

District of Columbia
Office of the State Superintendent of Education

Office of Dispute Resolution
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OSSE
Office of Dispute Resolution
March 14, 2021

Parents, on behalf of Student,¹)	
Petitioners,)	
)	Hearing Dates: 12/1/20; 12/2/20; 12/8/20;
v.)	2/3/21; 2/4/21
)	Hearing Officer: Michael Lazan
District of Columbia Public Schools,)	Case No. 2020-0168
Respondent.)	

HEARING OFFICER DETERMINATION

I. Introduction

This is a case involving an X-year-old student who is currently eligible for services as a student with Specific Learning Disability (the “Student”). A due process complaint (“Complaint”) was received by District of Columbia Public Schools (“DCPS” or “Respondent”) pursuant to the Individuals with Disabilities Education Act (“IDEA”) on September 21, 2020. The Complaint was filed by the Student’s parents (“Petitioners”). On October 2, 2020, Respondent filed a response. The resolution period expired on October 21, 2020.

II. Subject Matter Jurisdiction

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the IDEA, 20 U.S.C. 1400 et seq., its implementing regulations, 34 C.F.R. Sect. 300 et seq., Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-E, Chapter 30.

¹Personally identifiable information is attached as Appendix A and must be removed prior to public distribution.

III. Procedural History

A prehearing conference was held on October 29, 2020. Attorney A, Esq., counsel for Petitioners, appeared. Attorney B, Esq., counsel for Respondent, appeared. A prehearing conference order was issued on November 3, 2020, summarizing the rules to be applied in the hearing and identifying the issues in the case. The hearing was conducted through the Microsoft Teams videoconferencing platform, without objection. Petitioners were again represented by Attorney A, Esq. Respondent was again represented by Attorney B, Esq. This was a closed proceeding. On November 23, 2020, Petitioners moved to extend the Hearing Officer Determination (“HOD”) due date from December 5, 2020, to January 4, 2021. DCPS consented to this motion and an order was issued on December 5, 2020, extending the timelines for the HOD to January 4, 2021.

The matter proceeded to trial on December 1, 2020, December 2, 2020, and December 8, 2020, but the parties did not complete testimony because of the extensive testimony and issues in the case. On January 4, 2021, Petitioners moved to extend the HOD due date again, from January 4, 2021, to March 14, 2021. DCPS consented to this motion and an order was issued on January 4, 2021, extending the timelines for the HOD to March 14, 2021.

During the proceeding, Petitioners moved into evidence exhibits P-1 through P-49. Petitioners then withdrew exhibits P-9 and P-47. Respondent objected to the evidence, but the objections were overruled, and exhibits P-1 through P-49 (exclusive of exhibits P-9 and P-47) were admitted. Respondent moved into evidence exhibits R-1 through R-19 without objection. Petitioners presented as witnesses, in the following order: Witness A, an independent education consultant (expert in special education

programming and placement for students with disabilities); Witness B, an educator (expert in special education with expertise in reading disorders and dyslexia and providing reading interventions); the Student's father ("Father"); Witness C, Associate Head of School at School C (expert in occupational therapy and special education administration); the Student's mother ("Mother"); and Witness D, Division Head of School C elementary school (expert in special education placement and programming). Respondent presented, in the following order: Witness E, an occupational therapist (expert in occupational therapy as it relates to special education programming and placement); Witness F, a special education teacher at School B (expert in programming, placement, and reading); Witness G, a teacher at School B (expert in elementary education and inclusion services); Witness H, a resolution specialist (expert in special education programming and placement with an emphasis on the resolution of claims relating to unilaterally placed students in private schools); Witness I, a speech-language pathologist (expert in special education programming and placement and speech-language pathology); Witness J, a Local Educational Agency ("LEA") representative and teacher (expert in special education programming and placement, general education, and inclusion); and Witness K, a special education specialist (expert in special education programming and placement and inclusion).

IV. Issues

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

1. Did Respondent fail to provide the Student with an appropriate Individualized Education Program ("IEP") in or about January, 2019, and February, 2020? If so, did Respondent act in contravention of 34 C.F.R. 300.320, Endrew F. v. Douglas County School District, 137 U.S. 988 (2017), Hendrick

Hudson Bd. of Educ. v. Rowley, 458 U.S. 176 (1982), and related authority? If so, did Respondent deny the Student a Free Appropriate Public Education (“FAPE”)?

Petitioners contended that the Student’s IEPs did not recommend necessary specialized instruction outside of general education and failed to provide the Student with a program to meet his/her reading needs. Petitioners also contended that the IEPs did not recommend an appropriate educational placement or curriculum modifications to address the Student’s needs. Finally, Petitioners contended that the February, 2020, IEP did not provide the Student with occupational therapy services.

2. Did Respondent fail to timely evaluate/reevaluate the Student in all areas of suspected disability: 1) when they knew or should have known that the Student might be eligible for services; and 2) after the parental request for a reevaluation in or about February, 2020? If so, did Respondent violate 34 C.F.R. 300.303, 34 C.F.R. Sect. 300.304, and related provisions? If so, did Respondent deny the Student a FAPE?

Petitioners contended that they requested an occupational therapy assessment in February, 2018, and that such an evaluation should have been completed by January, 2019. Petitioners also contended that the Student should have received an occupational therapy assessment and a speech-language pathology assessment after their requests for such evaluations in or about February, 2020.

3. Did Respondent fail to recommend an appropriate educational placement for the Student from January, 2019, to present? If so, did Respondent violate the principles of law in 34 C.F.R. Sect. 300.17, 34 C.F.R. Sect. 300.39, 34 C.F.R. Sect. 300.115, 34 C.F.R. Sect. 300.116, 34 C.F.R. Sect. 300.323(c)(2), and cases such as Andrew F. and Gellert v. District of Columbia, 435 F. Supp. 2d 18 (D.D.C. 2006)? If so, did Respondent deny the Student a FAPE?

As relief, Petitioners seek tuition reimbursement for School C for the 2019-2020 and 2020-2021 school years, and reimbursement for tutoring, speech-language pathology, and occupational therapy services provided for the Student between August 15, 2018, and September, 2019.

V. Findings of Fact

1. The Student is an X-year-old who is eligible for services as a Student with Specific Learning Disability. The Student began having issues at school during pre-kindergarten classes, at School A. The Student had problems identifying sight words, applying phonics rules, and identifying numbers. The Student's teacher told Petitioners to arrange to evaluate the Student. Testimony of Father. The Student was then evaluated. A psychological evaluation report dated October 18, 2016, stated that the Student's full-scale IQ score was 104, in the average range. P-13-10-11. An educational evaluation report dated September 15, 2016, stated that on subtests of the Woodcock-Johnson Tests of Achievement, 4th edition ("WJ-IV"), the Student scored at the 20th percentile, in the low average range. The evaluator concluded that the Student presented as a child "who is developing significantly below typical range in regard to academic skills and concepts in the area of early reading skills." The evaluator recommended continued "Tier 2" intervention strategies within the Response to Intervention ("RTI") teaching model at the school. P-14.

