

District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution
1050 First Street, N.E.; Washington, D.C. 20002
(202) 698-3819 www.osse.dc.gov

OSSE
Office of Dispute Resolution
March 07, 2022

Confidential

Parent on behalf of Student,¹)	Case No. 2021-0158
)	
Petitioner.)	Hearing Date: January 26-27, 2022 and
)	February 15, 2022
)	
v.)	Conducted by Video Conference
)	
)	Date Issued: March 7, 2022
District of Columbia Public Schools,)	
)	Terry Michael Banks
Respondent.)	Hearing Officer

HEARING OFFICER DETERMINATION

INTRODUCTION

Petitioner is the mother of an X-year-old student (“Student”) attending School A. On October 1, 2021, Petitioner filed a *Due Process Complaint Notice* (“*Complaint*”) alleging that the District of Columbia Public Schools (“DCPS”) denied the student a free appropriate public education (“FAPE”) by failing to conduct a triennial evaluation, failing to provide appropriate Individualized Education Programs (“IEP”), and failing to implement an IEP. DCPS filed *District of Columbia Public Schools’ Response* on October 25, 2021, denying that it had failed to provide a FAPE in any way.

SUBJECT MATTER JURISDICTION

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the Individuals with Disabilities Education Improvement Act (“IDEIA”), 20 U.S.C. Section 1400 *et seq.*, its implementing regulations, 34 C.F.R. Sect. 300 *et seq.*, Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-E, Chapter 30.

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

PROCEDURAL HISTORY

Petitioner filed her *Complaint* on October 1, 2021, alleging that DCPS denied Student a FAPE by failing to provide an IEP and placement for the 2021-22 school year. On December 16, 2021, Petitioner filed *Petitioner's Motion for Leave to Amend the Pending Administrative Due Process ("Motion")* to add additional claims after Respondent failed to give consent to an amendment. Respondent did not file an opposition to the motion. On December 22, 2021, Petitioner filed an *Amended Complaint* alleging that DCPS denied Student a FAPE by (1) failing to provide appropriate IEPs on October 25, 2019, September 25, 2020, and May 26, 2021, and December 7, 2021, (2) failing to implement Student's IEP during distance learning by failing to provide the full amount of specialized instruction required by the IEP, (3) and failing to provide Petitioner full and timely access to Student's educational records. Thereafter, by email, Respondent's counsel stated that DCPS consented to the proposed amendment.

On December 22, 2021, I issued an order granting the *Motion*. On January 3, 2022, DCPS filed its response to the *Amended Complaint* ("*Response*") denying that it had denied Student a FAPE as follows:

1. Student's last previous triennial reevaluation was completed on November 9, 2018. DCPS completed a triennial psychological reevaluation on May 5, 2021, and the eligibility determination was made on May 26, 2021. On September 14, 2021, DCPS issued a Prior Written Notice ("PWN") indicating its intent to conduct three additional assessments: S/L, OT, and psychological;
2. DCPS proposed IEPs for Student on October 25, 2019, September 25, 2020, May 26, 2021, and September 17, 2021. On October 25, 2019, on or about September 27, 2020, and September 17, 2021, DCPS issued Petitioner PWNs notifying her of the essential terms of the IEPs and that the IEP teams determined that FAPes had been provided to the Student. On October 5, 2020, DCPS issued an Individualized Distance Learning Plan ("IDL") due to school closures during the COVID pandemic.
3. After the filing of the Complaint on October 1, 2021, the IEP team met on December 7, 2021 to review existing data and to update the IEP. Petitioner requested an increase in service hours. The team agreed to make a request for assistive technology consultation. However, because of its determination that Student was making academic progress, the IEP team concluded that an increase in service hours was not warranted. Whether Student requires extended year services ("ESY") will be determined based on Student's performance after breaks during the remainder of the school year. The team reviewed a recently completed OT evaluation and concluded that OT services were not warranted. DCPS issued a PWN on December 10, 2021 confirming the provision of FAPE in the IEP.
4. Parents may seek access to inspect their child's special education records prior to an IEP meeting or hearing. While it is not required under IDEA, DCPS will provide copies of records at no cost to the parent.

The parties participated in a resolution meeting on October 15, 2021 that did not result in a settlement. Prehearing conferences were conducted by video conference on November 12, 2021 and January 12, 2022. A *Prehearing Order* was issued on November 12, 2021 and an *Amended Prehearing Order* was issued on December 3, 2021. After the filing of the Amended Complaint, another prehearing conference was conducted on January 12, 2022, and a *Second Amended Prehearing Order* was issued that day.

The due process hearing was convened on January 26, 2022 by video conference. The hearing was open to the public. Petitioner filed Disclosures on January 19, 2022 containing a witness list of eight witnesses and documents P1-P66. DCPS filed objections to the disclosures on January 24, 2022. DCPS objected to expert testimony from Witness B and Witness D on the grounds that Petitioner failed to provide the specific areas in which the witnesses will testify. The witnesses' resumes were disclosed and Respondent's counsel is well aware of both witnesses' areas of expertise. Thus, there is no prejudice to DCPS and the objection was overruled. DCPS also objected to [REDACTED] on the grounds of her potential financial interest in the outcome. A ruling on that issue was deferred until *voir dire*. DCPS objected to P24, P34-P38, P65, and P66 on the grounds of hearsay, relevance, and authentication. I overruled the objections to P34, relating to records requests, and P35, a letter sent pre-*Complaint* from Petitioner's educational advocate to DCPS memorializing concerns raised at a recent IEP meeting. I deferred ruling in P24, P65, and P66 pending authentication during the hearing. P65 and P66 were authenticated and admitted during Petitioner's direct case, but P24 was not. Thus, Petitioner's exhibits P1 – 23 and P25 – P66 were admitted into evidence.

DCPS also filed Disclosures on January 19, 2022 containing a witness list of seven witnesses and documents R-1 through R-27. DCPS filed a supplemental disclosure on January 20, 2022 adding R28, Petitioner filed objections to DCPS' proposed exhibits on January 24, 2022. After 5:00 p.m. on January 25, 2022, DCPS filed a second supplemental disclosure adding exhibits R29 and R30. Petitioner filed objections later that day. After the first day of hearings on January 26, 2022, DCPS filed a third supplemental disclosure, adding Exhibit 31. At the inception of DCPS' direct case, DCPS offered R1-R31 into evidence. Petitioner's counsel objected to all late-filed disclosures. I overruled the objection to R28, which was filed the morning after the deadline. I sustained the objections to R29-R31.

During the second day of hearings on January 27, 2022, it was determined that a third day of hearings would be required. The parties agreed to reconvene on February 15, 2022. On February 7, 2022, DCPS filed *Corrected/Supplemental Disclosure Statement* including eight witnesses and documents R1-R33. Petitioner submitted *Petitioner's Supplemental Disclosure* on February 8, 2022 including the same list eight witnesses and documents P1-P74. Neither party filed an objection to the supplemental disclosures. Therefore, Petitioner's Exhibits P1-P23 and P25-P74 are admitted into evidence, and DCPS' Exhibits R1-R33 are admitted into evidence, reversing my previous exclusion of R29-R31.

Petitioner presented as witnesses in chronological order: Witness A, Witness B, Petitioner, Witness C, Witness D, and Petitioner. Witness A was admitted as an expert in Occupational Therapy and Witness B was admitted as an expert in Special Education. Respondent presented as witnesses in chronological order: Witness F, Witness G, Witness H, Witness J, Witness K, and Witness L. Witness F was admitted as an expert in School Psychology and Special Education, Witness G was admitted as

an expert in Occupational Therapy, Witness H, Witness J, and Witness L were admitted as experts in Special Education, and Witness K was admitted as an expert in Social Work.

At the conclusion of testimony, counsel for the parties elected to provide written closing arguments on or before February 25, 2022. On February 25, 2022, Petitioner filed *Petitioner's Closing Argument*, and DCPS filed *District of Columbia Public Schools' Case Citations*.

