

JURISDICTION:

The due process hearing was conducted, and this decision was written, pursuant to the Individuals with Disabilities Act (“IDEA”), P.L. 101-476, as amended by P.L. 105-17 and the Individuals with Disabilities Education Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E30.

BACKGROUND AND PROCEDURAL HISTORY:

The student who is the subject of this due process hearing (“Student”) resides with Student's parents ("Petitioners") in the District of Columbia, and the District of Columbia Public Schools ("DCPS") is Student's local educational agency ("LEA"). Student is currently age ____² and is eligible for special education pursuant to IDEA with a disability classification of Specific Learning Disability (“SLD”). Student last attended a DCPS school (“School A”) during the first half school year (“SY”) 2019-2020.

During SY 2018-2019, while Student was attending Student's previous DCPS school ("School B"), DCPS developed an individualized education program ("IEP") for Student dated December 20, 2018. Petitioners participated in the IEP meeting. That IEP was updated at School B on May 29, 2019, in preparation for Student's attendance at School A. At the end of the first half of SY 2019-2020, Petitioners unilaterally placed Student in a private school ("School C") and informed DCPS that Student would no longer be attending School A. Student has continued to attend School C since January 2020.

Before the start of SY 2020-2021, Petitioners, through their attorney, requested an offer of a free appropriate public education ("FAPE") for Student for SY 2020-2021. DCPS developed an IEP for Student dated August 13, 2020, and proposed implementing the IEP at School A. Petitioners, through their attorney, informed DCPS that Petitioners were rejecting the offer of FAPE and unilaterally placing Student at School C for SY 2020-2021.

Petitioners filed their due process complaint against DCPS on December 18, 2020, alleging DCPS denied Student a FAPE because the IEPs DCPS developed for Student on December 20, 2018, May 29, 2019, and August 13, 2020, were inappropriate because, among other things, they lacked appropriate goals and sufficient hours of specialized instruction.

RELIEF SOUGHT:

Petitioner seeks the following as relief: a finding that Student has been denied a FAPE; that DCPS be ordered to reimburse Petitioners for the costs associated with Student’s unilateral placement at School C during the second half of SY 2019-2020 and for SY 2020-2021, including any and all related services; that if the hearing officer’s determination (“HOD”) is due mid-school year, DCPS be ordered to continue Student’s placement and public funding at School C

² Student’s age and grade are listed in Appendix B.

until at least the end of SY 2020-2021, but continuing until a FAPE is offered consistent with the hearing officer's decision.³

LEA Response to the Complaint:

The LEA filed a response to Petitioners' complaint on December 29, 2020. The LEA denies that there has been any failure to provide Student with a FAPE. In its response, DCPS asserts, inter alia, the following:

DCPS appropriately programmed for and placed Student during the relevant period. The parents participated in the December 2018 IEP when Student was at School B. Student then progressed to School A. Student was and remains appropriately programmed for with DCPS' IEPs. Student may be better provided for at a private school, but this is not FAPE. Parental preference is not FAPE. IEPs are for at a minimum annual provision and review. Here, the IEPs were reviewed and revised well before the annual review to address parent concerns and student needs. DCPS did not fail Student's programming or placement requirements. Respondent respectfully requests that Petitioners' request for relief be denied.

Resolution Meeting, Pre-Hearing Conference and Order:

The parties participated in a resolution meeting on January 4, 2021, and did not resolve the complaint. The parties did not mutually agree to shorten the 30-day resolution period. The 45-day period began on January 18, 2021, and ends, and the HOD was originally due on March 3, 2021.

The undersigned hearing officer ("Hearing Officer") conducted a pre-hearing conference on January 25, 2021, and issued a pre-hearing order on January 28, 2021, outlining, inter alia, the issues to be adjudicated.

Issues Adjudicated:

1. Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP in December 2018 because the IEP: (a) had insufficient hours and type of specialized instruction; (b) had inappropriate and inadequate goals, objectives, and related baselines; (c) had too many goals to be reasonably worked on in the time allotted in the IEP; (d) had other classroom aids and services that describe the needs of Student in such a way that the proposed hours of specialized instruction and settings would not meet Student's needs; (e) failed to address Student's known social-emotional challenges related to

³ In their due process complaint, Petitioners also ask for additional relief. However, during the hearing, Petitioners' attorney expressed that Petitioners were no longer seeking the remainder of the relief requested in the due process complaint, which included the following: DCPS be ordered to reimburse Petitioners for any outside services including tutoring, or other out-of-school supports paid out-of-pocket for Student from December 20, 2018, through the present; DCPS to fund an independent assistive technology assessment; DCPS authorize/ fund the compensatory education plan proposed by the Petitioners and/or the hearing officer fashion an appropriate compensatory education plan to address the denials of FAPE found; any and all other relief which the hearing officer deems equitable, just, and appropriate.

anxiety; (f) otherwise failed to provide an appropriate educational program/plan for Student based on the data available to the team at the time.

2. Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP in May 2019 because the IEP: (a) had insufficient hours and type of specialized instruction (including an unwarranted reduction hours from the previous IEP); (b) had inappropriate and inadequate goals, objectives, and related baselines; (c) had too many goals to be reasonably worked on in the time allotted in the IEP; (d) had other classroom aids and services that describe the needs of Student in such a way that the proposed hours of specialized instruction and settings would not meet Student's needs; (e) failed to address known social-emotional challenges related to anxiety; (f) had services linked to the offerings of the particular school where the IEP was going to be implemented rather than to Student's individual needs; (g) otherwise failed to provide an appropriate educational program/plan for Student based on the data available to the team at the time.
3. Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on August 13, 2020, because the IEP: (a) has insufficient hours and type of specialized instruction based on the data available to the team at the time the IEP was developed; (b) has inappropriate and inadequate goals, objectives, and related baselines; (c) without supporting data, removed important information about Student's needs from other classroom aids and services; (d) otherwise failed to provide an appropriate educational program/plan for Student based on the data available to the team at the time.
4. If Petitioners prevail on issue #1, and/or issue #2, and/or issue #3 above, are Petitioners entitled to reimbursement of the tuition and/or related services costs from Student's unilateral placement at School C for the second half of SY 2019-2020 and/or for SY 2020-2021.

DUE PROCESS HEARING:

Due to the COVID-19 emergency, the hearing was conducted via video-teleconference on February 19, 2021, February 22, 2021, February 23, 2021, February 24, 2021. The hearing was originally scheduled to conclude on February 24, 2021. The parties agreed to continue the hearing to March 1, 2021, and delivered closing arguments on that date. Petitioner filed a consent motion to continue the hearing and extend the HOD due date, which was granted. The HOD is now due on March 8, 2021.

RELEVANT EVIDENCE CONSIDERED:

This Hearing Officer considered the following as evidence and the source of findings of fact: (1) the testimony of the witnesses, and (2) the documents submitted in the parties' disclosures (Petitioners' Exhibits 1 through 43 and Respondent's Exhibits 1 through 77) that were admitted into the record and are listed in Appendix A.⁴ Witnesses' identifying information is in Appendix B.⁵

SUMMARY OF DECISION:

The burden of persuasion fell to Respondent on issues #1, #2, and #3, once Petitioners established a prima facie case on those issues. Respondent did not sustain the burden of persuasion by a preponderance of the evidence on any of these three issues. Petitioners had the burden of persuasion on issue #4 and sustained that burden by a preponderance of the evidence. The Hearing Officer directed DCPS in the order below to reimburse Petitioners the amounts Petitioners paid for Student to attend School C for the second half of SY 2019-2020 and for SY 2020-2021 and directed DCPS to develop an appropriate IEP for Student and offer a FAPE in an appropriate school location for SY 2021-2022.

FINDINGS OF FACT:⁶

1. Student resides with Petitioners in the District of Columbia, and DCPS is Student's LEA. Student is eligible for special education and related services pursuant to IDEA with a disability classification of SLD. Student last attended a DCPS school, School A, during the first half of SY 2019-2020. (Father's testimony, Petitioners' Exhibit 12-29)
2. Student's first IEP was developed at Student's previous DCPS school, School B, when Student was in first grade. In February 2015, DCPS conducted an initial psychological evaluation of Student. Student's cognitive functioning was Average. Student's phonological awareness was Average; however, Student's phonological memory was Very Poor. Student was assessed for reading tasks. Student scored Average for word reading and early reading skills and Below Average for decoding and reading comprehension. Student's math and written language abilities were assessed as Average. Student's behavioral functioning was rated by Student's teacher at the time as high for inattention, learning, and executive functioning problems. (Father's testimony, Petitioners' Exhibit 3)

⁴ Any item disclosed and not admitted, or admitted for limited purposes, was noted on the record and is noted in Appendix A.

⁵ Petitioner presented five witnesses: (1) Student's Father, (2) Student's Mother, (3) Student, (4) Student's Independent Tutor, and (5) Petitioners' Educational Consultant who testified as an expert witness. DCPS presented five witnesses: (1) The DCPS Special Educator and LEA Representative who helped develop Student's August 2020 IEP, (2) Student's Writing Teacher at School B, (3) Student's Math Teacher and Case Manager at School A, (4) Student's Reading Teacher at School B, (5) School B's Director of Specialized Instruction. The Hearing Officer found the witnesses credible unless otherwise noted in the Conclusions of Law. Any material inconsistencies in the testimony of witnesses that the Hearing Officer found are addressed in the Conclusions of Law.

⁶ The evidence (documentary and/or testimony) that is the source of the Findings of Fact ("FOF") is noted within parenthesis following the finding. Documents cited are noted by the exhibit number. If there is a second number following the exhibit number, it denotes the page of the exhibit (or the page number of the entire disclosure document) from which the fact was extracted. When citing an exhibit that has been submitted by more than one party separately, the Hearing Officer may only cite one party's exhibit.

3. In November 2015, Petitioners engaged the services of a reading specialist to assess Student's reading abilities. Student was tested and diagnosed with dyslexia in early elementary school. Student's parents let Student know of the diagnosis when it was made, as Student was familiar with the condition because Student's father also has the condition. Student's parents have reassured Student that many people with dyslexia have been successful, like Student's father, despite the condition. (Father's testimony, Petitioners' Exhibit 4)
4. In December 2017, during SY 2017-2018, School B conducted a psychological reevaluation of Student. The DCPS psychologist reviewed Student's prior evaluations and conducted the following assessments: Woodcock-Johnson Tests of Cognitive Abilities, Fourth Edition ("WJ-IV COG") for long term retrieval and auditory processing, the Wechsler Individual Achievement Test, Third Edition ("WIAT-II"), Behavior Rating Inventory of Executive Function, Second Edition ("BRIEF-2") (Teacher, Parent), Revised Children's Manifest Anxiety Scale, Second Edition ("RCMAS-2") (Self-Report). (Petitioners' Exhibit 10)
5. Student's scores on the WJ-IV COG reflected that Student's long-term retrieval was Low Average, and auditory processing was Average. The WIAT-II was used to assess Student's performance in reading, math, written language, and oral expression. In reading, Student scored Below Average in Word Reading at the 17th percentile, Average in Pseudoword Decoding at the 50th percentile, Below Average in Oral Reading Fluency at the 13th percentile, Average in Oral Reading Accuracy at the 16th percentile, Average in Oral Reading Rate at the 16th percentile, and Average at the 77th percentile in Reading Comprehension. (Petitioners' Exhibit 10-8)
6. In math, Student scored Average in Numerical Operations at the 39th percentile, Average in Math Fluency-Addition at the 32nd percentile, Average in Math Fluency – Subtraction at the 21st percentile, Below Average in Math Fluency Multiplication at the 6th percentile, and Average in Math Problem Solving at the 39th percentile. (Petitioners' Exhibit 10-8)
7. In written expression, Student scored Below Average in Spelling at the 10th percentile, Average in Sentence Composition at the 32nd percentile, Average in Sentence Combining at the 50th percentile, Average in Sentence Building, at the 21st percentile, Average in Essay Composition at the 45th percentile, Average in Word Count at the 79th percentile, and Below Average in Theme Development and Text Organization at the 13th percentile. Student scored Average in Listening Comprehension at the 21st percentile. Student's Receptive Vocabulary was Average at the 66th percentile, but Student's Oral Discourse Comprehension was Below Average at the 4th percentile. Student's Oral Expression was Average at the 45th percentile, Expressive Vocabulary was Average at the 21st percentile, Oral Word Fluency was Average at the 81st percentile, and Sentence Repetition was Average at the 39th percentile. (Petitioners' Exhibit 10-9)
8. The BRIEF-2 ratings revealed no clinically significant concerns across school and home that were impacting Student with regard to executive functioning. The behavior and social-emotional data revealed that Student had symptoms consistent with anxiety. The

psychologist recommended that Student's reading goals focus on sight word recognition and fluency using the suggested research-based program Wilson Reading. She recommended that Student focus on repetition of math fluency facts in the area of multiplication and that Student's writing goals focus on spelling, grammar, writing mechanics, and formation of main idea and detail sentences when forming written responses to a narrative, expository and informational prompt. The psychologist also recommended cognitive-behavioral strategies to assist Student with anxiety symptoms. (Petitioners' Exhibit 10-15, 10-16, 10-17)