2. The Student attended School B for the 2016-2017 school year. The Student's teacher immediately noticed the Student's deficits with letters and numbers, and the Student did not make appropriate progress during this school year, which made the Student feel badly. To address these issues, the Student received tutoring twice a week from Tutoring Center A, from approximately September, 2016, through August, 2018. Testimony of Father.

3. The Student began receiving small group pull-out RTI instruction in February, 2017, on three of every six days over a four-week cycle (for a total of ten

sessions). The Student benefitted from this instruction and exceeded the goals that were set for him/her. P-15-3-4.

4. From March, 2017, to May, 2017, the Student received small group RTI instruction using a “Foundations” program to work on blending and segmenting “CVC” words. The Student’s goal was to identify 28 correct letter sounds in nonsense words within one minute. During the first four weeks of this eight-week RTI cycle, the Student received the intervention three of every six days. The Student did not make progress, however, and was deemed to require more intensive support. As a result, for the remaining four weeks of the cycle, the RTI intervention was increased to five of every six days. Even so, after eight weeks, the Student was only able to identify 20 correct letter sounds, falling well short of the goal. P-15-4.

5. During summer, 2017, the Student attended a four-week program at School C to increase his/her reading skills. At the end of this program, The Student was performing at reading level “B.” Testimony of Father.

6. The Student remained at School B for the 2017-2018 school year. The Student started the school year at reading level “B.” P-15-5. Guided reading was used to help the Student, as well as programs such as Foundations and “Read Naturally.” Testimony of Witness F. The Student had issues with staying on task and DCPS staff used accommodations to help the Student maintain attention in the classroom. The Student also struggled to remember words and his/her sight word vocabulary was very low. However, the Student began to show more interest in reading and was better able to recognize repeated words throughout a text. The Student also started to produce writing, though his/her handwriting was below level. P-15-6. The Student received RTI

instruction four of every six days, over two eight-week cycles, on subjects such as phonics and reading fluency. The Student improved during the first cycle, then showed significant regression in the second cycle. P-15-4. As of January, 2018, the Student was at reading level “C,” with fluency and accuracy well below grade level. P-15-5.

7. By November, 2017, the Student’s general education teacher, Witness G, reported that the Student was not making progress, despite receiving RTI in both math and English language arts, and sought additional support for the Student. P-1-2.

Petitioners then sought a reevaluation for the Student. Testimony of Mother. Evaluator A conducted a psychological assessment of the Student, as reflected in a report dated January 24, 2018. The report indicated that the Student had received intensive supports both in and out of school but was nevertheless struggling to close the academic gap. The evaluator reported that the Student was not meeting grade level expectations in reading, writing, and mathematics and that the Student’s most recent report card showed a grade of “1” in reading and writing and a grade of “2” in mathematics. The evaluator also administered testing, including the WJ-IV, the Kaufman Test of Educational Achievement, Third Edition (“KTEA-3”), the Behavior Assessment System for Children, Third Edition (“BASC-3”), and the Behavior Rating Inventory of Executive Function, Second Edition (“BRIEF 2”). The Student’s full-scale IQ score was 98, at the 45th percentile. On the KTEA, the Student scored at the 23rd percentile in reading, 79th percentile in math, and 34th percentile in writing. The BASC-3 (teacher form) indicated that the Student had clinically significant learning problems, anxiety, withdrawal, and depression, and was at risk for attention, hyperactivity, and aggression. On the BRIEF, the Student exhibited issues with executive functioning, including completing tasks,

careless mistakes, and difficulty with multi-step directions. The evaluator concluded that the Student's abilities were in the average range, but that issues relating to phonological processing caused the Student problems in reading and writing. The evaluator also stated that the Student appeared to have difficulties in most areas of executive functioning on the school level, including impulse control, organization, problem solving, sustaining attention, finishing tasks, and following multi-step directions. P-15.

8. The Student was determined to be eligible for services on February 8, 2018. R-5. An IEP meeting was held for the Student on February 8, 2018. By this point, the Student was well aware that his/her peers could perform in school in a way that s/he could not. Testimony of Father. Petitioners agreed with DCPS's recommendation for 1.5 hours per week of specialized instruction outside general education in reading, one hour per week of specialized instruction outside general education in written expression, and one hour per week of consultation services in mathematics, amounting to pull-out services twice per week. Testimony of Mother; P-20-7. No concerns about occupational therapy were raised at the meeting. Testimony of Witness F. The resulting IEP indicated that the Student required "a lot" of teacher assistance while writing, and that the Student was not always able to match letter sounds to words, making his/her writing product illegible at times. The IEP indicated that the Student's writing samples could not be decoded when the topic was unknown, and that when the topic was known, the writing was only forty to fifty percent legible. P-20-6. The IEP of February 8, 2018, also stated that despite interventions, the Student had a low level of reading achievement, including comprehension. The IEP included "Other Classroom Aids and Services": anchor charts, task cards, visual cues, verbal and visual prompting, peer tutoring, proximity, hand-held

fidgets, wobble seat, study corral, and scheduled breaks. The IEP also included classroom accommodations such as preferred seating, location with minimal distractions, individual testing, and clarification/repetition of directions. P-20.

9. By the end of the 2017-2018 school year, the Student had not met the standards for the grade. Petitioners sought to have the Student held back with the same teacher, Witness G. The school staff agreed. Testimony of Father; Testimony of Mother; P-1-11. Still, the Student was reported to have made progress on all goals during the year, with improvements noted in writing and mathematics. R-10-4-6.

10. In the summer of 2018, the Student attended School C. Testimony of Father. The summer program resulted in gains in the Student's reading assessments, including on phonological awareness and reading fluency. The Student was considered to be at reading level "D" at the start of the summer and level "E" at the end of the program. School C staff provided the Student with movement breaks, a quiet workspace, and small group instruction. P-49. On July 23, 2018, School C issued an occupational therapy report on the Student, noting areas of concern in attention and focus, shoe tying skills, and handwriting (mixed upper/lower case letters and letter reversals). P-11-4.

11. For the 2018-2019 school year, the Student again attended School B. "DIBELS TRC" testing at the start of the school year indicated that the Student was at level "C," in the proficient range. P-16-1. Witness B provided the Student with Orton-Gillingham reading instruction twice per week, from approximately August, 2018, through August, 2019. R-13-3; Testimony of Witness B. Petitioners provided School B staff with information about the School C reading program and told the school that the Student also had an outside tutor. P-2-2; Testimony of Mother. At School B, guided

reading was again used to help the Student, as well as the Foundations and Read Naturally programs. Testimony of Witness F. Even so, the Student's gains were "sluggish" and his/her work was "laborious" during the first part of the 2018-2019 school year.