ISSUES

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

1. Whether DCPS denied Student a FAPE by failing to provide Student appropriate IEPs on October 25, 2019, September 25, 2020, and May 26, 2021 by failing to increase Student's service hours or provide a sufficient amount of specialized instruction in light of his/her lack of appropriate progress, the IEPs were not based on comprehensive evaluations and failed to address her/his need for related services or extended year services ("ESY"), occupational therapy ("OT") and behavioral support services ("BSS"), and failed to provide supports including small group instruction, one-to-one support, checks for understanding, modification of texts and assignments, and other supports to assist with inattentiveness, and organization and planning like graphic organizers or guided notes.
2. Whether DCPS denied Student a FAPE by failing to implement Student's IEP during distance learning by failing to provide Student the full amount of specialized instruction required by the IEP.
3. Whether DCPS failed to provide full and timely access to Student's records. Specifically, Petitioner alleges that DCPS has failed to provide access to standardized testing results for the last 4 years, report cards all four school year terms – not just the end of year report cards, and Student's initial psychological and OT evaluations.
4. Whether DCPS denied Student a FAPE by failing to provide Student an appropriate IEP on or about December 7, 2021. Specifically, Petitioner alleges that the IEP was inappropriate because it did not address Student's need for assistive technology, the goals did not reflect that Student would receive instruction at his/her "instructional" level rather than grade level, the IEP did not include occupational therapy ("OT") goals or goals to address Student's Attention Deficit Hyperactivity Disorder ("ADHD"), and the IEP did not provide a sufficient amount of specialized instruction.

FINDINGS OF FACT

1. Student is X years-old and attended School A in grade D during the 2020-21 school

year.²

2. On December 28, 2016, when Student was in grade H at School A, DCPS completed an Initial Speech-Language Evaluation.³ In Articulation, Student's standard score of 88 was within normal limits at the word level, and at the sentence level, his/her score of 80 was mildly delayed. Student's receptive vocabulary (98) and expressive vocabulary (99) were within normal limits. His/her fluency was also age-appropriate. On the Clinical Evaluation of Language Fundamentals ("CELF"), Student's scores were in the Average range in Word Structure, Word Classes, Following Directions, Formulated Sentences, and Recalling Sentences, and Below Average in Sentence Comprehension and Linguistic Concepts. Examiner A concluded as follows:

[Student's] articulation skills are within the average range at the word level... and are mildly delayed at the sentence-level. [Student] may need cues to take [her/his] time when [s/he] is excited and wants to share in order to increase [her/his] intelligibility in sentences and conversation. However, overall, [his/her] language skills indicate that [Student] is able to understand and use language appropriately for a child [her/his] age and should not hinder [him/her] academically.

[Student's] receptive vocabulary... and expressive vocabulary... skills are within the average range. This indicates [Student] should be able to successfully demonstrate an understanding of grade level vocabulary through both non-verbal and verbal means.

[Student's] voice, fluency and pragmatic language skills were all informally judged to be within age level expectations and should not impact [her/him] academically.⁴

3. On December 28, 2016, DCPS completed an Occupational Therapy Assessment Report. S/he was referred for evaluation due to concerns regarding fine motor, visual spatial, and handwriting skills.⁵ On the Wide Range Assessment of Visual Motor Abilities ("WRAVMA"), which measures overall motor abilities, Student scored within the Average range on all subtests: Visual Motor, Visual Spatial, Fine Motor, and Visual Motor Composite.⁶ Examiner B reached the following conclusions:

As seen in the Wide Range Assessment of Visual Motor Abilities, [Student] presents with visual spatial, visual motor, and fine motor skills in the average range. [S/he] was able to complete all tasks for this standardized task, but at times required repetition of directions and movement breaks between subsections. Overall, [s/he] demonstrates age appropriate underlying visual motor abilities that are needed for successful participation inside the classroom.

As seen in Clinical Observation, [Student] has range of motion, muscle strength, muscle

² Petitioner's Exhibits ("P:") 17, page 1 at Bates page 202. The exhibit number and page are followed by the electronic page number in the disclosure in parentheses, i.e., P17:1 (202).

³ P25:1 (306).

⁴ *Id.* at 3-10 (308-15).

⁵ P26:1 (318).

⁶ *Id.* at 8 (325).

tone, motor planning, bilateral coordination, postural control, and functional mobility within functional limits. [S/he] demonstrates age appropriate gross motor skills, balance, and coordination needed in the school environment. With one on one support and verbal prompting, [s/he] is able to manipulate school based tools (scissors, markers, glue sticks, crayons, pencils etc.) [Student] does not have age appropriate endurance. [S/he] is often fatigued, expressed a desire to take a nap frequently, and falls asleep during classroom activities.⁷

4. On January 17, 2017, DCPS found Student eligible for special education services with a classification of Developmental Delay (“DDD”).⁸

5. Student’s grades for the 2016-17 school year were as follows: Basic in Reading, Writing & Language, Speaking and Listening, Math, and Health & Physical Education, Proficient in Social Studies, Science, Music, and World Languages (Spanish), and Advanced in Art. S/he was absent 56 times, 14 unexcused.⁹ In the eleven categories of behavior that were graded, Student performed Independently in seven categories and With Limited Prompting in four categories.¹⁰

6. The first IEP in the record was developed at School A on November 29, 2017, when Student was in grade E.¹¹ The Consideration of Special Factors indicated that Student’s communication and language needs were within the normal range, but s/he needed to be monitored to ensure they did not impair her/his access to the curriculum.¹² The IEP included goals in Mathematics, Reading, and Written Expression. The IEP team prescribed 5 hours per week of specialized instruction outside general education.¹³

7. Student’s grades for the 2017-18 school year were as follows: Below Basic in Reading, Basic in Writing & Language, Speaking and Listening, Math, World Languages, and Social Studies, Proficient in Science, Art, and Health & Physical Education, and Advanced in Music. S/he was absent 39 days, 16 unexcused. In the twelve graded behavior categories, Student performed Independently in seven categories and With Limited Prompting in five categories.¹⁴

8. On June 13, 2018, DCPS issued an IEP Progress Report for the 2017-18 school year. Student made no progress on any of her/his goals.¹⁵

9. On October 21, 2018, when Student was in grade C at School A, Witness F, the school psychologist, completed a Comprehensive Psychological Reevaluation.¹⁶ Witness F did not conduct cognitive testing due to recent testing¹⁷ in which Student’s General Intellectual Ability (GIA”) was

⁷ *Id.* at 10 (327).

⁸ P27:1 (353).

⁹ P56:1-3 (726-28).

¹⁰ *Id.* at 4 (729).

¹¹ P6:1 (72).

¹² *Id.* at 2 (73).

¹³ *Id.* at 8 (79).

¹⁴ P57:1-3 (731-33).

¹⁵ P45:1-4 (667-71).

¹⁶ P27:1 (353).