9. School B provided Student specialized instruction in Student's deficit areas in reading, math, and written expression. Student was provided social/emotional behavior support services as a part of the Student's IEP for half of SY 2017-2018 to address anxiety. (Witness 7's testimony, Respondent's Exhibit 72 page 636)
10. During SY 2017-2018 and SY 2018-2019, School B provided Student specialized instruction in reading, math, and written expression taught by a special education teacher within Student's general education classroom. Students had a different special education teacher for each of the three subjects. Each of them co-taught in the general education classroom with the general education teacher and provided Student instruction and assistance for the respective general education class five days per week. In addition, Student was provided specialized instruction in reading outside the general education classroom using the Wilson Reading System, a research-based specialized reading program. (Witness 4's testimony)
11. Within the general education reading classroom, Student's special education reading teacher moved students into small groups of five to six inside the general education classroom, and at other times, the small groups would go to a separate room. Small groups would be a mix of general education and special education students. In the general education reading classroom, Student participated in group conversations and participated when called on or volunteered. Student's special education reading teacher also provided Student specialized instruction on the Wilson Reading System ("Wilson") outside general education either alone or with another student. Wilson is a structured literacy program meant for students with a language-based learning disability. (Witness 6's testimony)
12. Student's special education writing teacher worked with Student throughout the writing process and did not use one teaching or writing method. There were one on one conferences with students or small groups to go over a writing craft. There were parallel lessons in small groups with more scaffolding, and that varied from writing unit to unit. The special education writing teacher worked with Student every day for writing in the general education classroom. She was also Student's case manager and made sure Student's IEP was updated from input from content areas and she was a part of the IEP meetings and parent conferences. Student was not on grade level in writing and was sometimes anxious when pulled out of the main class for instruction. (Witness 4's testimony)

13. Student's teachers knew Student did not like the attention of being pulled out for specialized services. The teachers were careful not to draw attention to Student that Student needed anything different than other students. They worked on Student self-advocating for what support Student needed. Student's special education writing teacher did not witness any anxiety or any reluctance in Student asking for any help when needed. Allowing Student to self-advocate was important for Student and the team encouraged that Student make teachers aware when something was not clear. (Witness 4's testimony)
14. SY 2017-2018 was Student's most challenging year at School B, both academically and emotionally. Petitioners paid for Student to have out-of-school tutoring, vision therapy, and mental health therapy. Student also had tutoring while on vacation to make sure that Student didn't fall behind academically. Student remained behind peers with gaps in decoding, encoding, and math skills. (Father's testimony)
15. Student described SY 2017-2018 as stressful, and Student would on occasion become ill and miss school as a result. At times Student felt lonely and sometimes felt like the slowest student in class. When pulled out of class for instruction, Student felt left out because Student was not learning what the other students were who stayed in the classroom. Student was pulled out alone for testing, but when pulled out of class for reading or writing Student would normally get pulled out with one other student. (Student's testimony)
16. A tutor started working with Student in September 2017 once per week. She was provided Student's IEP and targeted the IEP reading goals. Student was reading below grade level and in some areas two grade levels below. The tutor worked with Student using the same reading intervention program used by Student's special education teacher at School B. She also used her own materials to reinforce reading concepts. The tutor would also work with Student in math, assisting Student with math homework, particularly math word problems, by breaking down the vocabulary. Student would just buckle down and do the work and do Student's best. (Witness 1's testimony, Petitioners' Exhibit 9)
17. During SY 2017-2018 Petitioners began discuss moving Student to another school, but ultimately decided to remain at School B through Student's final year there: SY 2018-2019. Student was not on grade level, but Student's final year at School B was better than the year before. (Father's testimony)
18. Student acknowledged that Student was not as anxious during SY 2018-2019, and did not get sick as much except perhaps because of tests. Most students in Student's class knew Student had dyslexia and at one point during Student's last year at School B were making fun of Student about it. Student liked going to the therapist outside because it helped to relieve stress and Student was able to challenge the next day at school less stressed. (Student's testimony)

19. Students tutor focused more on Student's work with math during SY 2018-2019, as Student "had it together" with school work by that year. During SY 2018-2019, Student showed a lot of progress in writing. (Witness 1's testimony, Witness 4's testimony)
20. During the first reporting period of SY 2018-2019, Student was either progressing on or had mastered the IEP goals that had been introduced by that time. (Respondent's Exhibit 72 pages 620-636)
21. On December 20, 2018, School B, updated Student's IEP. Petitioners and Student participated in the IEP meeting. (Father's testimony, Petitioners' Exhibit 12-29)
22. The December 20, 2018, IEP's Other Classroom Aids and Services stated: [Student] benefits from small group and individual instruction for pre-teaching and re-teaching of skills and strategies learned. [Student] may not always inform teachers when [Student] does not understand a concept, and so a check-in can be helpful. [Student] benefits from preferential seating, visual supports, repeated directions, strategy cards, and tasks broken down into smaller steps. Benefits from leadership opportunities to build self-esteem and confidence. Thrives on 1:1 support. Masks anxiety behind a smile and desire to please attitude in large group settings. In small groups and individual settings, will ask for help. Math support will include base ten blocks, place value disks, place value charts, base ten tables, highlighting multiplication tables. Read aloud for content questions and instructions. Multi-sensory learning tools include tactile strategies, including sand tracing for learning sight words and tapping out sounds for decoding and segmenting sounds. (Petitioners' Exhibit 11-4, 11-13)
23. The December 20, 2018, IEP's Classroom Accommodations and Statewide Assessment Accommodations section included the following: (a) Presentation: clarification/repetition of directions, read aloud for English Language Arts ("ELA")/literacy and non-ELA/literacy assessments, redirect Student to test, (b) Response: calculation device on non-calculator sections; (c) Setting: preferential seating, location with minimal distractions, small group testing; (d) Timing and Scheduling: extended time, frequent breaks. (Petitioners' Exhibit 11-15)
24. That IEP listed present levels of performance ("PLOP") and goals in the areas of math, reading, and written expression. It provided for the following special education services: 45 minutes per week of specialized instruction in reading inside the general education setting, 45 minutes per week of specialized instruction in written expression inside the general education setting, 45 minutes per week of specialized instruction in mathematics inside the general education setting, 90 minutes per week of specialized instruction in reading outside of the general education setting, 60 minutes per week of specialized instruction in mathematics outside of the general education setting. (Petitioners' Exhibit 12-39)
25. Student's special education teachers prepared the IEP goals, including the PLOPs and baselines. Generally, the PLOP includes the data from the last psychological evaluation until a psychological reevaluation is conducted. Otherwise, the more current information

is from the classroom-based assessments, which at School B was Fountas and Pennell ("F&P") to assess reading levels and progress, iReady and Achievement Network ("Anet"). (Witness 4's testimony, Witness 6's testimony, Witness 7's testimony)

26. The PLOP for math in the December 20, 2018, IEP cited Student's scores on an academic achievement assessment that was conducted by School B in December 2017 as a part of Student's triennial evaluation. The standard scores in math cited were Average except in the area of math fluency in multiplication, which was Below Average. The IEP cited Student's beginning of year ("BOY") assessment for math that revealed Student was operating two grade levels below in Number and Operations, three grade levels below in Algebraic Thinking, one grade level below in Measurement and Data, and one grade level below in Geometry. (Petitioners' Exhibit 12-31)
27. Student's December 20, 2018, IEP Math PLOP stated the following:
- WIAT III December 2017: Math numerical operations SS 96 Average; Math fluency addition SS 93 Average; Math fluency subtraction SS 89 Average, Math fluency multiplication SS 77- Below Average.
 - BOY iReady 5th test (Sept 2018) Overall: Number and Operations: Grade 3, 437; Algebraic Thinking: Grade 2, 429, Measurement and Data: Grade 4, 468; Geometry: Grade 4, 455.
 - [Student] has shown mastery of the following computation skills since the BOY iReady test was administered: Adding and Subtracting multi-digit decimals (ex: $54.32 - 12.897$) Multiplying multi-digit whole numbers (ex: 328×32); Dividing multi-digit whole number dividends by single-digit divisors (ex: $7,802 \div 6$).
 - [Student] is a kind and eager []th grader who enjoys working in partnerships and explaining [Student's] thinking. [Student] is quick to make connections to previous learned skills. [Student's] self-advocacy skills have grown immensely since the start of the year. When working with a difficult problem, [Student] is able to work through the initial hurdle of "this feels hard" and is able to find the right time to ask a question to move [Student's] thinking along.
 - Test results indicate that [Student] would benefit from intensive intervention focused on skills and concepts related to quantitative reasoning and representation. Instruction that connects understanding of number relationships, computation, and problem-solving skills will strengthen [Student's] math abilities across domains.
28. The December 20, 2018, IEP descriptions of how Student's disability affected Student in math stated the following:
- Description of how the student's disability affects the student's access to the general education curriculum: Difficulty with long term memory impacts [Student's] ability to read and comprehend math word problems and language used in math explanations.
 - Description of how the student's disability affects the student's progress in the general education curriculum: [Student's] disability impacts [Student's] ability to retain new information without direct, explicit instruction and repeated practice.
29. The December 20, 2018, IEP had four math goals with 12/19/19 as the date of achievement. The goals were based on the common core standards of the grade Student

was in at the time. The goals, their baselines, and evaluation procedures and frequency were as follows:

- **Annual Goal 1:**
Using various models (area model, partial products, place value dots/digits) and visual supports, [Student] will multiply decimal numbers to the thousandths place value with 80% accuracy in 4/5 trials.
Baseline: This goal had no baseline stated.
Evaluation Procedures and Schedule: *Work Samples I Each Nine Weeks*
- **Annual Goal 2:**
Using supports, as needed, and place value knowledge, [Student] will read, write, compare, and round decimals to the thousandths place value with 80% accuracy in 4/5 trials.
Baseline: [Student] can round whole numbers to any place value with no teacher support and can round decimals with significant teacher support.
Evaluation Procedures and Schedule: *Work Samples I Each Nine Weeks*
- **Annual Goal 3:**
With access to manipulatives and supports, [Student] will use knowledge of fractions to perform operations (ex: addition, subtraction, multiplication, and division) with fractions with 80% accuracy in 4/5 trials.
Baseline: Based on [Student's] i-Ready BOY score, [Student's] could benefit from a review of basic fractions.
Evaluation Procedures and Schedule: *Work Samples I Each Nine Weeks*
- **Annual Goal 4:**
When given 5 expressions with parentheses, brackets, and grouping symbols, [Student] will use order of operations and checklists to accurately solve numerical equations such as $(4 \times 5) + (20 - 2 \times 7) = 26$, far above [Student's] grade level.
Baseline: [Student's] BOY iReady score places [Student] at 2nd-grade level for Algebraic Thinking.
Evaluation Procedures and Schedule: *Work Samples I Each Nine Weeks*

30. Student's December 20, 2018, IEP reading PLOP stated the following:

- Based on the Fall 2018 Fountas and Pinnell Reading Assessments, [Student] is reading independently at a level Q with a 98% accuracy score.
- In class, [Student] participates in class discussions and often builds on the ideas in the conversation. [Student] makes every effort to apply the strategies that are taught to help [Student] develop [Student's] own ideas about the text and author's intent. [Student] will say, "To add on..." and share [Student's] thinking with some evidence from the text.
- [Student] is currently working on closed syllables words with up to 3 letter blends, and [Student] is learning how to blend and segment up to six sounds in a closed syllable (ex: string, splash)
- WIAT III December 2017: Word Reading SS 84 Below Average; Pseudoword Decoding: SS 100 Average; Oral Reading Fluency: SS 83 Below Average; Oral Reading Accuracy: SS 85 Average; Reading Comprehension: SS 111 Average
- Woodcock Reading Mastery Test, November 25, 2016: Word Identification: SS 81 Low Average, Word Attack: SS 100 Average
- Test of Reading Efficiency (TOWER-2) SS: 76 Low; Sigh[t] Word Efficiency: SS 72 Low; Phonemic Decoding Efficiency: SS 82 Low Average;
- Gray Oral Reading Test: SS 86 Low Average.
- Based on the Wilson Reading Assessment for Decoding and Encoding (September 2017), [Student] is able to identify all consonants and short vowel sounds. [Student] is able to identify digraphs that include sh, ch, ck, th, and wh. [Student] is able to identify 10 out of 16 welded sounds. When reading unfamiliar words, [Student] reads through the word to solve by segmenting and blending its' parts.
- [Student] is currently reading Level M texts independently, according to the Fountas and Pinnell Reading Assessment System. [Student] is able to consistently decode CVC word patterns that include short vowels, digraphs, blends, and welded sounds (an, am, all, ang,

ing, ong, ung, ank, ink, onk, unk). [Student] is able to recognize these patterns in words and uses finger tapping to decode. [Student] reads in large, meaningful phrases with expressive interpretation of the author's meaning. [Student] is able to recall the important information from a text and share it in an organized way. [Student] is able to identify character feelings and traits, lessons learned, and provide text evidence to support [Student's] thinking. When reading aloud, [Student] is able to read an on-level controlled text at a rate of 66 words per minute.