Testimony of Witness F. The Student's report card for the second term indicated that the Student was still at level "C" on the TRC reading test. P-17-9. However, the Student's mid-year DIBELS TRC assessment indicated that the Student was at level "E," below level. P-16-1. The Student's IEP progress reports for the first term of the 2018-2019 school year reflected progress in learning sight words, decoding, and writing rate and output. P-21; P-24.

12. On or about January 15, 2019, Petitioners were given a new draft IEP for the Student, which disturbed them. As a result, they decided to apply to School C and asked Witness G for a recommendation. P-3-7. An IEP meeting was held for the Student on January 18, 2019. Attending the meeting were Petitioners, Witness F, Evaluator A, Witness G, and another DCPS staff member. P-23-1. The Student's tutor, Witness B, also attended the meeting. DCPS staff felt that accommodations such as a "quiet corner" would address the Student's focus issues, and therefore the Student did not need any occupational therapy services to address these issues. Witness F, who wrote much of the resulting IEP, felt that the Student's handwriting was not unusual for students of his/her age and that interventions were not needed. The January 18, 2019, IEP used a "matrix" to determine the Student's specialized instructional hours. The matrix arrived at a "point score" based on the Student's goal mastery, accommodations, math levels, reading levels, and other factors. The point score provided a window of hours within which to determine the amount of specialized instruction for the Student. The IEP team felt that the Student

was responding to his/her RTI instruction and did not increase the Student's overall hours of small group "pull-out" reading and writing instruction per week. Petitioners did not clearly express disagreement with the recommended specialized instruction hours in the IEP. Testimony of Witness F. Witness B expressed that classroom accommodations for the Student had not changed at all, that the team did not go through "what worked" and "what did not work" for the child, and that the team did not discuss what the services would "look like." Testimony of Witness B. The Student was accepted at School C in or about March, 2019. Testimony of Father.

13. The January 18, 2019, IEP indicated that the Student continued to make slow academic progress and had difficulty retaining information. The IEP indicated that the Student had only basic skills in reading comprehension, identifying main ideas, decoding rules, and fluency, and struggled to remember words while reading. The IEP indicated that the Student's sight word vocabulary and fluency rate were increasing, and that s/he was able to write letters in a legible manner. The IEP also indicated that the Student was one grade level below in mathematics, per the i-Ready measure. In reading, the IEP indicated that the Student was working at level "E." The IEP indicated that, at times, the Student had difficulty maintaining focus and remaining on task. The IEP contained "Area of Concern" sections in mathematics, reading, and written expression, and recommended the same mandate of services as the prior IEP, except that the recommendation for mathematics consultant services was reduced from one hour per month to thirty minutes per month. Other classroom aids and services recommended included anchor charts, task cards, visual cues, verbal and visual prompting, peer tutor, proximity hand-held fidgets, wobble seat, study corral, scheduled breaks, access to a

quiet space for personal meditation, “theraband” for chair legs, biweekly 1:1 personal check-ins from the teacher (“Banking Time”), graphic organizers, and access to word wall/bank. P-23. Petitioners sought changes to the goals, which DCPS incorporated into the IEP. Testimony of Witness F.

14. The Student’s progress reports for the 2018-2019 school year indicated progress in mathematics, reading, and written expression. R-10. The progress reports also reflected gains in decoding, sight words, and writing rate and output. R-10-7-9. By the end of the school year, the Student had mastered two goals and progressed on the rest of his/her goals. R-10-20-10-22. The Student also completed a reading assessment at an independent “I” level, with an instructional level of “J,” slightly above end-of-year expectations for the grade. Testimony of Witness F; Testimony of Witness G; R-10-21.

15. Petitioners sent DCPS a notice on August 9, 2019, indicating they were placing the Student at School C and seeking reimbursement for the 2019-2020 school year. P-4-2. In July, 2019, Witness C conducted an occupational therapy assessment of the Student at School C, consisting of the Bruininks-Oseretsky Test of Motor Proficiency, 2nd Edition (“BOT-2”); the Developmental Test of Visual Perception, 3rd Edition (“DTVP-3”); the Jordan Left-Right Reversal Test, 3rd Edition (“Jordan-3”); a grip and pinch strength test; the Short Sensory Profile 2: Caregiver Questionnaire; the Short Sensory Profile 2: Teacher Questionnaire; the Evaluation Tool of Children's Handwriting (“ETCH”); a clinical observation; and other questionnaires. Witness C found that the Student displayed strengths in his/her occupational therapy profile, including an awareness of sensory needs and “intact” fine motor skills. Witness C noted that the Student’s handwriting was especially difficult, and that s/he had issues with letter

recognition, reversals, sequential formation, spacing, case, consistent size, and speed.

Witness C noted deficits in locating objects in a busy background, visual closure, visual perceptual skills, and coordination, and concluded that the Student's difficulties with handwriting were a manifestation of learning challenges, not a motor control problem.

Witness C recommended direct occupational therapy for the Student once weekly for forty-five minutes, with a variety of accommodations, including work in a visually uncluttered room, noise-cancelling headphones, frequent breaks, highlighted margins, and line trackers. The assessment noted that the Student erased a lot, omitted words and punctuation, and did not do well in writing. Testimony of Witness C; P-25. The assessment contained one scoring error in general visual perception. Testimony of Witness E. A sensory processing assessment of the Student was conducted on or about November 7, 2019. The evaluators found that the Student had sensory dysfunction pursuant to the Sensory Processing Measure ("SPM") and recommended "continued collaboration" between occupational therapy, classroom staff, and other team members. They also recommended further observation to refine the Student's self-regulation strategies and improve identification and communication of needs related to classroom participation. P-26.

16. School C is a school for students with language differences. The school provides students with instruction through different methodologies, including the Orton-Gillingham approach and the "Responsive Classroom" framework. School staff teach students "mindfulness" to regulate behavior. Reading is taught in a very small group, with two students and one teacher. The school week is thirty-five hours, including lunch and recess. Testimony of Witness D. The part of School C that the Student is assigned to

contains about seventy students, who are grouped by ability. Twelve students are grouped for classes such as science and art, often with a co-teacher who could be an occupational therapist. Testimony of Witness D.

