student’s need for a dedicated aide. In the absence of a formal dedicated aide, Special Education Teacher served as Student’s “1:1/Dedicated Aide.” Educational Consultant acknowledged on 2/4/22 that Special Education Teacher “pretty much” acted as Student’s 1:1, but even then there was no formal dedicated aide. OSSE criticized Special Education Teacher acting as Student’s dedicated aide, as that didn’t allow Special Education Teacher to fulfill his responsibilities as classroom instructor. But OSSE was not part of the IEP team and the IEP was not modified, although this further confirms that Student did receive dedicated aide services even when not required. The undersigned finds no violation here.

(b) Special Education Certification. Petitioner’s other failure to implement claim is based on the lack of a certified special education teacher in the CES classroom when Special Education Teacher was on leave. The analysis begins with *Q.C-C. v. Dist. of Columbia*, 164 F. Supp. 3d 35, 51 (D.D.C. 2016), in which the Court explained that as defined in the IDEA, “special education” includes not only education by certified special education teachers, but also a broader range of instruction by others, relying on 20 U.S.C. § 1401(29) (“special education” means “specially designed instruction . . . designed to meet the unique needs of a child with a disability”) and 34 C.F.R. § 300.39(b)(3) (defining “specially designed instruction” – without reference to certification – as “adapting, as appropriate to the needs of an eligible child . . . the content, methodology, or delivery of instruction”), and *Leggett v. Dist. of Columbia*, 793 F.3d 59, 63 (D.C. Cir. 2015) (quoting 20 U.S.C. § 1401(29)). *See also L.J. v. Pittsburg Unified Sch. Dist.*, 835 F.3d 1168, 1176 (9th Cir. 2016), *opinion amended and superseded on denial of reh’g sub nom., L.J. by & through Hudson v. Pittsburg Unified Sch. Dist.*, 850 F.3d 996 (9th Cir. 2017). Here, Petitioner failed to meet her burden of proving that Public School did not provide specially designed instruction for Student in the CES classroom. The un rebutted evidence in this case was that Student

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received instruction in the CES classroom and made progress through the school year. The undersigned finds no violation here.

### **ORDER**

Petitioner did not prevail on any of the issues in this case. Accordingly, **it is hereby ordered** that any and all claims and requests for relief are **dismissed with prejudice**.

**IT IS SO ORDERED.**

Dated in Caption

/s/ *Keith Seat*

Keith L. Seat, Esq.  
Hearing Officer

### **NOTICE OF RIGHT TO APPEAL**

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

Copies to:

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