31. The December 20, 2018, IEP descriptions of how Student's disability affected Student in reading stated the following:

- Description of how the student's disability affects the student's access to the general education curriculum: [Student] is working to improve [Student's] decoding and encoding skills. [Student's] difficulty with [Student's] long-term memory can impact [Student's] ability to quickly recognize and apply the phonics that [Student] is learning to independently read and comprehend grade-level texts.
- Description of how the student's disability affects the student's progress in the general education curriculum: [Student] is eager to learn and discuss [Student's] thinking. Because [Student] is not currently reading independently on grade level, [Student] continues to benefit from teacher supports and practice in small groups.

32. The December 20, 2018, IEP had five reading goals with 12/19/19 as the date of achievement. The goals were based on the common core standards of the grade Student was in at the time. The goals, their baselines, and evaluation procedures and frequency were as follows:

- **Annual Goal 1:**
[Student] will segment and blend multi-syllabic, closed syllable words (real, nonsense) with 90% accuracy in 2 out of 3 [t]rials.
Baseline: The student is able to segment and blend one-syllable CVC words.
Evaluation Procedures and Schedule: *Observation I At Opportunity*
- **Annual Goal 2:**
[Student] will segment and blend words (real, nonsense) that follow a vowel-consonant-e syllable pattern with 90% ac- curacy in 2 out of 3 trials.
Baseline: [Student] [Student] is able to segment and blend CVC words.
Evaluation Procedures and Schedule: *Observation I At Opportunity*
- **Annual Goal 3:**
[Student] will read and recognize 90% of grade-level high-frequency words correctly in 3 out of 4 trials.
Baseline: [Student] identified 83% of grade-level high-frequency words in isolation, with limited ability to recognize these words in context.
Evaluation Procedures and Schedule: *Observation I At Opportunity*
- **Annual Goal 4:**
[Student] will be able to identify the main ideas or life lessons of a text and support it with at least 2 pieces of evidence in 2 out of 3 trials.
Baseline: [Student] has demonstrated that [Student] is able to identify at least one theme in a story. However, [Student] does not consistently support [Student's] theme with appropriate evidence from the text.
Evaluation Procedures and Schedule: *Work Samples I At Opportunity Test I Each Nine Weeks*
- **Annual Goal 5:** [Student] will be able to fluently read a controlled text at a rate of 90 words per minute with 90% accuracy in 2 out of 3 trials.
- **Baseline:** [Student] is able to read a controlled text at a rate of 66 words per minute.
Evaluation Procedures and Schedule: *Observation I At Opportunity*

33. Student's December 20, 2018, IEP Written Expression PLOP stated the following:

- [Student] is eager to write in class. [Student] participates in discussions and engages in lessons so that [Student] is able to practice the skills that are taught. [Student] is able to write multi-paragraph stories with a clear beginning, middle, and end. With informational writing, [Student] has been able to group [Student's] ideas into appropriate sections. Organization within each section, elaboration, and punctuation are areas that [Student] continues to work on. WIAT III: December 2017: Spelling: SS 81 Below Average Sentence Composition SS 93 Average Sentence combining SS 100 Average Sentence Building SS 88 Average Essay Composition SS 98 Average Theme Development and Text Organization SS 83 Below Average.
- Based on the Wilson Reading Assessment for Decoding and Encoding (September 2017), [Student] is able to write CVC words that include consonants, short vowels, digraphs, blends, and most welded sounds. [Student] is able to segment these sounds to encode and uses inventive spelling to solve more complex word patterns. [Student] does not consistently spell learned high-frequency words in [Student's] writing.
- In writing class, [Student] has been able to keep pace with the classwork and has been an enthusiastic writer. [Student] is able to paragraph, follow a narrative story sequence, and use a storyteller's voice to draw the reader into [Student's] text. [Student] needs to continue to work on writing complete sentences and build up [Student's] writing to write an appropriate five-paragraph essay. Reading unfamiliar words, [Student] reads through the word to solve by segmenting and blending its' parts. [Student] is currently reading Level M texts independently, according to the Fountas and Pinnell Reading Assessment System. [Student] is able to consistently decode CVC word patterns that include short vowels, digraphs, blends, and welded sounds (an, am, all, ang, ing, ong, ung, ank, ink, onk, unk). [Student] is able to recognize these patterns in words and uses finger tapping to decode. [Student] reads in large, meaningful phrases with expressive interpretation of the author's meaning. [Student] is able to recall the important information from a text and share it in an organized way. [Student] is able to identify character feelings and traits, lessons learned, and provide text evidence to support thinking. When reading aloud, [Student] is able to read an on-level controlled text at a rate of 66 words per minute.

34. The December 20, 2018, IEP descriptions of how Student's disability affected Student in written expression stated the following:

- Description of how the student's disability affects the student's access to the general education curriculum: [Student] is consistently engaged in [Student's] writing assignments, [Student's] difficulty with long and short-term memory can impact [Student]'s encoding skills and written language development.
- Description of how the student's disability affects the student's progress in the general education curriculum: [Student]'s memory difficulties impact the clarity of [Student's] written ideas, which is a barrier to helping [Student] produce on grade-level pieces. [Student] benefits from small groups and scaffolds to help [Student] organize [Student's] writing and ideas.

35. The December 20, 2018, IEP had five written expression goals with 12/19/19 as the date of achievement. The goals were based on the common core standards of the grade Student was in at the time. The goals, their baselines, and evaluation procedures and frequency were as follows:

- **Annual Goal 1:** [Student] will encode multi-syllabic, closed syllable words with 90% accuracy in 2 out of 3 writing samples.
Baseline: [Student] is able to encode CVC words that include digraphs, short vowels, and some welded sounds.
Evaluation Procedures and Schedule: *Work Samples 1 At Opportunity*

- **Annual Goal 2:** [Student] will be able to spell 75% of grade-level high-frequency words in isolation.
- **Baseline:** [Student] [Student] is able to spell 25% of grade-level high frequency words.
Evaluation Procedures and Schedule: *Observation 1 At Opportunity*
- **Annual Goal 3:** [Student] will develop a writing piece using a variety of sentence structures in 2 out 3 writing samples.
Baseline: [Student's] writing includes many run-on sentences, which impacts the clarity of [Student's] ideas.
Evaluation Procedures and Schedule: *Work Samples 1 Each Nine Weeks*
- **Annual Goal 4:** [Student] will independently plan a sequential and organized writing piece using a graphic organizer with 90% accuracy in 2 out of 3 trials.
Baseline: [Student's] [Student] is able to brainstorm but would benefit from more concrete planning tools.
Evaluation Procedures and Schedule: *Work Samples 1 Each Nine Weeks*
- **Annual Goal 5:** [Student] will encode (real nonsense) words that follow vce patterns with 90% accuracy in 2/3 writing samples.
Baseline: There was no baseline
Evaluation Procedures and Schedule: *Work Samples 1 At Opportunity*

36. Student's final report card for SY 2018-2019 reflected that Student was rated as proficient and met grade expectations in reading for every quarter of the school year. Student was "proficient" in writing and language in the first quarter, and "basic," approaching grade-level expectations, for the last three quarters of the school year. Student was rated as proficient in math in the first quarter and last quarter and basic, approaching grade-level expectations, for the second and third quarters of the school year. Student was rated as proficient or advanced in all other subject areas. Student's work habits, personal and social skills were rated as being displayed independent of prompting. By the end of the year, with regard to specific reading skills and writing skills, Student was rated as "developing" in most skills and "secure" in most math skills and other subject areas, except for health and physical education in which Student was rated as "developing." (Petitioners' Exhibit 14)
37. On the city-wide standardized testing during SY 2018-2019, Student scored at the 4th percentile in Math for Student's grade compared to students attending School B. Student scored at the 37th percentile compared to all students in Student's grade in the District of Columbia. Student had scored at the 46th percentile compared to all District of Columbia students the year before. In English/Language Arts Student scored at the 25th percentile for Student's grade compared to other students at School B, and at the 73rd percentile for all students at that grade in the District of Columbia. Student had scored at the 67th percentile compared to all District of Columbia students the year before. (Petitioners' Exhibit 15)
38. Student's December 18, 2018, IEP was updated at School B on May 29, 2019, in preparation for Student's attendance at School A. The May 29, 2019, IEP prescribed 2 hours per week each for reading, written expression, and math in general education. There were no hours of specialized instruction outside general education and no related services. (Respondent's Exhibit 33)

39. The May 29, 2019, IEP stated the following with regard to Assistive Technology: [Student] benefits from using a laptop or computer for writing to make use of enlarged font and spell-check tool. (Respondent's Exhibit 33)
40. The May 29, 2019, IEP's Other Classroom Aids and Services stated: [Student] benefits from small group and individual instruction for pre-teaching and re-teaching of skills and strategies learned. [Student] may not always inform teachers when [Student] does not understand a concept, so a check-in can be helpful. [Student] benefits from preferential seating, visual supports, repeated directions, strategy cards, and tasks broken down into smaller steps. Benefits from leadership opportunities to build self-esteem and confidence. Thrives on 1:1 support. Masks anxiety behind a smile and desire to please attitude in large group settings. In small groups and individual settings, will ask for help. Math support will include base ten blocks, place value disks, place value charts, base ten tables, highlighting multiplication tables. Read aloud for content questions and instructions. Multi-sensory learning tools include tactile strategies, including sand tracing for learning sight words and tapping out sounds for decoding and segmenting sounds. [Student] may benefit from computerized access to a reading intervention program, laptop, or computer for written work using enlarged font and spell checks. (Respondent's Exhibit 33)
41. The May 29, 2019, IEP's Classroom Accommodations and Statewide Assessment Accommodations section included the following: (a) Presentation: clarification/repetition of directions, read aloud for ELA/literacy and non-ELA/literacy assessments, redirect Student to test, (b) Response: calculation device on non-calculator sections, human scribe, speech to text, human signer, or external assistive technology for response on non-ELA/literacy assessments, test with a familiar examiner; (c) Setting: preferential seating, location with minimal distractions, small group testing; (d) Timing and Scheduling: extended time, frequent breaks. (Respondent's Exhibit 33)
42. Student's May 29, 2019, Math PLOP stated the following:
 - WIAT III December 2017: Math numerical operations SS 96 Average Math fluency addition SS 93 Average Math fluency subtraction SS 89 Average, Math fluency multiplication SS 77 Below Average.
 - BOY – September 2018 Overall: 446, Grade 3, Number and Operations: Late Grade 3, Algebraic Thinking: Mid-Grade 2, 429, Measurement and Data: Early Grade 4, Geometry Early Grade 4.
 - EOY – May 2019 Overall: 467, Grade 4, Number and Operations: Mid-Grade 5, Algebraic Thinking: Late Grade 4, Measurement and Data: Late Grade 4, Geometry Late Grade 4.
 - Test results indicate that [Student] would benefit from intensive intervention focused on skills and concepts related to quantitative reasoning and representation. Instruction that connects understanding of number relationships, computation, and problem-solving skills will strengthen [Student's] math abilities across domains.
 - [Student] is a kind and eager []th grader who enjoys working in partnerships and explaining [Student's] thinking. [Student] is quick to make connections to previously learned skills. [Student's] self-advocacy skills have grown immensely since the start of the year. When working with a difficult problem, [Student] is able to work through the initial hurdle of "this feels hard" and is able to find the right time to ask a question to move [Student's] thinking along.

43. The May 29, 2019, descriptions of how Student's disability affected Student in math stated the following:

- Description of how the student's disability affects the student's access to the general education curriculum: Difficulty with long term memory impacts [Student's] ability to read and comprehend math word problems and language used in math explanations.
- Description of how the student's disability affects the student's progress in the general education curriculum: [Student's] disability impacts [Student's] ability to retain new information without direct, explicit instruction and repeated practice.