17. At School C, the Student received reading, writing, and mathematics instruction from a certified special education teacher. The Student also took or is taking classes in science (2019-2020 only), art, “academic club” (a social studies and art class), physical education, and a writing class. Social studies instruction uses a project-based approach so that students do not have to read as much text. An occupational therapist consults staff on strategies for writing. Classes are often taught with co-teachers, such as related services providers or assistant teachers. Testimony of Witness C; Testimony of Witness D. The Student was assigned to School C’s most structured, supported classroom for his/her age, with a speech-language pathologist as a co-teacher. The Student was provided with an occupational therapy component in the classroom two to three times per week, but was not provided with direct occupational therapy services or direct speech and language services during his/her time at School C. Testimony of Witness C; Testimony of Witness D.

18. Initially at School C, the Student would sometimes remove him/herself from the group. Teachers would have to prompt the Student to get him/her back on task, though the Student was easier to prompt when the group was smaller than four. During virtual instruction, the Student participated better in “breakout” rooms. The Student would attend “lunch bunch” to address his/her social skills, and School C staff would provide the Student with calming strategies through a “Zones of Regulation” program.

During the 2020-2021 school year, the Student has been more talkative in class during virtual instruction. Testimony of Witness C; Testimony of Witness D.

19. School C drafted its own version of an “IEP” for the Student (not involving DCPS) on December 2, 2019. This “IEP” recommended integrated speech-language pathology occupational therapy, as well as consultative occupational therapy services, and noted that the Student had access to an occupational therapist during both “academic club” and writing class. Strategies in this “IEP” included small group instruction, the Orton-Gillingham methodology, use of graphic and semantic organizers such as story maps, extra processing time to formulate verbal responses, visual-concrete support for retelling, teacher-made materials, storyboarding, visual-concrete support for written expression, oral rehearsal prior to writing, extra processing time to formulate written responses, direct instruction of writing process, manipulative materials for mathematics, and a “100s Board.” Testimony of Witness D; P-30.

20. DCPS held an IEP meeting for the Student on February 7, 2020. Attending the meeting were Petitioners, Consultant A, Witness K, Witness C, an occupational therapist, a speech-language pathologist and co-teacher, and a general education specialist. R-12-1. Petitioners were provided with a draft IEP before the meeting. The IEP team discussed an occupational therapy assessment written for the Student by Witness C at School C. They also discussed the Student’s academic needs and difficulties with organization and focus. Testimony of Witness K; Testimony of Father. Initially, DCPS offered the Student five hours of specialized instruction per week, then increased the offer to ten hours per week (five hours inside general education and five hours outside general education). Consultant A requested a full-time placement

and explained that the proposal would not be sufficient, since the Student had made no progress in the general education program, except after s/he had attended a special summer program and received intensive outside tutoring. P-5-19; R-13-3; Testimony of Witness K. There was general agreement about the IEP goals. Testimony of Witness K. Other classroom aids and services were also agreed to after discussion. Testimony of Witness K; R-13-3. Petitioners suggested that the IEP should recommend the Student for direct occupational therapy. DCPS agreed to look into the provision of occupational therapy and speech concerns but did not recommend occupational therapy. Testimony of Witness H; Testimony of Witness C; Testimony of Mother.

21. The IEP was finalized on February 19, 2020. The IEP contained “Area of Concern” sections in reading, mathematics, and written expression, and recommended ten hours of specialized instruction per week (five hours inside general education and five hours outside general education), with “Other Classroom Aids and Services” such as anchor charts, task cards, visual cues, verbal and visual prompting, proximity, study corral, access to a quiet space for personal meditation, graphic organizers, access to word wall/bank, a “number strip,” a “100s board,” a “slant board,” graph paper, teacher check-ins, and a visual schedule. The requirements for a “wobble seat” and a “fidget” in the prior IEP were not included in this IEP. R-12; Testimony of Witness A. The “Classroom Accommodations” section of the IEP was the same as the January 18, 2019, IEP. The “Area of Concern” sections were based on the School C “IEP,” including the sections relating to the Student’s present levels of performance. R-12. Most of the proposed goals in the IEP, including reading goals and some written expression goals, were also

taken from the School C “IEP.” One mathematics goal was added. Testimony of Witness A; Testimony of Witness K.

22. After the onset of the COVID-19 pandemic in March, 2020, School C provided the Student with virtual instruction. Petitioners paid School C a deposit for the 2020-2021 school year in or about April, 2020. Testimony of Father. After Petitioners sent Respondent a consent to evaluate the Student in February, 2020, a meeting was held on July 30, 2020, to discuss the Student’s occupational therapy and speech and language needs. The delay was largely attributable to the COVID-19 pandemic. At the meeting, DCPS proposed a speech and language assessment, a comprehensive psychological assessment, and an occupational therapy assessment for the Student. Petitioners agreed. Testimony of Witness H.

23. On or about August 3, 2020, Petitioners sent Respondent a notice informing it of their unilateral placement of the Student at School C for the 2020-2021 school year. P-6-3. In or about October, 2020, Witness I and Witness E observed the Student at School C to determine the need to evaluate him/her in, respectively, speech-language pathology and occupational therapy. Witness K also observed the Student at School C during the 2020-2021 school year. P-7-23-24; Testimony of Witness K. Witness I tested the Student in or about December, 2020, and determined that s/he did not need speech-language pathology services. Testimony of Witness I. Witness E tested the Student and determined that s/he did not need direct occupational therapy services but recommended consultative occupational therapy services. Testimony of Witness E.

24. For the 2020-2021 school year, School C began classes in early September, 2020. Classes were virtual at the start, then moved to a hybrid model with

some in-person learning. After about four to six weeks of using the hybrid model, School C went back to a virtual model. Testimony of Father.

25. The Student has made progress at School C. The Student is able to read more sophisticated texts and write better-formed sentences, and is developing socially and emotionally. The Student has improved in reading words correctly per minute and is beginning to master “controlled vowels.” The Student is now participating more in class and has responded to the small group reading instruction at the school. On School C’s Decoding Encoding Red Words Morphology Assessment (“DERMA”) and Phono-Graphix Screening test of the Student, his/her reading level progressed from level “J” in fall 2019 to level “K” in winter 2020. P-31. The Student is now at the level “L.” Testimony of Witness D; P-31-4-5.

VI. Conclusions of Law

The burden of proof in District of Columbia special education cases was changed by the local legislature through the District of Columbia Special Education Student Rights Act of 2014. That burden is expressed in statute as the following: “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.” D.C. Code Sect. 38-2571.03(6)(A)(i). Accordingly, on Issues #1 and #3, relating to the appropriateness of

the Student's IEP and placement, the burden of persuasion is on Respondent if Petitioners present a *prima facie* case. On Issue #2, the burden of persuasion is on Petitioners.

1. Did Respondent fail to provide the Student with an appropriate IEP in or about January, 2019, and February, 2020? If so, did Respondent act in contravention of 34 C.F.R. 300.320, Andrew F. v. Douglas County School District, 137 U.S. 988 (2017), Hendrick Hudson Bd. of Educ. v. Rowley, 458 U.S. 176 (1982), and related authority? If so, did Respondent deny the Student a FAPE?