¹⁷ *Id.* at 9 (361).

found to be Average.¹⁸ On the Woodcock-Johnson Tests of Achievement (“WJ-IV”), Student scored in the Low Average range in Basic Reading Skills (89), Broad Mathematics (84), and Brief Achievement (80), and in the Low range in Broad Written Language (78), and Academic Fluency (79).¹⁹ Witness F described Student’s academic capabilities as follows:

Overall, [Student’s] ability to understand number concepts, complete simple one-step word problems, and add or subtract single-digit numbers falls below what would be expected for [his/her] age. [S/he] will be most successful with math instruction provided at the early [grade E] level. [S/he] will also benefit from reminders to pay attention to the operation sign and re-teaching of solving subtraction problems...²⁰ Overall, [Student] was better able to construct written sentences when provided with verbal and visual models (either pictures or words). [S/he] has significantly more difficulty when asked to create original sentences or produce sentences within a time limit. Support should continue to target encouraging [her/him] to ask for reminders about the directions when needed.²¹

The Adaptive Behavior Assessment System (“ABAS-3”) measures personal and social skills in communication, socialization, and daily living. Student’s mother and Teacher A, his/her general education teacher at the time, were interviewed by Witness F. Petitioner’s responses placed Student in the Average range in all categories: Global Adaptive Composite (101), Conceptual - with subtests in Communication, Functional Academics, and Self-Direction (94), Social – with subtests in Leisure and Social (101), and Practical – with subtests in Community Use, Home/School Living, Health & Safety, and Self-Care (107). Teacher A rated Student Below Average overall (86), and in Conceptual (86), and Average in Social (91) and Practical (85). Teacher A’s scores suggest “that in the school setting, [Student] functions at a developmental level slightly lower than [his/her] same aged peers across several areas of adaptive functions.”²²

Teacher A described Student’s weaknesses as follows. Cognitively, s/he had the most difficulty with nonverbal reasoning tasks, needs frequent support to remember directions and to complete activities in a timely manner, and has significant difficulty following multi-step directions unassisted. In reading, s/he has difficulty reading grade-level text and is significantly below proficient with reading fluently and accurately. In math, s/he struggles with subtraction fluency and has difficulty grasping abstract concepts or solving math problems requiring general knowledge information. In writing, s/he struggles with spelling, punctuation, and other skills typical for grade C students, has difficulty coming up with original thoughts for his/her writing and expanding on writing prompts, has underdeveloped letter formation, and becomes frustrated when s/he needs to complete a piece of writing. Witness F opined that Student exhibited no significant social-emotional or behavioral concerns.²³ Witness F recommended that Student should be considered for a classification of Specific Learning Disability (“SLD”) in written expression and “to a lesser degree” in reading fluency and math calculation skills.²⁴ Witness F recommended that Student be given extended time on tests and quizzes, consistency and

¹⁸ *Id.* at 3 (355).

¹⁹ *Id.* at 12 (364).

²⁰ *Id.* at 11 (363).

²¹ *Id.* at 12 (364).

²² *Id.* at 14-15 (366-67).

²³ *Id.* at 17 (369).

²⁴ *Id.* at 17-18 (369-70).

repetition in instruction, breaking tasks into smaller, more manageable steps, and the use of multiple teaching modalities, including visual, auditory, and tactile cues.²⁵

10. On November 9, 2018, DCPS convened an annual IEP meeting. Student was classified with an SLD.²⁶ The Consideration of Special Factors was unchanged from the previous IEP. The Present Levels of Academic Achievement and Functional Performance (“PLOP”) in Mathematics reported that Student performed at a beginning grade C level. However, s/he scored 344 on an i-Ready assessment on August 30, 2018, “significantly behind the grade level expectation of 450 points for the [grade C] range.” The baselines were: (1) s/he can fluently add and subtract within 20, (2) s/he recognizes numbers might have more than one digit. The goals were: (1) given four addition or subtraction word problems with solutions up to 100, and provided scaffolds for setting up each problem, s/he will solve problems with 75% accuracy, and (2) when presented with a three-digit number and a place value chart, s/he will tell how many hundreds, tens, and ones are in the given number with 80% accuracy with support.²⁷

In Reading, the PLOP revealed that on September 5, 2018, Student was tested on the Text Reading and Comprehension (“TRC”) and Dynamic Indicators of Basic Early Literacy Skills (“DIBELS”), resulting in scores placing his/her performance at the grade H level, two grades below his/her current grade. S/he was reported to struggle with independently identifying the events of a story, with whole word discrimination, rhyming words-application, oral synthesis and rhyming words-recognition. The baselines were: (1) s/he recognizes most of his/her grade E (one grade below level) words with irregular spellings, and (2) s/he can verbally answer questions after reading an instructional level text with mild supports. The goals were: (1) given a list of 100 priority grade level words with regular spellings, s/he will read target words aloud with automaticity with 80% accuracy, and (2) after reading a grade level nonfiction text, s/he will verbally or in writing ask or answer at least three “wh” questions.²⁸

In Written Expression, the PLOP reported that on a grade level writing assessment, Student’s writing did not reflect complete thoughts. It did not include a topic sentence, details, or a conclusion. The baseline was that s/he can write a sentence with “mild” support after reading an instructional level text. The goal was that when given a sequence of events, Student will fill in a partially completed paragraph template to use as a guide for writing a three-sentence paragraph.²⁹

The IEP team maintained Student’s specialized instruction at five hours per week, but changed it from outside to inside general education.³⁰ Classroom accommodations included clarification/repetition of directions, Read Aloud for assessments, redirection, seating location with minimal distractions, small group testing, frequent breaks, and extended time on assessments.³¹ Witness F testified that the IEP was consistent with the findings and recommendations in her October 21, 2018 evaluation.

²⁵ *Id.* at 20 (372).

²⁶ P7:1 (85).

²⁷ *Id.* at 3-4 (87-88).

²⁸ *Id.* at 4-5 (88-89).

²⁹ *Id.* at 6 (90).

³⁰ *Id.* at 7-8 (91-92).

³¹ *Id.* at 9 (93).

11. Student's grades for the 2018-19 school year were as follows: Below Basic in Writing & Language, Basic in Reading and Math, and Proficient in Speaking and Listening, Social Studies, Science, Music, Health & Physical Education, and World Languages (Spanish). S/he was absent 26 days, 11 unexcused. In the twelve graded behavior categories, s/he performed Independently in eight categories and With Limited Prompting in four.³²

12. On June 20, 2019, DCPS issued an IEP Progress Report for the 2018-19 school year. Student was reported to be progressing on all of her/his goals.³³

13. On October 25, 2019, when Student was in grade F, DCPS conducted an IEP Annual Review.³⁴ The Consideration of Special Factors was unchanged from past IEPs. The Math PLOP reported that on an August 28, 2019 i-Ready assessment, Student scored 363 points, "significantly behind the grade level expectation of 449 points for the [grade F] range. Therefore, [Student] will benefit from intensive intervention connecting counting patterns and concepts of addition and subtraction..." The baselines were: (1) s/he can solve some addition and subtraction problems without regrouping within 100, and (2) s/he can represent his/her multiplication problems by drawing an array. The goals were: (1) given 5 addition or subtraction problems within 1000, Student will select a strategy to solve the problems with 80% accuracy, and (2) given a multiplication problem with factors up to 10, Student will determine the product using manipulatives or multiplication charts with 80% accuracy.³⁵

The Reading PLOP reported the same September 2018 assessment scores from the previous IEP, on which s/he was two grades below grade level. However, the PLOP also reported that s/he was given a "Literacy Foot Prints running record" which reflected performance at the middle of grade C, slightly less than one grade below current level. The baselines were: (1) s/he can read informational text and give at least one detail, and (2) s/he can read a literary passage with minimal support and explain at least one event. The goals were: (1) given an independent level literary passage and a prompt to describe the character, s/he will state two character traits and two events that happened because of those traits, and (2) after reading an informational, independent reading level text, Student will identify the main idea, key details, and describe how the key details support the main idea.³⁶

The Written Expression PLOP reported that on a writing assessment on September 19, 2019, Student did not demonstrate comprehension of the non-fiction, grade level passage s/he had read. There was "little to no text-based evidence. [S/he] does not use language to express ideas with clarity. [Student's] response to the prompt does not demonstrate command of the conventions of standard English at the appropriate level of complexity. [S/he] has frequent and varied errors in mechanics, grammar, and usage..." The baseline was that s/he can read a short grade level text and write a few words answering the prompt. The goal was that given a short grade level informational text and a writing prompt, Student will write a paragraph on the given topic that includes an opening sentence, two to three supporting detail sentences, and one closing sentence.³⁷

³² P58:1-3 (736-38).

³³ P46: 1-4 (673-76).

³⁴ P8:1 (97).

³⁵ *Id.* at 3-4 (99-100).

³⁶ *Id.* at 4-5 (100-01).

³⁷ *Id.* at 5-6 (101-02).