44. The May 29, 2019, IEP had four math goals with 5/28/20 as the date of achievement. The goals were based on the common core standards of the grade Student would be in during SY 2019-2020. The goals, their baselines, and evaluation procedures and frequency were as follows:

- **Annual Goal 1:** [Student] will be able to solve a 2-step word problem with up to 4-digit numbers with subtraction, addition, multiplication, or division with 80% accuracy in 4/5 trials.
Baseline: [Student] is able to match the correct operations to math vocabulary in a word problem with limited teacher support. [Student] is able to make a plan for solving the word problem, using sentence stems or a word bank of new vocabulary to lean on for support. This goal area is to maintain work in solving multi-step word problems as the content lifts to 6th-grade level.
Evaluation Procedures and Schedule: *Worksheet 1 Weekly*
- **Annual Goal 2:** [Student] will increase the ability to represent probabilities using fractions, decimals, and percents from a current level of limited exposure to 75% accuracy as measured by curriculum-based assessments.
Baseline: [Student] can relate 0.1 to 1/10 but is currently unable to relate those figures to 10%.
Evaluation Procedures and Schedule: *Worksheet 1 a Month*
- **Annual Goal 3:** When given a set of (5) questions, [Student] will identify which questions are statistical (e.g., "For the given jar of different colored marbles, what are the chances that a student will pick a red marble?"), and non-statistical (e.g., "For the given jar of different colored marbles, how many red marbles are in the container?"), for (4 out of 5) questions
Baseline: [Student] has grown in Algebraic Thinking as a domain from Grade 2 level to Grade 4 level this school year. [Student] is better able to think creatively to problem-solve grade-level content but will likely need support in differentiating between statistical and non-statistical questions due to [Student's] reading disability.
Evaluation Procedures and Schedule: *Worksheet 1 Weekly*
- **Annual Goal 4:** When given a mathematical expression adding two whole numbers between 1 and 100 ($36 + 8$), [Student] will correctly use the distributive property to rewrite the expression in the form GCF (factor $+$ factor) for 4 out of 5 examples. Ex: ($36 + 8$ as $4 \times (9 + 2)$; 4 is the Greatest Common Factor.
Baseline: [Student's] [Student] is able to decompose numbers ($36 = 30 + 6$) with ease and no teacher support. [Student] is less successful with using distributive property successfully - and could benefit from teacher support in utilizing this shortcut as [Student's] abstract number sense is still building. BOY iReady score places [Student] at the 2nd-grade level for Algebraic Thinking.
Evaluation Procedures and Schedule: *Worksheet 1 Weekly*

45. Student's May 29, 2019, IEP reading PLOP stated the following:

- Based on the May 2019 Fountas and Pinnell Reading Assessments, [Student] is reading independently at a level T with 98% accuracy. [Student] needed to be prompted to use decoding skills to sound out unfamiliar words.
- [Student] continues to work on decoding skills and reading fluency.
- In class, [Student] participates in class discussions and often builds on the ideas in the conversation. [Student] makes every effort to apply the strategies that are taught to help develop [Student's] own ideas about the text and author's intent. [Student] will say, "To add on..." and share [Student's] thinking with some evidence from the text.
- WIAT III December 2017: Word Reading SS 84 Below Average; Pseudoword Decoding: SS 100 Average; Oral Reading Fluency: SS 83 Below Average; Oral Reading Accuracy: SS 85 Average; Reading Comprehension: SS 111 Average.
- Woodcock Reading Mastery Test, November 25, 2016: Word Identification: SS 81 Low Average, Word Attack: SS 100 Average.
- Test of Reading Efficiency (TOWER-2) SS: 76 Low; Sigh[t] Word Efficiency: SS 72 Low; Phonemic Decoding Efficiency: SS 82 Low Average;
- Grady Oral Reading Test: SS 86 Low Average.
- Based on the Wilson Reading Assessment for Decoding and Encoding (September 2017), [Student] is able to identify all consonants and short vowel sounds. [Student] is able to identify digraphs that include sh, ch, ck, th and wh. [Student] is able to identify 10 out of 16 welded sounds. When reading unfamiliar words, [Student] reads through the word to solve by segmenting and blending its' parts. [Student] is working to improve decoding and encoding skills. [Student's] difficulty with long-term memory can im-pact [Student's] ability to quickly recognize and apply the phonics that [Student] is learning to independently read and comprehend grade-level texts.

46. The May 29, 2019, IEP descriptions of how Student's disability affected Student in reading stated the following:

- Description of how the student's disability affects the student's access to the general education curriculum: [Student] is working to improve [Student's] decoding and encoding skills. [Student's] difficulty with [Student's] long-term memory can impact [Student's] ability to quickly recognize and apply the phonics that [Student] is learning to independently read and comprehend grade-level texts.
- Description of how the student's disability affects the student's progress in the general education curriculum: [Student] is eager to learn and discuss [Student's] thinking. Because [Student] is not currently reading independently on grade level, [Student] continues to benefit from teacher supports and practice in small groups.

47. The May 29, 2019, IEP had three reading goals with 5/28/20 as the date of achievement. The goals were based on the common core standards of the grade Student would be in SY 2019-2020. The goals, their baselines, and evaluation procedures and frequency were as follows:

- **Annual Goal 1:** [Student] will segment and blend words (real, nonsense) that follow a vowel-consonant-e syllable pattern with 90% accuracy in 2 out of 3 trials.
Baseline: [Student] is able to apply strategies to decode some -VCe words
Evaluation Procedures and Schedule: *Work Samples I Each Six Weeks Observation I At Opportunity*
- **Annual Goal 2:** [Student] will read and recognize 90% of grade-level words correctly in 3 out of 4 trials.
Baseline: [Student] identified 50% of grade-level high-frequency words in isolation, with limited ability to recognize these words in context.
Evaluation Procedures and Schedule: *Observation I At Opportunity Test I Each Semester*

- **Annual Goal 3:** [Student] will be able to independently identify at least two main ideas or life lessons of a text and support each with at least 2 pieces of evidence 2 out of 3 trials.
Baseline: With prompting, [Student] is able to identify the main idea or theme of a text. With continued questioning, [Student] is able to provide supporting evidence.
Evaluation Procedures and Schedule: *Work Samples 1 At Opportunity Test 1 Each Nine Weeks*

48. Student's May 29, 2019, IEP written expression PLOP stated the following:

- When provided or using a familiar graphic organizer, [Student] is able to plan [Student's] writing and draft [Student's] piece to include appropriate details and a variety of sentences throughout the piece. [Student] participates in discussions and engages in lessons, so that [Student] is able to practice the skills that are taught. [Student] is able to write multi-paragraph stories with a clear beginning, middle, and end. With informational writing, [Student] has been able to group ideas into appropriate sections. Elaboration and punctuation are areas that [Student] continues to work on.
- WIAT III: Spelling: SS 81 Below Average; Sentence Composition: SS 93 Average; Sentence Combining: SS 100 Average; Sentence Building SS 88 Average; Essay Composition SS 98 Average; Theme Development and Text Organization SS 83 Below Average.

49. The May 29, 2019, IEP descriptions of how Student's disability affected Student in written expression stated the following:

- Description of how the student's disability affects the student's access to the general education curriculum: Based on the Wilson Reading Assessment for Decoding and Encoding (September 2017), [Student] is able to write CVC words that include consonants, short vowels, digraphs, blends, and most welded sounds. [Student] is able to segment these sounds to encode and uses inventive spelling to solve more complex word patterns. [Student] does not consistently spell learned high-frequency words in [Student's] writing.
- Description of how the student's disability affects the student's progress in the general education curriculum: In writing class, [Student] has been able to keep on pace with the classwork and has been an enthusiastic writer. [Student] is able to paragraph, follow a narrative story sequence, and use a storyteller voice to draw the reader into [Student's] text. [Student] needs to continue to work on writing complete sentences and build up [Student's] writing to write an appropriate five-paragraph essay.

50. The May 29, 2019, IEP had five written expression goals with 5/28/20 as the date of achievement. The goals were based on the common core standards of the grade Student would be in SY 2019-2020. The goals, their baselines, and evaluation procedures and frequency were as follows:

- **Annual Goal 1:** [Student] will encode multi-syllabic, closed syllable words with 90% accuracy in 2 out of 3 writing samples.
Baseline: [Student] is able to encode multi-syllabic closed syllable words with 50% accuracy.
Evaluation Procedures and Schedule: *Work Samples 1 At Opportunity Test 1 Each Nine Weeks*
- **Annual Goal 2:** [Student] will be able to spell 75% of grade-level high-frequency words in isolation.
Baseline: [Student] is able to spell 20% of grade-level high-frequency words.
Evaluation Procedures and Schedule: *Work Samples 1 At Opportunity Test 1 Each Nine Weeks*
- **Annual Goal 3:** [Student] will independently revise [Student's] narrative writing to

elaborate on the most important parts of the story by using narrative crafts such as descriptions, dialogue, and inner thinking.

Baseline: With 1:1 support and prompting, [Student] may revise [redacted] writing.

Evaluation Procedures and Schedule: *Work Samples 1 Each Nine Weeks*

- **Annual Goal 4:** [Student] will encode (real nonsense) words that follow a vcv patterns with 90% accuracy in 2/3 writing samples.

Baseline: [Student] is able to encode one-syllable words that follow the vowel-consonant-e pattern with 73% accuracy.

Evaluation Procedures and Schedule: *Work Samples 1 At Opportunity Test 1 Each Nine Weeks*

- **Annual Goal 5:** [Student] will be able to independently revise [Student's] essays to include explanations of the details/evidence that [Student] includes.

Baseline: With prompting and guidance, [Student] may revise [Student's] essay to include an explanation for how the evidence connects to [Student's] thesis.

Evaluation Procedures and Schedule: *Work Samples 1 Each Nine Weeks*

51. Student's special education teachers updated the PLOP and goals for writing, reading, and math in the May 29, 2019, IEP. The draft IEP first developed by the teachers included some hours of specialized instruction outside general education. Student's reading teacher was addressing Student's reading disability with both instruction in the general education reading class and the intervention with Wilson outside the general education class, but she was not aware of how Student's reading difficulties affected Student in other classes. The goal in her instruction was to use grade-level texts, and by the end of SY 2018-2019 Student was at mid-grade level in reading as measured by some classroom assessments. However, Student still needed continued growth in decoding with an evidenced-based reading intervention at the end of SY 2018-2019. (Witness 4's testimony, Witness 6's testimony)
52. Petitioners and Student participated in the May 29, 2019, IEP meeting. There were two people from School A in the meeting. Student's father believed initially that the meeting was simply a meet and greet. However, the team went through a normal IEP meeting, reviewing documentation. The tone of the meeting was cordial, and everyone seemed to be there to support Student. (Father's testimony)
53. During the May 29, 2019 meeting, it was explained by the representative from School A who attended the meeting that any hours outside general education would be provided in a separate special education resource room. The special education teachers decided that the Student's need for support in decoding and phonics did not override the decision to eliminate Student being in the resource room as it was described at School A. The final IEP stated that Student's reading intervention was to be outside of school hours. None of the School B team members could remember making a recommendation for Student's reading intervention to be outside of school hours and did not realize that was in the May 29, 2019, IEP. (Witness 4's, testimony, Witness 6's testimony, Witness 7's testimony)
54. Student's father knew that School A had a different type of reading program than School B, but did not recall there was any reduction in Student's hours of specialized instruction as the team reviewed and agreed upon the contents of the IEP. School A members offered a link to the school's reading program so that Student could start using the program over the summer. (Father's testimony)

55. Student's mother did not remember any conversations during the May 29, 2019, meeting about the details of the IEP and services. She found out about a reduction in Student's specialized instruction much later. There was some disagreement during the meeting about social-emotional support. Student's parents wanted to be proactive and add those services. The School A team member said they would address any social-emotional concerns Student had if or when they came up, as they did not want that documentation in the IEP. The team discussed the continuum of services, but Student's mother does not recall there being options for them to make a decision upon. There was a discussion that about a resource room at School A and based on the description, it did not appear to be appropriate for Student because there were students in that program with behavior issues. (Mother's testimony)
56. The School A special education coordinator stated that these goals in the IEP could be addressed with School A's inclusion model or in its resource room, and the team agreed Student does better when in a general education setting; no one disagreed that model would meet Student's goals best. If later Student wanted to move to the resource room model, that switch could be made. The School B and School A team members did not want Student to look more disabled in May 29, 2019, IEP than Student was. (Witness 7's testimony)
57. Student really wanted to attend School A so Student could be with friends from School B. Petitioners sat down with Student and said if Student really wanted to go to School A, they would give Student the opportunity; give it a try and "see as they go". (Father's testimony)
58. Student found the pace of instruction at School A was much faster, and the classes had more students than at School B. There was a lot more homework; Student soon became stressed and would only do half of the homework. Student was scared to miss a day of school because of the chance Student would fall behind. Student was not getting pulled out of class for instruction as much as at School B, but was pulled out of class for tests. Student sometimes understood the classwork. Student liked science and kept up with it. In math, Student would often not really understand what was going on and would be pulled out into a smaller group in class. (Student's testimony)
59. Student's mother eventually became aware that Student was not receiving any evidence-based reading program at School A. Student's mother inquired about the reading intervention program, but by that time Student was getting so stressed over the academics that Student's special education case manager said Student could not handle the reading intervention program at that time. In October 2019 Student's mother had a meeting with School A staff about how to help Student. They provided Student a computer but did not tell all of Student's teachers that Student could use the computer. There was a lot of confusion. (Mother's testimony)
60. Petitioners applied to School C and had Student take assessments at School C, thinking that Student would perhaps attend School C in SY 2020-2021 and finish the first year at