Petitioners contended that the Student's IEPs did not recommend necessary specialized instruction outside of general education and failed to provide the Student with a program to meet his/her reading needs. Petitioners also contended that the IEPs did not recommend an appropriate educational placement or curriculum modifications to address the Student's needs. Finally, Petitioners contended that the February, 2020, IEP did not provide the Student with occupational therapy services.

In Hendrick Hudson Bd. of Educ. v. Rowley, 458 U.S. 176 (1982), the Court explained that an IEP must be formulated in accordance with the terms of the IDEA and "should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." Id. At 204. The IDEA also requires that children with disabilities be placed in the "least restrictive environment" ("LRE") so that they can be educated in an integrated setting with children who are not disabled to the maximum extent appropriate, that is, one that provides a program that "most closely approximates" the education a disabled child would receive if s/he had no disability. Leggett v. Dist. of Columbia, 793 F.3d 59, 74 (D.C. Cir. 2015); 20 U.S.C. Sect. 1412(a)(5)(A). In 2017, the Supreme Court addressed a split amongst the circuit courts regarding what the IDEA means when it requires school districts to provide an "appropriate" level of education to children with disabilities. Andrew F. ex rel. Joseph F. v. Douglas County School Dist.

RE-I, 137 S. Ct. 988 (2017). In Endrew F., the Court held that an IEP must be reasonably calculated “in light of the child’s circumstances.” Id. at 999-1000. The Court also held that a student’s educational progress must be “markedly more” than merely “de minimis” for a FAPE to be provided, and that a student’s educational program must be “appropriately ambitious.” Id. at 1000-1001. The Court also held that parents can fairly expect school authorities to offer a “cogent and responsive explanation” for their decisions, and that its ruling “should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of school authorities, to whose expertise and professional judgment deference should be paid.” Id. at 1001-1002.

January 18, 2019, IEP.

The measure and adequacy of an IEP decision must be determined as of the time it was offered to the student. S.S. ex rel. Shank v. Howard Road Academy, 585 F. Supp. 2d 56, 66-67 (D.D.C. 2008). Witness F, who drafted much of this IEP for the Student, said that the IEP’s recommendation of 2.5 hours of specialized instruction per week outside general education was based in part upon the Student’s performance during the RTI process. Witness F said that the Student did well with a similar amount of RTI instruction time. However, Evaluator A pointed out that the Student often struggled with RTI instruction. From March, 2017, to May, 2017, the Student received small group RTI instruction using Foundations to work on blending and segmenting CVC words. During the first four weeks of this eight-week RTI cycle, the Student received the intervention three of every six days. The Student did not make progress, however, and was deemed to require more intensive support. As a result, for the remaining four weeks of the cycle, the RTI intervention was increased to five of every six days. Nevertheless, at the end of

eight weeks, the Student had not met the goal of the instruction. Then, at the beginning of the 2017-2018 school year, the Student received RTI instruction four of every six days over two eight-week cycles. The Student improved during the first cycle, but showed significant regression in second cycle. By November, 2017, the Student's general education teacher, Witness G, reported that the Student was not making progress, despite receiving RTI in both math and English language arts, and sought additional support for the Student.

Moreover, at the time of the IEP meeting, the Student was struggling to advance his/her reading level despite receiving RTI instruction in school and Orton-Gilligham tutoring at home. Witness F herself testified that the Student's progress *at the time of the IEP meeting* was "laborious," "sluggish," and "slow," even though the Student was repeating the same grade with the same teacher, suggesting that more services were needed for the Student's success. However, the record suggests that Witness F did not carefully calculate whether the Student's slow progress required additional specialized instruction based on the data before her. Instead, Witness F used a matrix to calculate a window of specialized instruction hours for the Student, and this matrix set a five-hour-per-week limit on the recommendation for specialized instruction. At the hearing, testimony and evidence did not establish the exact formula for the matrix, which was not entered into evidence. Moreover, Witness F's general testimony about the matrix, to the effect that the matrix derived a "point score" based on the Student's goal mastery, accommodations, math levels, reading levels, and other factors, was not clear. In fact, Petitioners were not told about the importance of the matrix at the IEP meeting or even

afterward.² Respondent's calculation of the Student's specialized instruction hours was not cogently and responsively explained at the IEP meeting or at the hearing.

Respondent contended that Petitioners agreed with the IEP, but the record does not clearly reflect Petitioners' genuine assent to the IEP. While Petitioners did not raise any specific objections to the IEP at the meeting, the record establishes that, three days earlier, Petitioners decided to apply to School C on behalf of the Student because they were upset about the services recommended in the draft IEP. While Petitioners' failure to clearly object to an IEP is a factor in deciding whether to invalidate an IEP, the burden is on the school district to provide an appropriate IEP and placement, not on parents to object. Middleton v. District of Columbia, 312 F. Supp. 3d 113, 136 (D.D.C. 2018); Letter to Lipsett, 52 IDELR 47 (OSEP 2008).

Respondent argued that the Student was on grade level and had only a "mild" disability, but this is not what the record reflects as of the date of the IEP meeting. To the contrary, the Student's IEP of January 18, 2019, stated that the Student required "a lot" of teacher assistance while writing, that the Student's writing samples could not be decoded when the topic was unknown, and that the Student was at a low level in reading achievement, particularly in comprehension, despite interventions and being held back. While Evaluator A's report indicated that the Student did fare well on the KTEA, the report's summary concluded with a paragraph containing the following sentence: "[s/he] has received intensive RTI supports, over 10 months, and continues to be unable to meet

²Witness F also did not consider the fact that the Student was receiving in-home tutoring when the IEP was created. E.W.K. v. Bd. of Educ. of the Chappaqua Cent. Sch. Dist., 884 F. Supp. 2d 39, 55 n.10 (S.D.N.Y. 2012) (IEP teams should consider information about "extra" learning support provided to the child at various stages of the IDEA process").

grade level expectations in reading, writing, and math.” The report made it clear that the Student needed more specialized instruction at the time the January 18, 2019, IEP was created.

Petitioners’ other contentions pertaining to the January 18, 2019, IEP lack merit. Petitioners’ contention that the IEP lacked a specific reading methodology was not the focus of their closing argument, and indeed no witness specifically testified that the Student needed a specific reading methodology to succeed in school. In fact, the record suggests that School B employed similar methodologies to the methodologies at School C, since “Wilson” instruction was used at both School B (testimony of Witness F) and School C (testimony of Witness D). Additionally, as Respondent pointed out, methodology issues are generally within the discretion of school districts. Fairfax Cty. Sch. Bd. v. Knight, No. 1:05CV1472 (LMB), 2006 WL 6209927, at *8 (E.D. Va. Aug. 23, 2006), *aff’d*, 261 F. App’x 606 (4th Cir. 2008). Petitioners also contended that the IEP lacked appropriate requirements for “curriculum modifications.” However, the IEP *did* contain requirements for curriculum modifications. In mathematics, reading, and written expression, the IEP called for “direct instruction, as well as other supports and differentiation” to allow the Student to access the general education curriculum.