The IEP team did not change Student's services from the previous IEP,³⁸ but added testing with a familiar adult as an accommodation.³⁹

14. Student's grades for the 2019-20 school year were as follows: Reading – Basic in Term 3, Pass in Term 4, Writing & Language - Basic in Term 3, Pass in Term 4, Speaking and Listening – Basic in Term 3, no grade in Term 4, Math – Below Basic in Term 3, Pass in Term 4, Social Studies – Proficient in Term 3, Pass in Term 4, Science - Proficient in Term 3, Pass in Term 4. No other grades were provided. S/he was absent 7 days, all unexcused.⁴⁰

15. On June 2, 2020, DCPS issued an IEP Progress Report for the 2019-20 school year. His/her first math goal was "Not Introduced" throughout the year. The teacher comments indicated an inability to measure progress during the fourth reporting period due to distance learning. Student was reported to have progressed on his/her second goal in the second and third reporting periods, but it was "Not Introduced" in the fourth period. In Reading, Student was reported to have progressed on his/her first goal in the second and third reporting periods, but it was "Not Introduced" in the fourth period. S/he was reported to have progressed on his/her second goal in the third reporting period after having it introduced in the second period, but it was "Not Introduced" in the fourth period. In Written Expression, Student was reported to have progressed on his/her second goal in the second and third reporting periods, but it was "Not Introduced" in the fourth period.⁴¹

16. On September 25, 2020, when Student was in grade A at School A, DCPS conducted an IEP Annual Meeting.⁴² The Consideration of Special Factors was unchanged from past IEPs. The Mathematics PLOP reported that beginning of the year assessments were not conducted due to students being on distance learning. The baselines were: (1) s/he is currently learning place value to the ten thousand place and how to use the vertical method to round, (2) s/he is learning how to add and subtract within 1000 using base tens and the standard algorithm, (3) s/he has a basic understanding of fractional parts to a whole, and (4) s/he has working knowledge of multiplication facts 1-10. The goals were: (1) s/he will demonstrate understanding using place value to round whole numbers to nearest place using manipulatives with 80% accuracy, (2) s/he will add and subtract within 1000 using strategies based on place value, properties of operations, and/or the relationship between addition and subtraction to solve 5 different double-digit problems with 80% accuracy, (3) s/he will demonstrate understanding of the nature of fractions with 80% accuracy, and (4) given 5 multiplication or division problems, s/he will incorporate learned strategies using multiplication and a number chart to complete problems with products of two one-digit numbers with 80% accuracy.⁴³ The Reading PLOP also reported that no new data was available. Student was reported to need scaffolds to help her/him answer prompts; s/he tends to drift off subject. The baselines were: (1) s/he is reading below grade level expectations, and (2) s/he needs additional support with reading comprehension. The goals were: (1) s/he will improve his/her ability to apply grade-level comprehension skills and analysis of texts on his/her benchmark assessments, and (2) given a multi-paragraph, leveled text, s/he will use a graphic organizer to generate ideas and then write multiple paragraphs identifying the main idea and 3 supporting details of the text

³⁸ *Id.* at 7 (103).

³⁹ *Id.* at 10 (106).

⁴⁰ P60:1-3 (746-48).

⁴¹ P50:1-3 (692-94).

⁴² P9:1 (109).

⁴³ *Id.* at 3-4 (111-12).

as measured by a score of 3 or higher on a 4-point rubric.⁴⁴ The Written Expression PLOP reported that Student is progressing with reading a short, grade level informational text and a writing prompt. S/he does not demonstrate comprehension, is undeveloped to the task, purpose, and audience, does not use language to express ideas with clarity, his/her responses to prompts do not demonstrate command of the conventions of standard English at the appropriate level of complexity, and s/he has frequent and varied errors in mechanics, grammar, and usage. The baseline was that s/he needs additional support in writing structure and mechanics. The goal was that s/he will draw evidence from a close reading of a text and supplemental research from the internet in order to create an interactive display, including a written description of at least three aspects from his/her research about a given history topic.⁴⁵

The IEP team did not change the services, classroom aids, and accommodations from the previous IEP.⁴⁶ Witness F testified that the IEP was consistent with the findings and recommendations in her 2018 evaluation. Witness H, Student's special education teacher from August until November during the 2020-21 school year, testified that five hours of specialized instruction inside general education was sufficient for Student. She testified that Student was an active participant in the class and was a "huge attribute" in the classroom.

17. On March 16, 2021, DCPS completed an Analysis of Existing Data ("AED").⁴⁷ In Mathematics, DCPS reported that Student has identified and regularly implemented strategies for adding, subtracting, and multiplying. S/he increased his/her multiplication and division fact fluency from 112 to 140 facts, but 325 out of 325 is the grade level expectation. S/he is often distracted and goes "off screen." S/he struggles to round numbers to the nearest ten or hundred; the expectation is the ability to round to the nearest thousand. S/he also struggles identifying fractions.⁴⁸ In Reading, a middle of the year ("MOY") Reading Inventory ("SRI") assessment found her/him to be reading at a beginning level ("BR"). Her/his words correct per minute ("wcpm") of 67 was seven points below grade level expectation. His/her estimated reading age was nine months below expectation. His/her ability to read text independently was below grade level (level N instead of level R), but his/her wcpm "is grade level appropriate." S/he struggles with comprehension. Student rushes through reading and does not read for understanding.⁴⁹ In Written Expression, Student writes in complete sentences with proper capitalization and punctuation. While the ability to write a five-paragraph essay is expected, Student can produce three short paragraphs with the help of a graphic organizer. S/he often misinterprets or fails to respond to writing prompts.⁵⁰

18. On April 23, 2021, DCPS issued an IEP Progress Report for the first three reporting periods of the 2020-21 school year. Student was reported to be progressing on all of his/her goals.⁵¹

19. On May 5, 2021, when Student was in grade A at School A, Witness F completed a

⁴⁴ *Id.* at 5-6 (113-14).

⁴⁵ *Id.* at 6-7 (114-15).

⁴⁶ *Id.* at 8-11 (116-19).

⁴⁷ P10:1 (122).

⁴⁸ *Id.* at 3 (124).

⁴⁹ *Id.* at 4 (125).

⁵⁰ *Id.* at 5 (126).

⁵¹ P53:1-5 (708-120).

virtual Psychological Triennial Reevaluation.⁵² In her review of Student's school history, Witness F found that Student had a history of significant absences that had improved over time: 56 days in school year 2017-18 (14 unexcused), 39 days in school year 2018-19 (16 unexcused), 26 days in school year 2019-20 (11 unexcused), 14 days in school year 2020-21 (3 unexcused), and 13 days in school year 2021-22 (at least 6 unexcused).⁵³ The conditions under which the virtual testing was done led Witness F to advise that interpretation of the scores should be done with caution.⁵⁴ On the WJ-IV, Student scored in the Very Low range in Academic Applications (66) and Mathematics (67), Low in Brief Achievement (74) and Written Language (76), and Low Average in Broad Reading (87). Due to significant variability among cluster and subtest scores, from Very Low to Average, Witness F determined that the Brief Achievement score was not fully representative of Student's academic abilities. For Reading, Writing, and Mathematics, Witness F opined that Student's reading abilities were unevenly developed.⁵⁵

Student's executive functioning was measured on the Behavior Rating Inventory of Executive Function ("BRIEF-2"). All of Petitioner's ratings of Student fell within normal limits. However, Teacher C's (STEM teacher) ratings were Moderately Elevated in Initiate, Cognitive Regulation Index, and Global Executive Composite, and she and Witness J, her/his general education teacher, rated her/him Clinically Elevated in Working Memory and Plan/Organize.⁵⁶ These results led Witness F to conclude that Student's executive functioning issues are more pronounced at home than at school. At school, her/his most significant problems were with working memory, which is essential for carrying out multi-step problems and completing mental manipulations. Her/his organizational difficulties also have a negative impact on his/her ability to solve problems. "It will be important for [his/her] parents and teachers to continue modeling how to break tasks down into manageable parts and use graphic organizers to help [him/her] effectively communicate what [s/he] knows."⁵⁷

After reviewing current grades and school-based assessments,⁵⁸ Witness F recommended continued eligibility as a student with an SLD and an assessment to determine eligibility for Other Health Impaired ("OHI").⁵⁹ "While [his/her] schooling experience has been atypical since last March [due to pandemic restrictions], [s/he] has historically performed below grade-level expectations in reading, math, and writing, despite small group instructions and consistent accommodations." Witness F recommended, *inter alia*, multiple teaching modalities (i.e., visual supports, manipulatives, repeated verbal prompts, modeling), frequent, immediate and specific feedback, consistency and repetition, and tasks kept short, concise and concrete, and specific recommendations for instructions in Reading, Math, and Written Expression.⁶⁰

20. On May 10, 2021, Student completed an i-Ready Reading assessment. Her/his overall score of 428 was significantly below the grade level range of 557-629, and was representative of grade E performance, three grade levels below Student's current grade. Student's subtest scores were at grade

⁵² P28:1 (376).