School A. However, in November 2019, the administrator at School C sent Student's mother a copy of Student's writing sample Student had written on the visit to School C. The administrator expressed concern that the sample reflected that Student was significantly below grade level in literacy and asked that Student start at School C immediately. Over that weekend in November Student's mother sent a letter to School A stating that they were going to start Student at another school in January 2020. School A responded by suggesting another meeting, but things were so hectic and chaotic they did not have a meeting before Student left school A at the start of the winter break. Petitioners unilaterally placed Student in School C. Student has continued to attend School C since January 2019. (Mother's testimony, Father's testimony, Petitioners' Exhibits 19-1, 20, 21, 22, 23)

61. In the first half of SY 2019-2020, at School A, Student took the following courses and got the following grades: Language Arts: D, World Geography and Cultures: B+, French Language and Culture: A, Accelerated Math: B-, Science: A, Music: A. (Petitioners' Exhibits 17)
62. Student's School A's special education teacher/case manager wrote the following comments regarding Student's progress in math, reading, and written expression: [Student] has improved [Student's] ability to decode what a word problem is asking as well as fluency in all four operations. Just the sight of multi-step word problems and 4-digit numbers can pose an immediate challenge for [Student] to get started. [Student] benefits from encouragement and step-by-step discussion with a teacher in order to work through the problem. [Student] has been able to decipher V-C-e words, especially well in a no-pressure environment. [Student] has improved [Student's] familiarity with grade-level words, though dyslexia can impede [Student's] reading. [Student] is skilled at identifying the main idea after independent reading or after a read-aloud and benefits from peer or teacher discussion to confirm [Student's] accuracy. [Student] has improved in spelling and tends to spell unfamiliar words based on sounding it out, which often is incorrect because, in English, letters are not always based on specific sounds. After peer review or teacher notes (or discussion), [Student] has edited and added to narrative writing pieces. After peer review or teacher notes (or discussion), [Student] has edited and added to short essays based on teacher prompts. (Petitioners' Exhibit 72 page 659-665)
63. While at School A Student did not present as anxious in class to Student's special education teacher. Student was well-liked in homeroom, was a leader, and was willing to share during social-emotional circles in homeroom. Student's willingness to share would spark others to do the same. Student's special education case manager helped Student with math and ELA for about 50 minutes each daily. There were 20 to 25 students in the classes, and the special education teacher supported other students as well. He shared Student's IEP with all Student's teachers. Some of the teachers would have two different versions of tests and materials and a modified version that Student and other students with IEPs would be provided. Student always wanted to be more independent but always would take support. Student came to understand that the special education teacher was in the general education classroom to help Student. Student would make eye contact or

raise a hand if Student needed help or a calculator. The special education teacher did not think Student wanted to be singled out, but Student would ask for help if needed. Student participated in the general education classroom and was willing to take risks to answer questions. (Witness 5's testimony)

64. In ELA, audiobooks were available, and the teacher often read out loud. When there were directions to be provided, the special education teacher would often read them out loud to make sure Student understood. Student was getting comfortable with the graphic organizers that all students used. Student was able to express Student's thoughts in writing; however, spelling and grammar were a struggle. The special education teacher could figure out what Student wrote, but it was not always clear. Student used a laptop sometimes; and the teacher would offer Student the computer if there were in-depth writing assignments. (Witness 5's testimony)
65. Initially, Student wanted to stay at School A and hated School C when Student first arrived at School C. Student has come to love School C now, despite the instruction becoming virtual soon after Student began attending School C. To Student, the major differences between School C from School A, is that there are a lot fewer students in each classroom: 6 students vs. 28 at School A. There are only 20 students in Student's entire grade at School C. School C has slower-paced instruction, and less work is given out in school and for homework. All work is on the computer. Each student has his or her own computer. As a result, the Student has learned typing and become better at spelling. Student is now able to write a longer paragraphs with more detail, and Student's spelling has improved. There are a lot of afterschool activities, including dance club, photography, drama and music. Student has experienced growth in reading, spelling, and math. (Student's testimony, Petitioners' Exhibit 12, page 159)
66. In the second half of SY 2019-2020, at School C, Student took the following courses and got the following final end of year grades: Art: A+, Drama: A+, English: B+, Math: B-, Physical Education: A+, Reading: Pass, Science: B, Social Studies: B. Student had seven absences in the 3rd quarter and 5 in the 4th quarter. Student's performance in writing was measured against the common core standards for Student's grade. (Petitioners' Exhibits 26-21, 27-1)
67. On May 13, 2020, Petitioners, through their attorney, requested an offer from DCPS of a FAPE for Student for SY 2020-2021. (Petitioners' Exhibit 28-1, 28-3).
68. DCPS developed an IEP for Student dated August 13, 2020, and proposed to implement the IEP at School A. The School C staff were not available to participate in a meeting during the summer months. (Petitioners' Exhibits 28-10, 29-20)
69. The August 13, 2020, meeting was conducted virtually. Student's mother and father, along with their educational advocate, participated in the August 13, 2020, IEP meeting, which was conducted by telephone. The DCPS representatives included a DCPS Resolution Specialist, a general education teacher and special education teacher. The

meeting was conducted by DCPS Central Office staff. No one from School A, B, or C participated in the meeting. (Petitioners' Exhibit 29-35)

70. The August 13, 2020, IEP included present levels of academic achievement and functional performance ("PLOP") and goals in academic areas of math, reading, and written expression and noted the common core standards in these areas for the grade Student would be in during SY 2020-2021. The IEP prescribed the following services: 12.5 hours of specialized instruction per week, ten of which were outside general education and 2.5 inside general education. The hours outside general education were divided as follows: 3 hours per week for reading, 4 hours per week for written expression, and 3 hours per week for math. The 2.5 hours inside general education had no subject specification. The IEP also included consultative behavior support services of 30 minutes per month. The IEP noted assistive technology. (Petitioners' Exhibit 29-20, 29-21, 29-31)
71. The August 13, 2020, IEP's Other Classroom Aids and Services stated: Teacher check-ins when needed, Pre-teach and re-teach when needed, visual supports, chunked assignments, benefits from leadership opportunities to build self-esteem and confidence. Thrives on 1:1 support. Masks anxiety behind a smile and desire to please attitude in large group settings. Small group setting read-aloud for content questions and instructions. [Student] may benefit from computerized access to reading intervention program, laptop or computer for written work using enlarged font and spell checks. (Petitioners' Exhibit 29-31)
72. The August 13, 2020, IEP's Classroom Accommodations and Statewide Assessment Accommodations section included the following: (a) Presentation: clarification/repetition of directions, read aloud for ELA/literacy and non-ELA/literacy assessments, redirect Student to test, (b) Response: calculation device on non-calculator sections, human scribe, speech to text, human signer, or external assistive technology for response on non-ELA/literacy assessments, test with a familiar examiner; (c) Setting: preferential seating, location with minimal distractions, small group testing; (d) Timing and Scheduling: extended time, frequent breaks. (Petitioners' Exhibit 29-33)
73. Student's August 13, 2020, Math PLOP cited Student's grades in math while attending School A, Student's math grade and School C, and the notes from Student's School A report card regarding Student's math performance. Student's math grades from Student's last year at School B were also cited along with data and description for math from Student's December 2017 psychological reevaluation. (Petitioners' Exhibit 29-22, 29-23)
74. The August 13, 2020, descriptions of how Student's disability affected Student in math was the same as in the previous IEP:
 - Description of how the student's disability affects the student's access to the general education curriculum: Difficulty with long term memory impacts [Student's] ability to read and comprehend math word problems and language used in math explanations.

- Description of how the student's disability affects the student's progress in the general education curriculum: [Student's] disability impacts [Student's] ability to retain new information without direct, explicit instruction and repeated practice.

75. The August 13, 2020, IEP had two math goals, with 8/12/21 as the date of achievement. The goals were based on the common core standards of the grade Student would be in during SY 2020-2021. The goals, their baselines, and evaluation procedures and frequency were as follows:

- **Annual Goal 1:** When given a real-world problem with rational numbers that requires two-steps to solve, [Student] will set up an equation in the form of $px+q=r$ or $p(x+q)=r$ and use inverse operations to solve for the unknown variable in 4 out of 5 opportunities.
Baseline: Report Card Comments stated [Student] uses the GEM (Groupings, Exponents, Multiplication) or division, and subtraction or addition strategies to solve multi-step math expressions and needs reminders about how to work with exponents.
Evaluation Procedures and Schedule: *Work Samples/Each Nine Weeks / Observation/ At Opportunity*
- **Annual Goal 2:** [Student] will use ratios to correctly calculate unit rates, including ratios of fractions with quantities measured in like or different units. For example, if a person walks $\frac{1}{2}$ mile in each $\frac{1}{4}$ hour, compute the unit rate as the complex fraction $\frac{1/2}{1/4}$ miles per hour, equivalently 2 miles per hour.
Baseline: Currently, [Student] can solve problems with fractions but omitted questions on a worksheet where [Student] had to multiply mixed numbers by whole numbers.
Evaluation Procedures and Schedule: *Work Samples/Each Nine Weeks / Observation/ At Opportunity*

76. Student's August 13, 2020, Reading PLOP cited Student's grades while attending School A, Student's English grade at School C, and the notes from Student's School A report card regarding Student's performance in English. Student's reading grades from Student's last year at School B were also cited along with data and description for math from Student's December 2017 psychological reevaluation. Finally, the comments from Student's IEP progress report from School A were cited. (Petitioners' Exhibit 29-24, 29-25, 29-26)

77. The August 13, 2020, IEP descriptions of how Student's disability affected Student in reading, the same as in the previous IEP, stated the following:

- Description of how the student's disability affects the student's access to the general education curriculum: [Student] is working to improve [Student's] decoding and encoding skills. [Student's] difficulty with [Student's] long-term memory can impact [Student's] ability to quickly recognize and apply the phonics that [Student] is learning to independently read and comprehend grade-level texts.
- Description of how the student's disability affects the student's progress in the general education curriculum: [Student] is eager to learn and discuss [Student's] thinking. Because [Student] is not currently reading independently on grade level, [Student] continues to benefit from teacher supports and practice in small groups.

78. The May 29, 2019, IEP had two reading goals with 8/12/21 as the date of achievement. The goals were based on the common core standards of the grade Student would be in SY 2020-2021. The goals, their baselines, and evaluation procedures and frequency were as follows:

- **Annual Goal 1:** When given an instructional level passage, [Student] will read passage aloud at a rate of a least 154 words per minute with 2 errors or less applying (3) teacher selected intonation and expression skills (e.g., acknowledge mid-sentence and end of sentence punctuation accurately, demonstrate a difference in tone between dialogue and narration, and include original expression reflective of passage content) as measured by teacher running record or curriculum-based assessment in 4 out of 5 opportunities.

Baseline: Currently based off the Aimsweb-Fluency assessment, [Student] is reading 116 WPM with 3 errors.

Evaluation Procedures and Schedule: *Log/Bi-Weekly Observation / At Opportunity*

- **Annual Goal 2:** Given an independent level informational text and a claim about the text (e.g. central idea, key conclusion), [Student] will consistently cite (3) pieces of strong evidence and write (2-3) sentences to explain how it supports the claim with an 80% accuracy as measured by a teacher made rubric.

Baseline: [Student's] report card indicates [Student] selects strong evidence, but comments on work samples indicate with is an area [Student] needs to improve upon.

Evaluation Procedures and Schedule: *Work Samples / Each Six Weeks Observation / At Opportunity*

79. Student's August 13, 2020, written expression PLOP cited Student's grades in while was attending School A, Student's English grade at School C, and the notes from Student's School A report card regarding Student's performance in English. Student's reading grades from Student's last year at School B were also cited along with data and description for math from Student's December 2017 psychological reevaluation. Finally, a summary of Student's work samples were reviewed that noted Student is able to write and stay on topic, needs work on the organization of paragraphs including (specifically topic/conclusion sentences and transition words), needs to work on supporting evidence and is able to complete a graphic organization to help with writing. (Petitioners' Exhibit 29-28, 29-29)
80. The August 13, 2020, IEP descriptions of how Student's disability affected Student in written expression stated the following:
 - Description of how the student's disability affects the student's access to the general education curriculum: [Student] is consistently engaged in writing assignments, [Student's] difficulty with long and short-term memory can impact Student's encoding skills and written language development.
 - Description of how the student's disability affects the student's progress in the general education curriculum: [Student's] memory difficulties impact the clarity of [Student's] written ideas, which is a barrier to helping [Student] produce on grade level pieces. [Student] benefits from small groups and scaffolds to help [Student] organize writing and ideas. (Petitioners' Exhibit 29-29)
81. The August 13, 2020, IEP had three written expression goals with 8/12/21 as the date of achievement. The goals were based on the common core standards of the grade Student would be in SY 2020-2021. The goals, their baselines, and evaluation procedures and frequency were as follows:
 - **Annual Goal 1:** Given a narrative writing prompt (e.g., written or verbally), [Student] will use (2) narrative techniques (e.g., dialogue, pacing, or description) to develop (2) story elements (e.g., plot, characters) in (4 of 5) writing prompts as measured by teacher

created rubric or writing checklist).