Petitioners also argued that the Student’s executive functioning and behavioral issues were not addressed in the January 18, 2019, IEP. However, these issues were not properly raised by Petitioners since they were not mentioned in the prehearing order, which the parties agreed to as the framework for the issues in this litigation. Office of Dispute Resolution Standard Operating Procedures, Sect. 501(B)(1). Moreover, the record indicates that the Student’s executive functioning issues were addressed in the IEP

through accommodations such as anchor charts, task cards, visual cues, verbal and visual prompting, proximity, hand-held fidgets, wobble seat, study corral, and scheduled breaks. Petitioners suggested that executive functioning should have been a separate “Area of Concern” in the IEP, but did not point to any authority to support this proposition or the proposition that “executive functioning goals” must be on all IEPs where students have executive functioning issues.³

February 7, 2020, IEP.

By February, 2020, DCPS recognized that the Student had greater needs than were addressed by the January 18, 2019, IEP. DCPS therefore made significant changes in a new IEP dated February 20, 2019, to remediate the problems in the January 18, 2019, IEP. In particular, DCPS recommended that the Student receive ten hours of specialized instruction per week (five hours inside general education and five hours outside general education). To this Hearing Officer, this was an appropriate recommendation for specialized instruction. During the latter half of the 2018-2019 school year, the Student made progress while receiving 2.5 hours of specialized instruction outside general education and Orton-Gillingham tutoring twice weekly. At the end of the 2018-2019 school year, the Student completed a reading assessment at an independent “I” level, with an instructional level of “J,” slightly above end-of-year expectations for the grade. DCPS’s recommendation for ten hours of specialized instruction offered approximately

³Petitioners contended that the Student’s IEP did not contain appropriate recommendations for the Student’s educational placement. These contentions are addressed in connection to Issue #3, which relates to placement issues. Petitioners also contended that the IEP goals needed “more time,” per the testimony of Witness A and Witness B. These claims were not plead adequately in the due process complaint and were not mentioned in the prehearing order. Additionally, none of the witnesses for Petitioners established that the IEP goals were not meaningful for the Student within the time span of the IEP. Petitioners did not provide any support for the proposition that goals have to be mastered during an IEP’s timeframe in order to be meaningful.

twice the services that the Student received during the second half of the 2018-2019 school year, giving the Student a reasonable opportunity to advance in reading, writing, and mathematics.

Petitioners argued that the IEP contained goals written by School C, and that these goals were intended to be used only in a “full-time” educational program. This claim was not mentioned in the prehearing order agreed to by the parties (though it was mentioned in the due process complaint). Moreover, Petitioners’ argument is not supported by the facts or the caselaw. 34 C.F.R. Sect. 300.320(4)(i) requires that an IEP include “a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals.” Petitioners suggested that the Student would need more than ten hours of specialized instruction per week to master the many goals in the IEP, but the IDEA does not establish a specific number of goals that must be included in an IEP, as that would contradict the premise that every IEP should be individualized. Moreover, courts have ruled that school districts can adopt private school IEP goals when creating their own IEPs. E.F. v. New York City Dep’t of Educ., No. 12–CV–2217 2013 WL 4495676, at *19 (S.D.N.Y. August 19, 2013) (permissible for IEP team to determine goals based on the private school placement); J.L. v. New York City Dep’t of Educ., No. 12-CV-1516 2013 WL 625064, at *14 (S.D.N.Y. February 20, 2013). Finally, though Petitioners presented a fourteen-page document containing case citations after the

conclusion of testimony, no cases cited in this document stand for the proposition that an IEP can be invalidated for having too many goals.

Petitioners also suggested that the Student could not function in a general education setting and therefore needs a full-time placement. There is nothing in the record, however, to suggest that the Student had such difficulty with academics, attention, or behavior that s/he could not function in general education classes. As Witness K testified, Petitioners themselves said that the Student had matured and no longer had behavioral issues. Indeed, at the February 7, 2020, IEP meeting, Consultant A (who strongly objected to the IEP) did not argue that the Student needed a small class size because of attentional or behavioral concerns. Instead, Consultant A argued that the IEP proposal would not be sufficient since the Student had made no progress in the general education program, except after s/he had attended a special summer program and received intensive outside tutoring.

However, the record does not establish that the Student made no progress in the general education program and made all of his/her progress as a result of tutoring. The record shows that the Student did eventually make progress in his/her general education program during the latter part of the 2018-2019 school year. During closing argument, Petitioners did not argue otherwise. At most, the record indicates that Witness B's tutoring assisted the Student in making progress toward the end of the 2018-2019 school year. Prior to that point, the record indicates that the Student was not making adequate progress, even though the Student had been receiving tutoring twice a week.

Petitioners also contended that this IEP did not contain a recommendation for direct occupational therapy services. The record indicates that the Student had issues

with handwriting and sensory integration, both of which can be addressed by occupational therapy. However, Respondent's expert, Witness E, was more persuasive on this issue than Petitioner's expert, Witness C. Witness C testified that the Student needed direct occupational therapy services, but the Student did not receive occupational therapy services at School C during the 2020-2021 school year, even though Witness C's occupational therapy assessment of the Student recommended direct services. Witness E, who has a doctorate in occupational therapy, testified that the Student's general education accommodations for writing were sufficient for the Student to make progress in writing, and that a general education teacher could instruct a student on handwriting. Indeed, at the IEP meeting, School C indicated that the Student's handwriting was not a primary concern, pointing to the Student's sensory issues. R-15-9. However, Petitioners did not clearly explain how direct occupational therapy would address the Student's sensory issues any better than the myriad accommodations in the classroom, and Witness E testified that the inconsistencies with the Student's performance did not result from sensory issues.

Finally, Petitioners' arguments pertaining to the Student's need for curriculum modifications and a specific reading program must be rejected for the same reasons articulated in regard to the January 18, 2019, IEP. Petitioners contended that the Student required behavioral interventions such as a "social curriculum," pointing to the report by Evaluator A, but the Mother told Evaluator A that she had "very little concern" with the Student's behavior and executive functioning, with the exception of a slight concern with withdrawing behaviors. Witness K testified without rebuttal that the Mother indicated to her that the Student did not need any behavioral intervention, since the Student had

matured. Moreover, no witness suggested that the Student requires a particular educational methodology, probably because the both School B and School C use similar reading methodologies.