⁵³ *Id.* at 2-3 (377-78).

⁵⁴ *Id.* at 11-12 (386-87).

⁵⁵ *Id.* at 12-15 (387-390).

⁵⁶ *Id.* at 15-16 (390-91).

⁵⁷ *Id.* at 17 (392).

⁵⁸ *Id.* at 18-21 (393-96).

⁵⁹ *Id.* at 21 (396).

⁶⁰ *Id.* at 24-27 (399-402).

E level in Phonics, Vocabulary, and Comprehension: Literature, grade H in Comprehension: Informational Text (four grades below grade level), and at grade level in Phonological Awareness and High-Frequency Words.⁶¹

21. On May 14, 2021, Student completed an i-Ready Math assessment. Her/his overall score of 406 was significantly below the grade level range of 465-526, and was representative of grade E performance, three grade levels below Student's current grade. Student's subtest scores were at a grade H level in Geometry (four grades below grade level), grade E in Measurement and Data (three grades below grade level), and grade C in Numbers and Operations and Algebra and Algebraic Thinking (two grades below grade level).⁶²

22. On May 20, 2021, Student was administered an SRI Reading Comprehension Assessment. Her/his score of 288 was representative of grade E performance. It was the first SRI assessment since it was administered to Student on January 11, 2019, that s/he performed above the BR level.⁶³

23. On May 26, 2021, DCPS conducted an IEP Annual Review.⁶⁴ The Consideration of Special Factors was unchanged from past IEPs. The Mathematics PLOP reported that a May 14, 2021 i-Ready assessment revealed that Student was performing at a grade E level, three grades below his/her current grade. The first three baselines from the previous IEP were repeated, and the fourth was replaced with s/he has committed 212 facts to memory, while 325 is the goal. The goals were unchanged from the previous IEP.⁶⁵ The Reading PLOP reported that on a May 10, 2021 i-Ready assessment, Student scored at the grade E level, three grade levels below her/his current grade. On May 18, 2021, Student also scored at the grade E level on an SRI assessment. "During whole group reading, [Student] has demonstrated the ability to identify the theme and describe characters in a text. [S/he] can often answer short, event-based questions about a text. However, on independent reading assessments, [Student] consistently scores below grade level due to low comprehension of grade level text." The baselines were: (1) due to his/her low reading comprehension, s/he is performing below grade level, and (2) s/he needs additional support with reading comprehension. The goals were: (1) s/he will improve her/his ability to apply grade level comprehension skills and analysis of a text as measured by continued growth in benchmark reading scores, and (2) given a multi-paragraph, leveled text, s/he will use a graphic organizer to generate ideas and then write multiple paragraphs identifying the main idea and 3 supporting details of the text.⁶⁶ The Written Expression PLOP reported that Student is often able to determine the main idea and generate ideas about a multi-paragraph text with 75% accuracy. S/he is able to determine the main idea from the text. The baseline was that s/he needs additional support in writing structure and mechanics. The goal was unchanged from the previous IEP.⁶⁷

⁶¹ P39:1 (580).

⁶² P43:1 (625).c

⁶³ P42:1-2 (621-22).

⁶⁴ P11:1 (128).

⁶⁵ *Id.* at 3-5 (129-32).

⁶⁶ *Id.* at 5-6 (132-33).

⁶⁷ *Id.* at 7 (134).

Student's services and accommodations remained unchanged from the previous IEP.⁶⁸ Attorney C, Petitioner's counsel at that time, objected to the lack of data in the PLOPs and argued that the goals were not measurable or sufficiently challenging.⁶⁹ He proposed that the team prescribe a more restrictive setting and more hours of specialized instruction, but emphasized that he was not requesting full-time services.⁷⁰ Witness F testified that the IEP was consistent with the data in her reevaluation of May 5, 2021.

24. The IEP team reconvened on June 9, 2021⁷¹ to consider amendments⁷² to the IEP. Witness B, Petitioner's educational advocate, requested that all goals include the date by which mastery would be expected and baselines should reflect his/her current capability with respect to each goal.⁷³ Teacher C and Witness J, Student's special and general education teachers, respectively, recommended that her/his specialized instruction remain at 5 five hours per week: two hours each for writing and math, and one hour for reading. Witness B disagreed, asserting that Student needed more hours, "... as [his/her] PLOPs have been the same for a few years and [s/he] is well below grade level." Witness L, the local education agency ("LEA") representative, noted that Student had a history of attendance problems, though his/her attendance had improved over the past two school years. Witness L also conceded that Student was only receiving two of the five hours "to keep the ratio between general education provided to students the same." Petitioner said she "would not be opposed to more than 5 hours based on what [Witness B] has said since [s/he] hasn't made progress on 5."⁷⁴ Witness L suggested that Student was not making progress because of his/her absences: "[Student] has missed almost a full year of school, 145 days, since starting here. Since starting with an IEP, so that could be part of the reason why we're not seeing growth, since [s/he's] not there to receive the instruction, so that could be a reason to keep it at 5 because the more we increase the less access [s/he] will have to the general education environment..."⁷⁵ After further discussion, the parties agreed with Witness L's proposal of 2.5 hours inside general education and 2.5 hours outside general education. "... [w]e make the change, monitor it, come back to the table sometime in the winter and see if it's working and if not revisit changing hours, changing goals. Does that work for everyone?"⁷⁶

25. Student's grades for the 2020-21 school year were as follows: Basic in Reading, Writing & Language, Math, and World Languages, and Proficient in Speaking and Listening, Science, and Health & Physical Education. S/he was absent 6 days, all unexcused. In the twelve graded behavior categories, she performed Independently in ten categories and With Limited Prompting in two.⁷⁷

26. On June 25, 2021, DCPS issued an IEP Progress Report for the fourth reporting period of the 2020-21 school year. Student made no progress on his/her first Math goal, but made progress on the other three goals. S/he made progress on the first Reading goal, but the second was not

⁶⁸ *Id.* at 8-11 (135-138).

⁶⁹ P12:4-6 (144-46).

⁷⁰ *Id.* at 7 (147).

⁷¹ P15:1 (181).

⁷² P13:1 (152).

⁷³ P15:1-3 (181-83).

⁷⁴ *Id.* at 6-7 (186-87).

⁷⁵ *Id.* at 7 (187).

⁷⁶ *Id.* at 7-9 (187-89).

⁷⁷ P61:1-3 (751-53).

introduced. The Written Expression goal was not introduced.⁷⁸

27. On August 6, 2021, Witness B, Petitioner's educational advocate, sent a letter to Witness L, the local education agency ("LEA") representative at School A, in which Witness B rejected the IEP team's proposal to maintain Student's specialized instruction at 5 hours per week.