Baseline: Teacher noted on report card [Student] should work on how [Student] writes dialogue.

Evaluation Procedures and Schedule: *Work Samples / Each Nine Weeks*

- **Annual Goal 2:** [Student] will be able to revise written work using graphic organizers, teacher feedback, and word processor to ensure [Student's] paragraphs are formatted appropriately, [Student] has supporting evidence, and proper writing mechanics as measured by a teacher rubric in 4 out 5 opportunities.

Baseline: Teacher noted on [Student's] report card and on work samples [Student] needs to work on paragraph formatting. Spelling is also an area of growth for [Student]. [Student] is able to spell 20% of grade-level high-frequency words.

Evaluation Procedures and Schedule: *Work Samples / Each Nine Weeks*

- **Annual Goal 3:** When given (2) grade level informational texts on a topic, [Student] will write an essay that includes paragraphs in the correct order: an introductory paragraph, (3) body paragraphs, and a conclusion paragraph, in 4 out of 5 opportunities.

Baseline: Currently [Student's] teachers notes on [Student's] report card and on work samples that [Student] need to work on paragraph formatting

Evaluation Procedures and Schedule: *Work Samples / Each Nine Weeks*

82. Petitioners believed that the IEP developed during the August 13, 2020, meeting did not address Student's needs. During the meeting, the DCPS team members spoke about Student's academic improvements, but did not seem to get or acknowledge the improvement was a result of the extra support Student was receiving at School C. Petitioners asked for an increase in the hours of specialized instruction in the IEP to 30 hours per week from what was originally offered by DCPS. Petitioners also requested that Student be provided behavior support, but the DCPS representative did not agree. (Father's testimony, Mother's testimony)
83. Petitioners expressed concern about how Student responded to the workload and curriculum when Student attended School A previously. Student's achievement scores were Low Average, and in reviewing Student's data from DCPS and School C, the DCPS representative did not see the severity of deficits that would warrant the 30 hours of specialized instruction per week that Student's father asked for during the meeting. She believed that based on the data, Student's needs could be met at School A. With regard to the Petitioners expressed concern about Student's anxiety, the DCPS representative was aware that anxiety was mentioned in a prior evaluation, but because there was no anxiety mentioned by School C or anything that she saw that needed to be addressed regarding Student's social-emotional development, no behavior support services were put in the IEP. (Witness 3's testimony, Respondent's Exhibits 38, 39, 65)
84. The DCPS representative in the August 13, 2020, IEP meeting did not speak with the staff members who worked directly with Student at School A, School B or School C. The DCPS representative erased the PLOP in Student's previous IEP and started from scratch, and gave Student new goals, and then moved on through the IEP. She updated the IEP to put in the next grade-level standards. She initially proposed two hours of specialized instruction in each area of math, reading, and written expression. She later agreed to increase the hours of specialized instruction after the parent's request. She did not change any of the academic goals when she increased the hours in the final IEP. There were no requests for changes to Other Classroom Aids and Services; there was

only disagreement with the hours of specialized instruction that were proposed. (Witness 3's testimony)

85. Petitioners' counsel informed DCPS on August 13, 2020, that based on the offer of FAPE that DCPS made, which Petitioners' considered inappropriate to meet Student's needs, Petitioners were continuing with their unilateral placement of Student at School C. (Petitioners' Exhibits 28-11, 29-18)
86. On August 18, 2020, DCPS responded to the Notice of Unilateral Placement, indicating that "DCPS confirms receipt of your letter dated August 3, 2020. While DCPS recognizes the parents' right to choose a private placement, DCPS does not agree to bear the cost of a private placement in this case." (Petitioners' Exhibit 28-17)
87. Petitioners educational advocate sent a letter of dissent to DCPS expressing Petitioners' concerns about the IEP and stating that the Petitioner did not believe it addressed Student's needs. (Petitioners' Exhibit 29-45)
88. Petitioners engaged an educational consultant to review Student's DCPS IEPs and educational data, interview Petitioners and Student, and render an opinion on the appropriateness of Student's DCPS IEPs for May 2019 and August 2020, and the type of educational placement that would meet Student's educational needs. The consultant created a report as a result. Petitioners' consultant reviewed a draft of the May 2019 IEP and the August 2020 IEP for her report. Prior to the hearing, she reviewed the December 2018 IEP and the finalized version of the May 2019 IEP. (Witness 2's testimony, Petitioners' Exhibit P-41. Page 302)
89. Petitioners' consultant surmised that Student has dyslexia and has been reading below grade level for many years. Student has trouble with decoding and comprehension, and writing, including punctuation and spelling. The consultant described dyslexia as a language-based disability that impacts the individual's phonological awareness and causes difficulty in manipulating sounds, blending sounds, being able to attack a word, and difficulty linking sounds together and breaking apart a word. Dyslexia also includes the orthography component of writing and can affect an individual's spelling and spelling patterns. (Witness 2's testimony)
90. Petitioners' educational consultant offered her opinion of the appropriateness in meeting Student's needs of each of the IEPs in question. Some of the concerns raised by the consultant included: There were no positive behavioral supports or direct behavior support services. The description of the effects of Student's disability on Student's access to and progress in the general education curriculum are incomplete because they don't describe all factors that impact Student, such as a reading disorder (dyslexia) and anxiety; it simply mentions memory. The academic goals in the areas of math, reading, written expression do not all have baselines, and some with baselines do not have specific data connected to the goal. The PLOPs do not all have current data that is reflected in the goals. The goals seem to have been picked to address curriculum skills while overlooking the foundations Student needed to reach those standards. The goals reflect a

number and level of skills that seem difficult for Student to attain in one year's time. Student had not mastered some of the previous goals but they seem to have been changed simply because Student was moving onto another grade. Not all the goals are measurable. The evaluation procedures for the goals do not always match the goal or produce regular data collection (e.g., with a specific frequency rather than "observation at opportunity".) The amount of specialized instruction was insufficient to address the Student's level of academic deficits, and all instruction should be outside the general education setting because Student's reading disorder affects Student throughout all classes in the general education curriculum. In making her post review of the IEPs, the consultant noted that particularly with regard to the IEP goals, PLOP, and baselines, the IEPs she reviewed were "not how I want to write an IEP, I want to write an IEP based on data." (Witness 2's testimony, Petitioners' Exhibit 41)

91. The consultant also conducted an observation of Student's virtual instruction at School C, spoke with Student's School C teachers, and had Student do some reading. The consultant also attended a recent meeting with DCPS and Petitioners a month prior to the hearing. School C has a writing curriculum throughout the school and in all subjects, low student to teacher ratio, reading, math, writing interventions, writing-focused in every subject, and social-emotional support. (Witness 2's testimony, Petitioners' Exhibit 37)
92. Student currently attends School C through virtual learning only. Soon, however, School C will begin to allow its students to attend school in person on Monday, Tuesday, Thursday, and Friday, with Wednesday instruction remaining virtual learning. (Father's testimony)
93. Petitioners received financial aid from School C for Student to attend School C in the second half of SY 2019-2020 and for SY 2020-2021. As a result, Petitioners were obligated to pay and paid School C \$17,519.87 for Student's attendance at School C for the second half of SY 2019-2020. Petitioners were obligated to pay and paid School C \$27,088.00 for Student's attendance at School C for SY 2020-2021. (Father's testimony, Petitioners' Exhibit 36)

CONCLUSIONS OF LAW:

Pursuant to IDEA §1415 (f)(3)(E)(i), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education ("FAPE").

Pursuant to IDEA §1415 (f)(3)(E)(ii), in matters alleging a procedural violation, a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE, or caused the child a deprivation of educational benefits. An IDEA claim is viable only if [DCPS'] procedural violations affected the student's substantive rights." *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

34 C.F.R. § 300.17 provides:

A free appropriate public education or FAPE means special education and related services that--
(a) Are provided at public expense, under public supervision and direction, and without charge;
(b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved;
and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324

Pursuant to 5E DCMR 3030.14, the burden of proof is the responsibility of the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528, (2005). Petitioner had the burden of persuasion on issue #4. The burden of persuasion fell to Respondent on issues #1, #2, and #3, once Petitioner established a prima facie case on those issues.⁷ The normal standard is the preponderance of the evidence. See, e.g., *N.G. V. District of Columbia* 556 f. Sup. 2d (D.D.C. 2008) see also 20 U.S.C. §1451 (i)(2)(C)(iii).

Issue 1: Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP in December 2018 because the IEP: (a) had insufficient hours and type of specialized instruction; (b) had inappropriate and inadequate goals, objectives, and related baselines; (c) had too many goals to be reasonably worked on in the time allotted in the IEP; (d) had other classroom aids and services that describe the needs of Student in such a way that the proposed hours of specialized instruction and settings would not meet Student's needs; (e) failed to address Student's known social-emotional challenges related to anxiety; (f) otherwise failed to provide an appropriate educational program/plan for Student based on the data available to the team at the time.

Conclusion: Respondent did not sustain the burden of persuasion by a preponderance of the evidence on this issue.

A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21." 20 U.S.C. § 1412(a)(1)(A). A "child with a disability" is defined by statute as a child with intellectual disabilities, physical impairments, or serious emotional disturbance "who, by reason thereof, needs special education and related services." *Id.* § 1401(3)(A). The District is required to enact policies and procedures to ensure that "[a]ll

⁷ Pursuant to DC Code § 38-2571.03 (6):

(A) 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: (i) 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. (ii) Where a party seeks tuition reimbursement for unilateral placement, the party seeking reimbursement shall bear the burden of production and the burden of persuasion on the appropriateness of the unilateral placement; provided, that the hearing officer shall have the authority to bifurcate a hearing regarding a unilateral placement; provided further, that if the hearing officer determines that the program offered by the public agency is appropriate, it is not necessary to inquire into the appropriateness of the unilateral placement.

(B) This paragraph shall apply to special education due process hearings resulting from complaints filed after July 1, 2016.

children with disabilities residing in the State, including ... children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated." *Id.* § 1412(a)(3)(A).

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”).

In *Board of Education v. Rowley*, the United States Supreme Court set forth a two-part inquiry for determining whether a school district has satisfied the FAPE requirement. First, the state must have “complied with the procedures set forth in the Act.” *Rowley*, 458 U.S. at 206. Second, the IEP that is developed must be “reasonably calculated to enable the child to receive educational benefits.” *Rowley*, 458 U.S. at 206-07. To be appropriate under 34 C.F.R. § 300.324, the IEP must consider the (i) strengths of the child; (ii) concerns of the parents; (iii) results of the initial or most recent evaluation; and (iv) academic, developmental, and functional needs of the child.

The second substantive prong of the *Rowley* inquiry is whether the IEP DCPS developed was reasonably calculated to enable Student to make progress appropriate in light of Student's individual circumstances. In *Endrew F. ex rel. Joseph F. v. Douglas City. Sch. Dist.* RE-1, 137 S. Ct. 988 (2017), the U.S. Supreme Court elaborated on the “educational benefits” requirement pronounced in *Rowley*: To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate, in light of the child’s circumstances. . . . Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. . . . When a child is fully integrated in the regular classroom, as the Act prefers, what that typically means is providing a level of instruction reasonably calculated to permit advancement through the general curriculum. . . . If that is not a reasonable prospect for a child, his IEP need not aim for grade-level advancement. But his educational program must be appropriately ambitious, in light of his 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. *Endrew F.*, supra, 137 S. Ct. at 999–1000 (citations omitted).

The key inquiry regarding an IEP’s substantive adequacy is whether, taking account of what the school knew or reasonably should have known of a student’s needs at the time, what the IEP offered was reasonably calculated to enable the specific student’s progress....” “Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.” *Z.B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018) citing *Endrew F.*, supra, 137 S. Ct. 988.

Pursuant to 34 C.F.R. § 300.324 (b) (1) Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team— (i) Reviews the child’s IEP periodically, but not less than annually, to determine whether the annual goals for the child are

being achieved; and (ii) Revises the IEP, as appropriate, to address— (A) Any lack of expected progress toward the annual goals described in § 300.320(a)(2), and in the general education curriculum, if appropriate; (B) The results of any reevaluation conducted under § 300.303; (C) Information about the child provided to, or by, the parents, as described under § 300.305(a)(2); (D) The child’s anticipated needs; or (E) Other matters.