As a result of the foregoing, this Hearing Officer finds that DCPS denied the Student a FAPE through its January 18, 2019, IEP, and that Petitioners' claims relating to the February 7, 2020, IEP must be dismissed.

2. Did Respondent fail to timely evaluate/reevaluate the Student in all areas of suspected disability: 1) when they knew or should have known that the Student might be eligible for services; and 2) after the parental request for a reevaluation in or about February, 2020? If so, did Respondent violate 34 C.F.R. 300.303, 34 C.F.R. Sect. 300.304, and related provisions? If so, did Respondent deny the Student a FAPE?

Petitioners contended that they requested an occupational therapy assessment in February, 2018, and that such an assessment should have been completed by January, 2019. Petitioners also contended that the Student should have received an occupational therapy assessment and a speech-language pathology assessment after their requests for such assessments in or about February, 2020.

A school district must ensure that a reevaluation of each child with a disability is conducted if there has been no evaluation within three years (unless the parties deem it unnecessary), if the child's parent or teacher requests such reevaluation, or if conditions warrant a reevaluation. 34 C.F.R. Sect. 300.303(a); 34 C.F.R. Sect. 300.303(b). A "reevaluation" is more than a single assessment. A reevaluation consists of a review of assessments of the child in all areas of suspected disability to assist in determining the educational needs of the child. 28 U.S.C. Sect. 1414(b)(3); 34 C.F.R. Sect. 300.304(c). When conducting a reevaluation, the LEA is directed to use a variety of assessment tools and strategies to gather "relevant functional, developmental, and academic information,"

including information from the parent, which may assist in determining (i) whether the child is a child with a disability and (ii) the content of the child's IEP. The LEA must also use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 28 U.S.C. Sect. 1414(b)(2); 34 C.F.R. 300.304(b).

During closing, Petitioners did not argue that Respondent failed to respond to their requests for an occupational therapy assessment in 2018, and the record does not indicate that any such request was clearly made by Petitioners at that time. Petitioners did contend that DCPS delayed in responding to the reevaluation request they made at the IEP meeting on February 7, 2020. Petitioners contended that DCPS delayed the reevaluation by insisting on conducting an Analysis of Existing Data ("AED") meeting prior to getting consent from Petitioners. That AED meeting was eventually held on July 22, 2020, more than five months after the request for reevaluation.

However, Petitioners did not fully acknowledge the impact of the COVID-19 pandemic on school districts during this time period. The record shows that the AED meeting was understandably delayed because of the difficulties associated with the first few months of the pandemic. Less than three months after the pandemic's onset, DCPS convened an AED meeting and authorized an occupational therapy assessment and a speech-language therapy assessment for the Student, which were conducted by Witness E and Witness I.

Moreover, Petitioners did not show that any failure to assess the Student immediately after their request in February, 2020, had any real impact on the Student's education. For a hearing officer to issue a finding of FAPE denial, petitioners must show

that a “procedural shortcoming led to some substantive denial in the form of a lower-quality education.” J.B. by & through Belt v. District of Columbia, 325 F. Supp. 3d 1, 6 (D.D.C. 2018); Lesesne ex rel. B.F. v. District of Columbia, 447 F.3d 828, 834 (D.C. Cir. 2006). By February, 2020, the Student had already received an occupational therapy assessment, conducted by Witness C on July 31, 2019. Witness C did not clearly testify that another assessment was needed in 2020, and Petitioners did not call any other experts in occupational therapy or otherwise show that an additional occupational therapy assessment would have made any difference in the Student’s education. In regard to speech-language pathology, the only witness with expertise in this area was Witness I, who assessed the Student and determined that the Student did not need speech-language pathology services. Witness I testified, without rebuttal, that there was no evidence that the Student needed to be assessed for speech-language pathology, that there was no sign that the Student had a communication disorder, and that the Student did not have a speech-language pathology issue when Witness I assessed him/her. It is again noted that the Student did not receive direct occupational therapy services or speech-language pathology services at School C. This claim must therefore be dismissed.

3. Did Respondent fail to recommend an appropriate educational placement for the Student from January, 2019, to present? If so, did Respondent violate the principles of law in 34 C.F.R. Sect. 300.17; 34 C.F.R. Sect. 300.39, 34 C.F.R. Sect. 300.115, 34 C.F.R. Sect. 300.116, 34 C.F.R. Sect. 300.323(c)(2), and cases such as Andrew F. and Gellert v. District of Columbia, 435 F. Supp. 2d 18 (D.D.C. 2006)? If so, did Respondent deny the Student a FAPE?

Most cases involving FAPE denial focus on the IEP, the “centerpiece” of the Act. Honig v. Doe, 484 U.S. 305, 311 (1988). Nevertheless, courts hold that parents may also bring claims based upon an inappropriate school placement. The benchmark under IDEA for determining the appropriateness of a student’s educational placement is that DCPS

“must place the student in a setting that is capable of fulfilling the student’s IEP.”

Johnson v. District of Columbia, 962 F. Supp. 2d 263, 267 (D.D.C. 2013); O.O. ex rel. Pabo v. Dist. of Columbia, 573 F. Supp. 2d 41, 53-54 (D.D.C. 2008); Roark ex rel. Roark v. D.C., 460 F. Supp. 2d 32, 44 (D.D.C. 2006) (“To determine whether [a] placement was appropriate, one must refer to the IEP”).

Petitioners’ placement claims were virtually identical to Petitioners’ IEP claims. There was no contention that School B could not implement the Student’s IEP. Moreover, there was no claim that the Student’s placement at School B would deny the Student a FAPE because special factors at the school prevented proper implementation of the IEP. Compare Gellert v. District of Columbia, 435 F. Supp. 2d 18 (D.D.C. 2006) (hectic, unstructured environment); Shore Regional High School Board of Education v. P.S., 381 F.3d 194 (3d Cir. 2004) (proposed placement would subject a student to bullying); M.L. v. Federal Way School District, 394 F.3d 634 (9th Cir. 2005) (teacher was deliberately indifferent to the teasing of child with a disability). This claim must therefore be dismissed.

RELIEF

As relief, Petitioners seek tuition reimbursement for School C for the 2019-2020 and 2020-2021 school years, and reimbursement for tutoring, speech and language therapy, and occupational therapy services provided for the Student between August 15, 2018, and September, 2019. Petitioners also seek reimbursement for the occupational therapy assessment performed by Witness C in July, 2019.