[Student] is performing well below grade level: Reading [grade C.7], Math [grade E.6], Writing [grade E.8]. [S/he] is also not making sufficient progress toward the mastery of [his/her] IEP goals... After reconsideration, in light of [Student's] insufficient academic progress since the first IEP in 2016, an increase to 20 hours, outside the general education setting is requested for the beginning of the 2021-22 School Year.⁷⁹

Witness B also requested that DCPS conduct an evaluation for ADHD, a speech/language ("S/L") evaluation, an occupational therapy ("OT") evaluation, that BSS be prescribed, that compensatory education be provided for services that were not rendered during the distance learning period, and that DCPS provide a copy of the 2018 Psychological Reevaluation "and any other records previously requested."⁸⁰

28. On September 8, 2021, Student completed an i-Ready Math assessment. Her/his overall score of 412 was significantly below the grade level range of 480-540, and was representative of grade E performance, four grade levels below Student's current grade. Student's subtest scores were at a grade E level in Measurement and Data (four grades below grade level), and grade C level in Geometry, Numbers and Operations, and Algebra and Algebraic Thinking (three grades below grade level).⁸¹

29. On September 7, 2021, when Student was in grade D at School A, DCPS completed an AED.⁸² In Mathematics, Student was reported to have taken an i-Ready assessment in the spring of 2021. In vague wording, rather than report the grade equivalence of Student's scores, the report indicated the s/he "was working on X grade lessons on i-Ready in this area." Thus, s/he was reported to be working on a grade C lessons (two grades below grade level at that time) in Base Ten System and Operations and Algebraic Thinking, and working on a grade E lessons (three grades below grade level) in Measurement and Data and Geometry. The AED reported the results of the WJ-IV mathematics assessment performed by Witness F in May 2021. Student was reported to be capable of adding and subtracting whole numbers and solving some simple multiplication and division problems. S/he was reported to need support to solve word problems and more complex multiplication and division problems that require multiple steps.⁸³ In Reading, Student was reported to have taken an i-Ready assessment, but the AED did not provide the date or scores, stating that Student "completed the sections on phonological awareness and high-frequency words with a high level of accuracy." The AED reported the results of the WJ-IV reading assessment performed by Witness F in May 2021. His/her strengths were reported to be decoding words from grade-level texts, reading sight words, and in phonological awareness skills. S/he struggles with comprehension and rushes through work.⁸⁴ In

⁷⁸ P54:1-5 (714-18).

⁷⁹ P35:1 (569).

⁸⁰ *Id.* at 2 (570).

⁸¹ P44:1 (647).

⁸² P16:1 (192).

⁸³ *Id.* at 2-3 (193-94).

⁸⁴ *Id.* at 4-5 (195-96).

Written Expression, there was no report of recent testing other than reporting on Witness F's May 2021 WJ-IV results. S/he was reported to be able to present his/her thoughts and responses to prompted questions, both orally and in writing. However, her/his writing is not consistently legible, and s/he does not consistently use punctuation, capitalization, and other writing mechanics.⁸⁵ In Emotional, Social, and Behavioral Development, it was reported that Petitioner had expressed concerns about Student's inattention and wanted this issue to be addressed in the IEP. In an observation on September 2, 2021, Student was observed to exhibit on-task behaviors 87% of the time. Student was described as being a cooperative, friendly, and engaging student who gets along well with others and shows empathy towards others. "[S/he] might need some reminders or prompts, but is able to engage in the activity or task."⁸⁶ In Motor Skills/Physical Development, Petitioner reported that Student's handwriting is illegible, his/her letters are not properly sized, and requires prompting to remain focused. The observer reported that Student responds well to verbal prompts and cues, was able to remain seated, and was able to complete tasks independently.⁸⁷

30. On September 14, 2021, a multidisciplinary team ("MDT") meeting was convened to review the recent AED report and to determine if further evaluations were needed.⁸⁸ Attorney A asserted that Student was overdue for cognitive testing because it was not done in the reevaluations in 2018 and May 2021. Witness F responded, agreeing to update Student's cognitive testing.⁸⁹ Attorney A reiterated the request for a more restrictive setting "except [his/her] electives like PE or something like that."⁹⁰ Witness K, the school social worker, reiterated that Student missed considerable time in school in the 2016-17 (56 days) and 2017-18 school years, but conceded that his/her attendance "has improved drastically since then but that's something that I think that's something that helps to understand why early on that progress might have been a little bit slower... but I do agree to jumping from five hours to 20 hours is pretty significant because [Student] from what I recall from our meeting last year has made progress... [her/his] reading abilities have come a long way and it's [his/her] comprehension that appears to be what really causes [her/him] to need that extra support at least when it comes to literacy related tasks..."⁹¹ Pathologist A, the school's speech/language pathologist ("SLP"), noted that Student's 2016 evaluation did not raise significant areas of concern. Moreover, in a conversation with Petitioner the previous week, Petitioner had "no concerns with any of [Student's] articulation skills or [her/his] speech sound production. She stated that [s/he] seems to understand language well. [S/he's] following directions at home. [Petitioner] also shared that [Student] articulates [her/himself] very well and even shared that she often gets compliments on the way that [Student] expresses [her/himself]. So in our conversation, [Petitioner] stated that she had no specific concerns related to [Student's] oral language skills."⁹² Attorney A argued that Student's misinterpretation of instructions and difficulty comprehension were indications of need for a S/L evaluation. Witness F disagreed, opining that Student needs prompts to slow down and listen to the full directions and then think about what s/he needs to do, suggesting that his/her misunderstandings are more likely related to executive functioning weaknesses rather than language-based.⁹³ On the issue of Student's

⁸⁵ *Id.* at 6 (197).

⁸⁶ *Id.* at 8 (199).

⁸⁷ *Id.* at 9 (200).

⁸⁸ P18:1 (219).

⁸⁹ *Id.* at 2 (220).

⁹⁰ *Id.*

⁹¹ *Id.* at 2-3 (220-21).

⁹² *Id.* at 3-4 (221-22).

⁹³ *Id.* at 4 (222).

social/emotional concerns. Witness K reported that during her observation, Student was on-task 87% of the time. Throughout the observation, Student responded appropriately to the teacher. Witness K described Student as “really social and empathetic towards [her/his] peers,” but agreed that “We would like to know more about [her/his] inattentiveness.”⁹⁴ The team agreed to perform S/L, OT, and psychological evaluations of Student.⁹⁵

On the issue of the IEP, Witness L noted that if the team were to prescribe 20 hours of specialized instruction outside general education, it would be beyond the capabilities of School A. Attorney A responded that Student was already underperforming and his/her attendance had not been an issue “in recent years.” Witness L suggested waiting until testing was completed before changing the IEP. Attorney A did not agree with a delay. Witness L suggested increasing math support to 3 hours outside general education and one hour inside, for reading – one hour outside general education and 2.5 hours inside, and for writing – one hour outside general education, and 2 hours inside. Attorney A responded that the proposed increases were insufficient.⁹⁶

31. On September 15, 2021, Student completed an i-Ready Reading assessment. Her/his overall score of 485 was significantly below the grade level range of 581-640, and was representative of grade C performance, three grade levels below Student’s current grade. Student’s subtest scores were at grade E level in Phonics (four grades below grade level), grade C in Vocabulary, and Comprehension: Informational Text (three grades below grade level), grade F in Comprehension: Literature (two grades below grade level), and at grade level in Phonological Awareness and High-Frequency Words.⁹⁷

32. On October 29, 2021, Witness G completed a Comprehensive Occupational Therapy Initial Evaluation.⁹⁸ On the Sensory Profile 2 assessment (“SP-2”), a teacher’s responses measure a student’s responses to sensory events in the classroom. Witness H, Student’s general education math and science teacher, provided responses that indicated that Student was “just like the majority of students the same age in [her/his] interest in sensory experiences, reaction to sensory experiences, detection of sensory cues, and ability to notice sensory cues.” Similarly, Petitioner consistently responded “Does not apply” to Student, indicating that she had no sensory concerns.⁹⁹ On the Developmental Test of Visual Perception (“DTVP-3”), Student scored in the Very Poor range in Visual-Motor Integration and Copying, Poor in General Visual Perception, Below Average in Eye-Hand Coordination, Figure-Ground, Motor-Reduced Visual Perception, and Average in Visual Closure. On the Bruininks-Oseretsky Test of Motor Proficiency (“BOT-2”), Student was Well Below Average in Fine Motor Composite and Below Average in Fine Motor Precision, Fine Motor Integration, Fine Manual Control, Manual Dexterity, Upper-Limbe Coordination, and Manual Coordination.¹⁰⁰ The Test of Handwriting Skills is intended to evaluate underlying neurosensory integration skills or deficits that affect a child’s handwriting. Student was successful in copying sentences from a model, but her/his legibility decreased with case changes, shows difficulty with writing letters in a straight line, rotated letters more than 30 degrees, wrote some letters in the wrong

⁹⁴ *Id.* at 6 (224).