Pursuant to 34 C.F.R. § 300.323 at the beginning of each school year, each public agency must have an IEP effect for each child with a disability within its jurisdiction. The legal standard under the IDEA is that DCPS “must place the student in a setting that is capable of fulfilling the student’s IEP.” *Johnson v. Dist. of Columbia*, 962 F. Supp. 2d 263, 267 (D.D.C. 2013). *See also O.O. ex rel. Pabo v. Dist. of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008) (placement must be in a school that can fulfill the student’s IEP requirements).

Petitioners first allege that Student’s, December 20, 2018, IEP was not appropriate because it had insufficient hours and type of specialized instruction.

Student's December 20, 2018, IEP prescribed the following specialized instruction: 45 minutes per week of specialized instruction in reading inside the general education setting, 45 minutes per week of specialized instruction in written expression inside the general education setting, 45 minutes per week of specialized instruction in mathematics inside the general education setting, 90 minutes per week of specialized instruction in reading outside of the general education setting, 60 minutes per week of specialized instruction in mathematics outside of the general education setting.

The evidence demonstrates that Student was provided more specialized instruction at School B during SY 2018-2019 than Student’s IEP prescribed. Student’s School B special education teachers for writing and reading both testified that they co-taught Student’s reading and writing classes daily and that each of those classes lasted 45 minutes. Thus, Student actually had the benefit of a special education teacher in the general education setting for reading and writing for an additional 180 minutes per week in each subject beyond what was prescribed in Student’s IEP. The teaching model used at School B uses a co-teacher who is a special education teacher in each core class. Although DCPS asserted that the amount of time that Student actually needed and received from the special education teacher was 45 minutes per week, the evidence belies that assertion.

The documentary evidence and testimony demonstrate Student's special education writing teacher was providing Student significant assistance and instruction beyond the amount of instruction that was in Student's IEP and it was the amount of instruction Student needed given the degree of Student's deficits. Likewise, in reading, the documentary evidence and testimony demonstrate Student's special education reading teacher was providing Student significant assistance and instruction beyond the amount of instruction that was in Student's IEP and was instruction that Student needed given the degree of Student's deficits. From the evidence presented, the Hearing Officer surmises that this was also the case with Student's math instruction provided inside general education. Although the evidence demonstrates, particularly the testimony of Student's tutor, that Student was doing better academically during SY 2018-2019, Student continued to need the tutor's assistance in math and was still being provided the additional support in the general education

setting than Student's IEP prescribed. Consequently, the Hearing Officer concludes that Student's December 20, 2018, IEP was not reasonably calculated to enable Student to make progress appropriate in light of the Student's circumstances and resulted in a denial of a FAPE to Student.

Student was also provided specialized instruction outside the general education classroom for reading and math. There was evidence presented that Student was provided that instruction in reading using the Wilson Reading System. Petitioners' expert witnesses' testimony about Wilson Reading System ("Wilson") was not convincing, as it was limited to stating the frequency and amount of instruction that the publishers of the Wilson program recommended. Although there was evidence presented that Wilson recommended that any student be provided more weekly instruction than was on Student's IEP, there was insufficient evidence presented to establish a prima facie case that the amount of instruction Student received in reading outside general education did not provide Student sufficient benefit.

Second Petitioners allege that Student's December 20, 2018, IEP was not appropriate because it had inappropriate and inadequate goals, objectives, and related baselines. There was no evidence that any of Student's IEP goals had or required objections. There was credible testimony by Petitioner's expert witness that Student's IEP goals needed to have related baselines from which any teacher could discern the starting point relative to each goal. The evidence demonstrates that at least one of Student's math goals and one of Student's written expression goals had not baselines. There was no testimony offered by DCPS to explain the math goals, and the testimony offered by Student's writing special education teacher who drafted the written expression goals did not explain why the one written expression goal had not baseline information or data. The Hearing Officer finds that the lack of sufficient baselines for these goals rendered the goals unmeasurable and was an additional basis for the Hearing Officer to conclude that Student's December 20, 2018, IEP was not reasonably calculated to enable Student to make progress appropriate, in light of the Student's circumstances and resulted in a denial of a FAPE to Student.

Third, Petitioners allege that Student's IEP was not appropriate in that it had too many goals to be reasonably worked on in the time allotted in the IEP. The evidence demonstrates that Student was progressing on the goals in the IEP, and Student writing special education teacher and reading special education teacher both testified that Student made progress by the end of the school year. The Hearing Officer has already concluded that Student was being provided more specialized instruction than Student's IEP prescribed. However, the Hearing Officer was not convinced by Petitioners' expert witness that the number of academic goals contained in the IEP was more than Student could attain in one year's time. The measure of time for Student to have achieved the goals was December 2019. There was additional time beyond the current school year for Student to have achieved those goals. There was insufficient evidence presented to establish a prima facie case that the number of goals in Student's December 20, 2018, IEP were too many to be reasonably worked on in the time allotted in the IEP.

Fourth, Petitioners allege that Student's December 20, 2018, IEP was not appropriate because it had other classroom aids and services that describe the needs of Student in such a way that the proposed hours of specialized instruction and settings would not meet Student's needs.

The December 18, 2018, IEP listed the following Classroom Aids and Services stated: [Student] benefits from small group and individual instruction for pre-teaching and reteaching of skills and strategies learned. [Student] may not always inform teachers when [Student] does not understand a concept, and so a check-in can be helpful. [Student] benefits from preferential seating, visual supports, repeated directions, strategy cards, and tasks broken down into smaller steps. Benefits from leadership opportunities to build self-esteem and confidence. Thrives on 1:1 support. Masks anxiety behind a smile and desire to please attitude in large group settings. In small groups and individual settings, will ask for help. Math support will include base ten blocks, place value disks, place value charts, base ten tables, highlighting multiplication tables. Read aloud for content questions and instructions. Multi-sensory learning tools include tactile strategies, including sand tracing for learning sight words and tapping out sounds for decoding and segmenting sounds.

The School B's special education coordinator and Student special education teachers spoke to the type of interventions and accommodations that were provided Student, which included many of the items listed above. Although the items listed above were numerous, there was no evidence presented that the classroom aids and services listed in Student's IEP were not provided to Student at School B during SY 2018-2019 in the amount of time and instruction that Student was actually provided. So, beyond the conclusion that Student was actually provided more specialized instruction than Student's IEP prescribed, there was insufficient evidence presented to establish a prima facie case that Student's December 20, 2018, IEP was not appropriate because it had other classroom aids and services that describe the needs of Student in such a way that the proposed hours of specialized instruction and settings would not meet Student's needs.

Fifth, Petitioners allege that Student's IEP was not appropriate in that it failed to address Student's known social-emotional challenges related to anxiety.

The evidence demonstrates that during SY 2017-2018, Student had the most significant difficulty emotionally and socially. Prior to the development of the December 20, 2018, IEP, Student was provided cognitive behavior strategies through the related service of behavior support prescribed in Student's IEP. The evidence demonstrates that Student had mastered the social-emotional goal that Student's prior IEP prescribed and the related service was removed at the December 18, 2018, meeting by the IEP team, which included Petitioners. The appropriateness of this decision by the team is bolstered by both Student's and Student's parent's testimony that Student was not experiencing the level of anxiety that Student experienced during SY 2017-2018. Thus, the Hearing Officer concludes that absence of behavioral support services to address Student's anxiety did not render Student's December 18, 2018, IEP inappropriate.

Sixth, Petitioner alleges that Student's IEP was not appropriate in that it otherwise failed to provide an appropriate educational program/plan for Student based on the data available to the team at the time. The Hearing Officer presumes and believes it was expressed by Petitioners' counsel during the pre-hearing conference, that this allegation was a catch-all in case any of the other alleged violations were not sufficient to prove a denial of a FAPE to the Student. Because there was no specific additional allegation that Petitioners made, and the Hearing Officer having already concluded that the December 20, 2018, IEP DCPS developed for Student denied Student a FAPE, there is no need to address any other issues relative to this IEP.

Issue 2: Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP in May 2019 because the IEP: (a) had insufficient hours and type of specialized instruction (including an unwarranted reduction of hours from the previous IEP); (b) had inappropriate and inadequate goals, objectives, and related baselines; (c) had too many goals to be reasonably worked on in the time allotted in the IEP; (d) had other classroom aids and services that describe the needs of Student in such a way that the proposed hours of specialized instruction and settings would not meet Student's needs; (e) failed to address known social-emotional challenges related to anxiety; (f) had services linked to the offerings of the particular school where the IEP was going to be implemented rather than to Student's individual needs; (g) otherwise failed to provide an appropriate educational program/plan for the student based on the data available to the team at the time.

Conclusion: Respondent did not sustain the burden of persuasion by a preponderance of the evidence on this issue.

Petitioner alleges that Student's May 29, 2019, IEP was inappropriate because it had insufficient hours and type of specialized instruction, including an unwarranted reduction of hours from the previous IEP. The May 29, 2019, IEP prescribed 2 hours each per week for reading, written expression, and math in general education. There were no hours of specialized instruction outside general education and no related services. This was a significant reduction in Student's special education services despite the level of Student's continued deficits in reading, math, and written expression.

Student previous IEP prescribed 45 minutes per week of specialized instruction each in reading, written expression, and math inside general education, 90 minutes per week of specialized instruction in reading outside general education, and 60 minutes per week of specialized instruction in math outside general education.

The evidence demonstrates that Student's School B special education teachers prepared a draft IEP in May 2019 that included some hours of specialized instruction outside general education. Student's reading teacher at School B had been addressing Student's reading disability with both instruction in the general education reading class and the intervention with Wilson outside the general education class, and testified that Student still needed continued growth in decoding with an evidenced based reading intervention at the end of SY 2018-2019.

However, the evidence demonstrates at the May 29, 2019, IEP meeting School B team decided that the Student's need for continued support in decoding and phonics did not override the decision to eliminate the Student being in the resource room as it was described at School A. Yet, the final May 29, 2019, IEP stated that Student's reading intervention was to be outside of school hours. None of the School B team members could remember making a recommendation for Student's reading intervention to be outside of school hours and did not realize that was in the May 2019 IEP. In addition, there was no testimony offered by DCPS to justify the reduction in Student's specialized instruction in math outside general education despite Student's continued deficits in math.

The weight of the evidence demonstrates that that Student had the continued need for specialized instruction outside general education, particularly for the provision of continued evidence-based reading intervention that Student special education teacher credibly testified that Student continued to need when leaving School B. It seems rather that the School B and School A team members who participated in the May 29, 2019, meeting chose to reduce Student's special education services and the services provide outside general education to avoid Student having to be in the resource special education room at School A that they deemed inappropriate for Student. This was clear evidence that the May 29, 2019, IEP was designed to fit the program available to Student at School A, rather than address Student's specific needs. Consequently, the Hearing Officer concludes that Student's May 29, 2019, IEP was not reasonably calculated to enable Student to make progress appropriate in light of the Student's circumstances and resulted in a denial of a FAPE to Student.

Petitioners assert that Student's May 29, 2019, IEP had inappropriate and inadequate goals, objectives, and related baselines. Petitioners' expert witness testified to a litany of reasons she believed that the goals in this IEP were inappropriate, including the PLOPs, the description of the affects of Student's disability on Student's access to and progress in the general education curriculum, the baselines that the goals were based on curriculum skill, or were not measurable, or the evaluation procedures for the goals did not always match the goal or produce regular data collection. In sum, this witness stated that the IEPs she reviewed were "not how I want to write an IEP, I want to write an IEP based on data."

Unlike some of the goals in Student's December 20, 2018, IEP, all the goals in this IEP had baselines. The goals were developed by special education teachers who were working with Student for years and were able to demonstrate with the data that Student was making academic progress with the goals and the services that were being provided to Student. Although this expert witness provided extensive testimony on the goals, most of her testimony amounted to Monday morning-quarter backing on these goals that did not meet her personal preference of how IEP goals should be written. Although Student's special education teachers did not testify about each goal in detail, the Hearing Officer found their testimony that goals were developed by the special education teachers to address the deficits that Student presented to be more cogent because of the years of working with Student and the demonstrated progress Student made.

Consequently, the Hearing Officer did not conclude that the May 29, 2019, IEP had inappropriate and inadequate goals, objectives, and related baselines. Nor, as with the December 20, 2018, IEP and for the same reasons stated in the issue above, did the evidence support a finding that there were too many goals to be reasonably worked on in the time allotted in the IEP.