When school districts deny students a FAPE, courts have wide discretion to ensure that students receive a FAPE going forward. As the Supreme Court stated, the

statute directs the Court to “grant such relief as [it] determines is appropriate.” School Committee of the Town of Burlington v. Dep’t of Education, Massachusetts, 471 U.S. 359, 371 (1985). The ordinary meaning of these words confer broad discretion on a hearing officer, since the type of relief is not further specified, except that it must be “appropriate.” To this end, a respondent may be required to pay for educational services obtained for a student by a student’s parent if the services offered by the school district are inadequate or inappropriate, the services selected by the parent are appropriate, and equitable considerations support the parents’ claim, even if the private school in which the parents placed the child is unapproved. Florence County School District Four et al. v. Carter by Carter, 510 U.S. 7 (1993). In Branham v. District of Columbia, 427 F.3d 7 (D.C. Cir. 2005), the court laid forth rules for determining when it is appropriate for Impartial Hearing Officers to order funding of non-public placements. First, the court indicated that “(i)f no suitable public school is available, the [school system] must pay the costs of sending the child to an appropriate private school.” Id. at 9 (citing to Jenkins v. Squillacote, 935 F.2d 303, 305 (D.C. Cir. 1991)). The relief “must be tailored” to meet a student’s “unique needs.” Id. at 11-12 (citing to Florence County School Dist. v. Carter, 510 U.S. 7, 16 (1993)). Courts must consider “all relevant factors” including the nature and severity of the student’s disability, the student’s specialized educational needs, the link between those needs and the services offered by the private school, the placement’s cost, and the extent to which the placement represents the least restrictive educational environment. Id. at 12.

School C is a school for students with language differences, like the Student. The school provides students with instruction through different methodologies geared for

students with disabilities, including the Orton-Gillingham approach. Reading at School C is taught in a very small group, with two students and one teacher. The record indicates that the Student has benefitted from this form of instruction in Witness B's tutoring and at School C. The Student received reading, writing, and mathematics instruction from a certified special education teacher at the school. Most classes at the school are taught with co-teachers in the class, reducing the student-to-teacher ratio. Staff at School C modify all of the school's curriculum to fit the needs of students who struggle with language. For example, the school's social studies curriculum is project-based, not text-based.

The Student has accordingly made good progress at School C. The Student is able to read more complex texts and write more complex, better-formed sentences, and is developing socially and emotionally. The Student is participating more in class and has responded to the small group reading instruction at the school. On School C's DERMA assessment and Phono-Graphix Screening test of the Student, his/her reading level progressed from level "J" in fall 2019 to level "K" in winter 2020. P-31.

Respondent objected to the placement, contending that the Student does not need such a restrictive environment. IDEA requires that children with disabilities be placed in the LRE so they can be educated in an integrated setting with children who are not disabled, to the maximum extent appropriate. 20 U.S.C. Sect. 1412(a)(5)(A). "Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment" should occur only if "the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 34 C.F.R. Sect. 300.114(a)(2)(ii). However, IDEA's

LRE requirement is subordinate to the IDEA's requirement that educational placements must be based on individual student needs. Hartmann by Hartmann v. Loudoun County Bd. of Educ., 118 F.3d 996 (4th Cir. 1997); Clyde K. v. Puyallup Sch. Dist., 35 F.3d 1396 (9th Cir. 1994); MR v. Lincolnwood Bd. of Educ., 843 F. Supp. 1236 (N.D. Ill 1994).

The record indicates that the Student benefitted from the placement at School B, and there is nothing in the record to suggest that Petitioners had any other choice during the 2019-2020 school year. Moreover, the record does not indicate that the Student was denied any significant benefit when s/he was placed in an environment with other disabled students. According to Petitioners, the students at School C behave typically in many ways, and the Student does not even know that s/he is in a special education school at School C. On balance, this Hearing Officer cannot find that that the unilateral placement is not appropriate because of LRE considerations.

Respondent also argued that School C does not provide students with a certified special educator in many classrooms, which is a state licensing requirement. However, as the Court pointed out in Carter, there is no requirement for parental placements to comply with state requirements (such as placing certified special education teachers in every classroom). Wimbish v. District of Columbia, 153 F. Supp. 3d 4, 12 (D.D.C. 2015) (reimbursement ordered for school without OSSE certification). Respondent did not provide any caselaw where tuition reimbursement was denied because some of the teachers instructing a student at the parental placement are not certified by the state. This Hearing Officer must accordingly find that School C was an appropriate placement for the Student during the 2019-2020 school year.

Tuition reimbursement may be reduced or denied when parents fail to raise the appropriateness of an IEP in a timely manner, fail to make their child available for evaluation by the district, or upon a finding of unreasonableness with respect to the actions taken by the parents. 20 U.S.C. Sect. 1412(a)(10)(C)(iii). With respect to parents' obligation to raise the appropriateness of an IEP in a timely manner, the IDEA provides that tuition reimbursement may be denied or reduced if parents neither inform the IEP team of their disagreement with its proposed placement and their intent to place their child in a private school at public expense at the most recent IEP meeting prior to their removal of the child from public school, nor provide the school district with written notice stating their concerns and their intent to remove the child within ten business days before such removal. 34 C.F.R. Sect. 300.148(d)(i), (ii). Under 20 U.S.C. Sect. 1412(a)(10)(C)(iii), a denial or reduction in reimbursement is discretionary.

Respondent suggested that School C resists allowing DCPS to observe the school's students and does not cooperate with its requests. However, both Witness E and Witness I did manage to observe and evaluate the Student at School C in the past year. Respondents did not argue that Petitioners themselves did anything wrong in connection to the IEP process for their child. There was no argument that Petitioners failed to attend IEP meetings or otherwise failed to cooperate with DCPS. In fact, Witness F testified that Petitioners have been "great" and "supportive" parents. Under the circumstances, this Hearing Officer will award Petitioners tuition reimbursement for the Student's attendance at School C for the 2019-2020 school year.

Finally, Petitioners also request reimbursement for tutoring, speech-language pathology, and occupational therapy services provided for the Student between August

15, 2018, and September, 2019, as well as reimbursement for the occupational therapy assessment performed by Witness C in July, 2019. However, there is no finding of FAPE denial that corresponds to these forms of relief, since the finding of FAPE denial relates to the 2019-2020 school year. It is noted that the record indicates that Witness B's tutoring of the Student ended in August, 2019. There is no showing that this tutoring occurred during the 2019-2020 school year. Even if it did, Petitioners did not argue that the tutoring was necessary for the Student to receive a proper education at School C during the 2019-2020 school year.

VII. Order

As a result of the foregoing, the following is ordered:

1. Petitioners shall be reimbursed for all tuition payments made to School C on behalf of the Student for the 2019-2020 school year;
2. Petitioners' other requests for relief are denied.

Dated: March 14, 2021

Michael Lazan
Impartial Hearing Officer

cc: Office of Dispute Resolution
Attorney A, Esq.
Attorney B, Esq.
OSSE Division of Specialized Education
[REDACTED]/DCPS
[REDACTED]/DCPS

VIII. Notice of Appeal Rights

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

Dated: March 14, 2021

Michael Lazan
Impartial Hearing Officer