⁹⁵ *Id.* at 9 (227).

⁹⁶ *Id.* at 9-11 (227-29); P17:12 (213).

⁹⁷ P40:1 (600).

⁹⁸ P30:1 (473).

⁹⁹ *Id.* at 4-5 (476-77).

¹⁰⁰ *Id.* at 7 (479).

casing, and reversed some letters.¹⁰¹ Witness G reached the following conclusions from the results of her evaluation:

[S/he] demonstrates good bilateral coordination skills as [s/he] can string blocks onto string using one hand to place string into opening of block, while [her/his] other hand stabilizes the string... [S/he] is independent in feeding, dressing, and toileting skills. [Student] at times, switches hand placement on pencil when writing, but can self-correct grasp placement. Despite performing well below average on the fine motor composite of the [BOT-2], [Student] demonstrates functional fine motor skills to use classroom materials independently. [Student] demonstrates slight decreased attention to tasks, however, can remain focused when minimum verbal cues are provided to [her/him] for redirection... [Student] is just like the majority of student of the same age in [his/her] interest in sensory experiences, reaction to sensory experiences, detection of sensory cues, and ability to notice sensory cues. No sensory processing concerns are noted at this time. Despite performing “very low” in the visual motor integration subtest on the [DTVP-3], [Student] can copy written work from the board in the classroom and overall demonstrates good line adherence when copying a sentence on triple lined paper. However, [Student] struggles with the ability to complete more complex visual motor tasks such as correctly orienting letters on the line, copying complex shapes, and writing letters in the correct casing. [Student] also demonstrates difficulties with tasks that involve accurately and legibly writing words from memory and dictation.¹⁰²

Witness G opined at the hearing that based on her evaluation, Student did not qualify for OT services. Student was average in visual motor and fine motor skills, his/her handwriting was legible, and despite some low scores on the assessments, s/he was capable of accessing the curriculum. There were no concerns as to sensory integration.

33. On October 29, 2021, Witness F completed an Addendum to Psychological Triennial Reevaluation Report. It was prepared in response to Petitioner’s Letter of Dissent of August 6, 2021 requesting, *inter alia*, cognitive testing and an evaluation for attention deficit hyperactivity disorder (“ADHD”).¹⁰³ Witness F interviewed Witness J, Student’s general education teacher, and Teacher D, a special education partner teacher. They reported that Student was eager to learn and engaged in class discussions. Witness F also reviewed Student’s current progress on her/his IEP goals in Reading, Math, and Written Expression.¹⁰⁴ For the assessments that she conducted, Witness F interviewed Petitioner, Witness G, Witness H, and Teacher E, Student’s Humanities teacher, and she conducted two classroom observations. Having observed Student during the testing, Witness F considered the test results to be a valid reflection of her/his current cognitive and oral language abilities.¹⁰⁵ On the Wechsler Intelligence Scale for Children (“WISC-V”), Student scores were Very Low in Working Memory (76), Processing Speed, (75) and Cognitive Proficiency (73), and Low Average in Verbal Comprehension (86), Visual Spatial (81), Fluid Reasoning (88), Full Scale IQ (80), and General Ability (85).¹⁰⁶ On the

¹⁰¹ *Id.* at 10-11 (482-83).

¹⁰² *Id.* at 13 (485).

¹⁰³ P31-1 (488).

¹⁰⁴ *Id.* at 2-4 (489-91).

¹⁰⁵ *Id.* at 9 (496).

¹⁰⁶ *Id.* at 10-13 (497-500).

Wechsler Individual Achievement Test, Student scored in the Low Average range overall in Oral Language (86). S/he was Average in Listening Comprehension (99) with Average subtest scores in Receptive Vocabulary (106) and Oral Discourse Comprehension (94). S/he scored in the Very Low range in Oral Expression (77) with subtests Expressive Vocabulary (63), Oral Word Fluency (94), and Sentence Repetition (87) in the Extremely Low, Average, and Low Average ranges, respectively.¹⁰⁷ Witness F concluded that “Overall, [Student’s] oral language abilities are appropriately developed, except for [her/his] expressive vocabulary skills... [His/her] tendency to give a response before stopping to think about what is being asked may have also contributed to [her/his] lower performance... [i]n the classroom setting [Student] will greatly benefit from having directions repeated at least twice and from having to paraphrase what [s/he] hears before [s/he] attempts to respond. [S/he] will also benefit from frequent reminders to slow down and double check [her/his] work.”¹⁰⁸

Witness F employed the Conners 3rd Edition to assess Student for ADHD, with rating scale responses received from Petitioner, Witness H, and Teacher E. All of Petitioner’s ratings were within the Average range. Teacher E had rated Student in the Elevated range in Learning Problems (66) and in the Very Elevated range in Hyperactivity Impulsivity. Examiner F reached the following conclusions about the varied ratings:

[Petitioner’s] ratings suggest that she does not observe any challenges with inattention, impulsivity, or hyperactivity at home, but does acknowledge some difficulties related to [Student’s] learning. The variation in how [Student] presents in each classroom could be related to [his/her] level of interest and engagement in the subject matter. [S/he] has been very vocal about how much [s/he] enjoys math and the hands-on activities that they do in [her/his] STEM class. [Student] may need additional check-ins, visual reminders, and positive reinforcement to remain fully engaged in [her/his] Humanities class or non-preferred work...”¹⁰⁹

While she noted that Student did not have a medical diagnosis of ADHD, Examiner F found that Student met the criteria for classification with multiple disabilities (“MD”) of SLD and OHI:

[S/he] appears to have the most challenges with impulsivity, sustaining attention, retaining information, and working independently in [his/her] Humanities class. These difficulties are still observed in [her/his] STEM class, but to a lesser degree. Behavioral observations and [his/her] performance on standardized testing also suggest that [Student’s] tendency to impulsively respond to questions, rush through [her/his] work, and need additional scaffolding to explain what [s/he] knows, may be impacting [her/his] ability to progress through the general education curriculum at a rate consistent with [his/her] peers.¹¹⁰

Witness F offered recommendations to help Student build verbal reasoning skills, visual spatial and fluid reasoning skills, working memory and processing speed skills, reading comprehension and

¹⁰⁷ *Id.* at 14 (501).

¹⁰⁸ *Id.* at 15-16 (502-3).

¹⁰⁹ *Id.* at 17 (504).