As previously stated in issue 1 above, the evidence demonstrates that Student had mastered the social-emotional goal that Student's prior IEP prescribed, and the related service was removed at the December 18, 2018, meeting by the IEP team and the evidence supported that decision by the team. There was no evidence that Student was experiencing the level of anxiety or need for behavioral support services as Student was leaving School B. It does not appear this was a concern the May 29, 2019, team thought needed to be addressed. Consequently, the Hearing Officer concludes that the absence of behavioral support services to address Student's anxiety did not render Student's May 29, 2019, IEP inappropriate.

The May 29, 2019, IEP's Other Classroom Aids and Services had the statement that was in Student's previous IEP and in addition, this IEP included the statement "[Student] may benefit from computerized access to reading intervention program, laptop or computer for written work using enlarged font and spell checks.

Student's School A's special education teacher and case manager spoke some of the interventions and accommodations that were provided Student at School A, which included the items that were added to the May 29, 2019, IEP. Although the items listed above were numerous, there was no evidence presented that the classroom aids and services listed in Student's IEP were not provided to Student at School C during the time Student attended. So, beyond the conclusion that Student was not provided sufficient specialized instruction and specialized instruction outside general education in this IEP, , there was insufficient evidence presented to establish a prima facie case that Student's, May 29, 2019, IEP was not appropriate because it had other classroom aids and services that describe the needs of Student in such a way that the proposed hours of specialized instruction and settings would not meet Student's needs.

The Hearing Officer has already discussed earlier that the evidence demonstrates that the amount of specialized instruction in the May 29, 2019, IEP and the setting in which instruction was to be delivered was predicated upon the School B and School A team members attempting to fit the IEP to the program and services that were available at School A, rather than to meet Student's unique needs. That action has already been noted as a denial of a FAPE to Student.

Finally, as with issue one above, Petitioner alleges that Student's, IEP was not appropriate in that it otherwise failed to provide an appropriate educational program/plan for Student based on the data available to the team at the time. The Hearing Officer presumes that this allegation was a catch-all in case any of the other alleged violations were not sufficient to prove a denial of a FAPE to the Student. Because there was no specific additional allegation that Petitioners made, and the Hearing Officer having already concluded that the May 29, 2019, IEP DCPS developed for Student denied Student a FAPE, there is no need to address any other issues relative to this IEP.

Issue 3 Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on August 13, 2020, because the IEP: (a) has insufficient hours and type of specialized instruction based on the data available to the team at the time the IEP was developed; (b) has inappropriate and inadequate goals, objectives, and related baselines; (c) without supporting data, removed important information about Student's needs, from other classroom aids and services; (d) otherwise failed to provide an appropriate educational program/plan for Student based on the data available to the team at the time.

Conclusion: Respondent did not sustain the burden of persuasion by a preponderance of the evidence on this issue.

Petitioner alleges that Student's August 13, 2020, IEP was inappropriate because it has insufficient hours and type of specialized instruction based on the data available to the team at the time the IEP was developed.

The August 13, 2020, IEP prescribed a total of 10 hours per week of specialized instruction outside general education divided as follows: 3 hours per week for reading, 4 hours per week for written expression, and 3 hours per week for math. The IEP also prescribed 2.5 hours inside general education with no subject specification. The IEP also included consultative behavior support services of 30 minutes per month. The IEP also simply noted assistive technology.

Petitioners' attorney contacted DCPS in mid-May 2020 requesting an offer of FAPE for SY 2020-2021. Yet, the IEP was not developed until August 13, 2020, a week before school was to start. There were no teachers who were familiar with Student who participated in the IEP meeting. Had the meeting been held sooner after the request was made, perhaps teachers who had worked with Student previously at School A and School C would have been available to participate and offer input to the IEP. The DCPS team had to rely on the Student's report card and the comments therein instead of direct input from Student's teachers.

The evidence demonstrates the total specialized instruction that Student actually received while at School B during SY 2018-2019, despite what Student's IEP prescribed that year, amounted to approximately 13.75 hours of specialized instruction per week in both general education and outside general education. The level of instruction was then reduced to a total of 6 hours of specialized instruction inside general education for SY 2019-2020. That level of services has proved to have been totally inappropriate for Student and designed to fit the program that was available to Student at School A.

Student then attended School C, where Student was provided all instruction in a classroom with a low student-to-teacher ratio and with students who are being provided specialized instruction throughout the school day in all subjects. The August 13, 2020, IEP that DCPS developed was developed not by any individuals who had provided instruction or services to Student or knew Student's unique needs personally. Petitioners put forth evidence including from their expert witness, and most importantly from Student and Petitioners themselves, that demonstrated that Student's unique needs, particularly with regard to Student reading disability that affects not only Student's reading, but spelling, and writing, which are critical components within all academic subjects.

The evidence demonstrates that DCPS originally offered even fewer hours than the final IEP prescribes based upon Petitioners request for more hours as somewhat of a compromise. However, that compromise did not even reach the level of actual specialized instruction that Student received at School B in SY 2018-2019. Although the DCPS expert witness who developed the August 13, 2020, IEP testified that based on the data she reviewed she believed that the level of services were appropriate and that the IEP could be implemented at School A, where Student had already experienced significant challenges, no one from School A, or any other school, who was familiar with the Student and Student's challenges actively contributed to the IEP's development.

Although the evidence may not support a finding that Student's least restrictive environment is a separate special education school, the evidence does demonstrate that the amount of specialized instruction that was prescribed in August 13, 2020, IEP was insufficient to meet Student needs given the level of services and supports Student had in the past and the fact that Student's more

recent progress at School C was likely the result of the amount of support being provided and the low student to teacher ratio the school provided. Consequently, the Hearing Officer concludes that the August 13, 2020, IEP that DCPS developed was not reasonably calculated to enable Student to make progress appropriate in light of the Student's circumstances and resulted in a denial of a FAPE to Student.

Petitioners also assert that the August 13, 2020, IEP has inappropriate and inadequate goals, objectives, and related baselines. The evidence demonstrates that the DCPS representative wiped clean the PLOPs and other information related to Student goals that were in Student's prior IEP, and started from scratch, based on the common core curriculum standards that were applicable to the grade Student would be in during SY 2020-2021. The goals were not directly related to Student's unique academic deficits, in addition to not being developed with personal input from any teacher or individual who had worked directly with Student. Consequently, the Hearing Officer concludes that the August 13, 2020, IEP, and inappropriate goals and as a result, was not reasonably calculated to enable Student to make progress appropriate, in light of the Student's circumstances and resulted in a denial of a FAPE to Student.

The August 13, 2020, IEP's other classroom aids and services stated the following: Teacher check-ins when needed, pre-teach and reteach when needed, visual supports, chunked assignments, benefits from leadership opportunities to build self-esteem and confidence. Thrives on 1:1 support. Masks anxiety behind a smile and desire to please attitude in large group settings. Small group setting, read aloud for content questions and instructions. [Student] may benefit from computerized access to reading intervention program, laptop or computer for written work using enlarged font and spell checks.

Although the other classroom aids and services in this IEP did not include all the elements that had been in Student's previous IEP, there was insufficient evidence presented to establish a prima facie case that Student's, August 13, 2020, IEP was not appropriate because some of the classroom aids and services that were in Student's previous IEP were eliminated.

Finally, as with the previous two issues above, Petitioner alleges that Student's IEP was not appropriate in that it otherwise failed to provide an appropriate educational program/plan for Student based on the data available to the team at the time. The Hearing Officer presumes that this allegation was a catch-all in case any of the other alleged violations were not sufficient to prove a denial of a FAPE to the Student. Because there was no specific additional allegation that Petitioners made, and the Hearing Officer having already concluded that the August 13, 2020, IEP DCPS developed for Student denied Student a FAPE, there is no need to address any other issues relative to this IEP.

Issue 4: If Petitioners prevail on issue #1, and/or issue #2, and/or issue #3 above, are Petitioners entitled to reimbursement of the tuition and/or related services costs from Student's unilateral placement at School C for the second half of SY 2019-2020 and/or for SY 2020-2021.

Conclusion: Petitioner sustained the burden of persuasion by a preponderance of the evidence on this issue.

Under the IDEA, parents who unilaterally decide to place their disabled child in a private school without obtaining the consent of local school officials, "do so at their own financial risk." *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15, 114 S.Ct. 361, 126 L.Ed.2d 284 (1993) (quoting *Sch. Comm. of the Town of Burlington v. Dep't of Educ.*, 471 U.S. 359, 374, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985)). "As interpreted by the Supreme Court, IDEA requires school districts to reimburse parents for their private-school expenses if (1) school officials failed to offer the child a free appropriate public education in a public or private school; (2) the private-school placement chosen by the parents was otherwise "proper under the Act"; and (3) the equities weigh in favor of reimbursement—that is, the parents did not otherwise act "unreasonabl[y]." *Leggett v. District of Columbia*, 793 F.3d 59, 66–67 (D.C. Cir. 2015) (citing *Carter*, supra, 510 U.S. at 15–16, 114 S.Ct. 361; 20 U.S.C. § 1412(10)(C)(iii)(III)).

To qualify for tuition reimbursement under the IDEA, a plaintiff must demonstrate that (1) the "school district failed to provide a [free appropriate public education,]" (2) the plaintiff's "private placement was suitable," and (3) the equities warrant "reimbursement for some or all of the cost of the child's private education[.]" See *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 247, 129 S. Ct. 2484, 174 L. Ed. 2d 168 (2009). The first prong of this test—which is the only prong that the Hearing Officer and Magistrate Judge Robinson addressed—focuses on whether the school district's educational placement could have implemented "substantial or significant provisions" of the student's IEP. See, e.g., *Johnson v. District of Columbia*, 962 F. Supp. 2d 263, 268 (D.D.C. 2013) (internal quotation marks and citation omitted). That question, in turn, depends on the goals or requirements that the student's IEP sets forth, and the ability of the educational placement to fulfill such goals or requirements. See *O.O. ex rel. Pabo v. District of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008).

The evidence in this case demonstrates that DCPS denied Student a FAPE in its development of Student's December 18, 2018, May 29, 2019, and August 13, 2020, IEPs. Petitioners provided DCPS notice that Student would be attending School C in January 2020, and Petitioners, through counsel, did so prior to SY 2020-2021. There was no evidence presented, nor argument made, that Petitioners did not provide DCPS adequate notice. There was sufficient evidence presented that School C is suitable and is otherwise proper to justify the requested reimbursement.

Remedy:

A hearing officer may award appropriate equitable relief when there has been an actionable violation of IDEA. See 20 U.S.C. § 1415(f)(3)(E)(ii)(II); *Eley v. District of Columbia*, 2012 WL 3656471, 11 (D.D.C. Aug. 24, 2012) (citing *Branham v. District of Columbia*, 427 F.3d at 11–12.) The Hearing Officer has concluded that Student was denied a FAPE by DCPS and has directed that DCPS, in the order below, remedy that denial.

Under the theory of compensatory education, "courts and hearing officers may award educational services to be provided prospectively to compensate for a past deficient program. The inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid*, 401 F.3d 522 & 524. To aid the court or hearing officer's fact-specific inquiry, "the parties must have

some opportunity to present evidence regarding [the student's] specific educational deficits resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits." Id. at 526.

At the conclusion of the hearing in closing arguments, Petitioners acknowledged that Petitioners were not seeking a number of the prayers for relief that were listed in Petitioners' due process complaint. They do, however, continue to seek in addition to the finding that Student has been denied a FAPE, that DCPS be ordered to reimburse Petitioners for the costs associated with Student's unilateral placement at School C during the second half of SY 2019-2020 and for SY 2020-2021, and that DCPS be ordered to continue Student's placement and public funding at School C until at least the end of SY 2020-2021.

ORDER: ⁸

1. Within forty-five (45) calendar days of the issuance of this Order, upon satisfactory proof of payment being provided to DCPS by Petitioners, DCPS shall reimburse Petitioners their costs of Student's attendance at School C for the second half of SY 2019-2020 and for SY 2020-2021 at a total amount not to exceed \$17,519.87 for Student's attendance at School C for the second half of SY 2019-2020, and \$27,088.00 for Student's attendance at School C for SY 2020-2021.
2. DCPS is hereby ordered to continue Student's placement and public funding at School C until the end of SY 2020-2021, and monitor Student's placement therein.
3. DCPS, shall within 90 calendar days prior to the start of SY 2021-2022, conduct and review any assessments or evaluations that DCPS deems appropriate, and for which consent is granted, and develop an appropriate IEP for Student and offer Student a FAPE in an appropriate school location for SY 2021-2022.

APPEAL PROCESS:

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have ninety (90) days from the date of the decision of the Hearing Officer to file a civil action concerning the issues presented at the due process hearing in a District Court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2).

/S/ *Coles B. Ruff*

Coles B. Ruff, Esq.
Hearing Officer
Date: March 8, 2021

⁸Any delay in Respondent meeting the timelines of this Order that is the result of action or inaction by Petitioner shall extend the timelines on a day for day basis.

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