¹¹⁰ *Id.* at 20-21, 24 (507-8, 511).

vocabulary, math skills, and writing skills.¹¹¹

34. On October 29, 2021, Pathologist A completed a Speech and Language Reevaluation.¹¹² The report included an extensive review of Student's history and background and discussions of interviews of Petitioner, Witness H (Student's special education teacher), Teacher E (Student's Humanities teacher), and a description of a classroom observation.¹¹³ Based on an October 23, 2019 hearing screener, Pathologist A concluded that Student's hearing was within normal limits. Based on history and observations, Pathologist A concluded that Student's oral structures are functional to produce clear and intelligible speech. Student also presented with functional articulation skills, vocal quality, and fluency.¹¹⁴ On the Peabody Picture Vocabulary Test ("PPVT-5"), Student's Receptive Vocabulary (88) was in the Average range, and her/his Expressive Vocabulary (82) was Slightly Below Average.¹¹⁵ On the Comprehensive Assessment of Spoken Language ("CASL-2"), Student scored in the Below Average range in Grammaticality Judgment (73) and Double Meaning (70), and in the Average range in Receptive Vocabulary (87), Synonyms (100), Sentence Expression (91), Sentence Comprehension (112), Nonliteral Language (111), and Meaning from Context (102). These scores led to a determination that Student's General Language Ability Index (83) was Slightly Below Average, and his/her Receptive Language Index (95) was in the Average range.¹¹⁶ Pathologist A concluded that Student's articulation, voice, fluency, pragmatic language, receptive vocabulary, and receptive language skills were functional and age-appropriate.¹¹⁷ As for her/his expressive vocabulary and language skills, while Student's scores were below the average range for his/her age, "these skills do not appear to adversely impact [her/his] educational performance when participating in tasks and assignment within [her/his] learning environment."¹¹⁸

35. On November 9, 2021, the MDT met to review the recently conducted evaluations and to reconsider Student's eligibility for special education. Due to time constraints, Witness G, the OT therapist, was unable to present her report. Witness F, the school psychologist who performed the psychological addendum, recommended that Student's classification be changed to MD, including SLD and OHI. Witness B, Petitioner's educational advocate, concurred with the reclassification.¹¹⁹

36. On November 16, 2021, DCPS issued an IEP Progress Report for the first reporting period of the 2021-22 school year. His/her first Math goal was just introduced, s/he was progressing on the second, s/he had mastered the third, and the fourth goal had not been introduced. In Reading, s/he was progressing on the first goal and the second was just introduced. The Written Expression goal was not yet introduced.

37. On December 7, 2021, DCPS conducted an IEP Annual Review.¹²⁰ The Consideration of Special Factors was revised to eliminate concerns related to Student's communications skills:

¹¹¹ *Id.* at 24-28 (511-15).

¹¹² P32:1 (517).

¹¹³ *Id.* at 1-5 (517-521).

¹¹⁴ *Id.* at 6-7 (522-23).

¹¹⁵ *Id.* at 7-8 (523-24).

¹¹⁶ *Id.* at 8-11 (524-27).

¹¹⁷ *Id.* at 12 (528).

¹¹⁸ *Id.* at 13 (529).

¹¹⁹ P21:5 (253).

¹²⁰ P22:1 (256).

“[Student] uses oral language to express [her/his] thoughts and needs. [S/he] demonstrates functional articulation, voice, fluency, receptive language, expressive language, and pragmatic language skills that are needed to participate in various activities in [her/his] learning environment.”¹²¹ The Mathematics PLOP reported on a September 8, 2021 i-Ready assessment, Student’s overall score (412) was at a grade E level, four grade levels below his/her current grade; the range for grade D is 480-540 points. The PLOP also reported the results of the WJ-IV math achievement tests performed by Witness F in the spring of 2021. The baselines were: (1) s/he demonstrates understanding using place value to round whole numbers (tens) to nearest place using manipulatives with 60% accuracy, (2) s/he uses learned strategies to add and subtract without regrouping within 1000 (3) s/he is able to recognize and write fractions using concrete and representational such as pictures, number lines, or tape diagrams; s/he struggles using abstract strategies to solve fraction problems, and (4) s/he uses learned strategies to complete problems within products of two one-digit numbers with 70% accuracy. The goals were largely unchanged from the previous two IEPs.¹²²

In Reading, the PLOP reported a September 15, 2021 i-Ready assessment overall score of 485, which is equivalent to grade C, three grades below Student’s current grade range, 581-640. S/he was four grades below her/his level in Phonics (441), three below in Vocabulary (484) and Comprehension: Informational Text (497), two below in Comprehension: Literature (504), and at grade level in Phonological Awareness and High Frequency Words. The PLOP also reported Student’s recent WJ-IV achievement scores. Teacher input provided that s/he reads with fluency and excitement. “His wcpm is appropriate for [her/his] grade level. [Student] demonstrates strength in decoding, phonological awareness, and reading fluency. [Student] often rushes through reading and does not read for understanding.” The baselines were: (1) s/he is reading at level P where level T is expected, (2) s/he is able to write a 3-paragraph response to a multi-paragraph independent level text utilizing a graphic organizer and heavy teacher prompts, and (3) s/he is able to read one/two closed syllable words. The first two goals were repeated from the previous IEP. A third was added – given an unfamiliar list of instructional level 20 regular and irregular multisyllabic words, Student will decode and count the number of syllables.¹²³

In Written Expression, the PLOP indicated that Student is able to write a 3-paragraph response to a multi-paragraph, independent level text utilizing a graphic organizer and prompts. The PLOP also reported Student’s recent WJ-IV achievement scores. The teacher input included: “[Student] enjoys argumentative writing and writing reviews about books. [Student] is eager to share [his/her] thoughts in written form and incorporate feedback immediately. [S/he] writes in complete sentences with proper capitalization and punctuation, and uses multiple sentences to communicate complete thoughts. [Student’s] overall writing abilities fall below grade-level expectations... With the help of a graphic organizer, [Student] can produce 3 short paragraphs, where 5 paragraphs is expected. [Student’s] difficulties in the area of comprehension often lead [her/him] to misinterpret or partially respond to writing prompts.” The baselines were: (1) S/he is able to write an introductory statement and provide supporting reasons, but the reasons do not always align with the claims. Samples range in length from 3 sentences (independently) to 3 paragraphs (with teacher support), and (2) s/he uses capital letters and punctuation marks in most sentences. The goals were: (1) when provided a graphic organizer and a writing checklist, Student will write a 5-paragraph persuasive or informative essay supported by facts

¹²¹ *Id.* at 2 (257).

¹²² *Id.* at 3-7 (258-62).

¹²³ *Id.* at 7-10 (262-65).

and details.¹²⁴

The IEP prescribed 5.5 hours of specialized instruction in general education (Math – 1 hour, Reading – 2.5 hours, Written Expression – 2 hours) and 5.5 hours outside general education (Math – 3 hours, Reading – 1 hour, Written Expression – 1.5 hours), other Classroom Aids and Services,¹²⁵ and Classroom Accommodations.¹²⁶

Attorney A, Petitioner’s counsel, objected to the lack of OT services, asserted that Student required “support in all areas where there’s reading, writing, or math involved,” objected to the lack of goals addressing Student’s ADHD, and objected to specific goals.¹²⁷ Attorney A suggested the need for assistive technology (“A/T”). Witness L said that DCPS would arrange an observation by an A/T specialist. Witness J, Student’s general education teacher, provided a description of Student’s performance on assessments and Witness F’s reevaluation. She then explained how the math goals were developed. The same process was followed for Reading with Witness L. Attorney A questioned the attainability of the reading goals and whether Student should be working on grade level material rather than instructional level material, and whether s/he needs goals in phonics and vocabulary. Witness J confirmed that Student was taught at her/his instructional level and offered to add a phonics goal. Witness L concurred and offered an explanation for the preference of the instructional level for Student, particularly to facilitate create annual goals that Student would be able to meet. Witness L proposed a phonics goal that Witness B found acceptable. In Written Expression, Witness J proposed a goal to address Student’s mechanical and spelling errors that was acceptable to Witness B.¹²⁸

Attorney A requested provisions to address Student’s “executive functioning attention issues” and OT services. Attorney A suggested that OT services would be useful in addressing Student’s attentional issues. Attorney A also reiterated the request for a full-time program in all academic areas, a minimum of 20 hours. Staff Member A wanted to ensure that Petitioner was aware that such a program was not available at School A. Witness J argued that Student benefits from his/her interaction with general education peers, and is anxious to return to the classroom during pull-out sessions. Witness H, Student’s general education math and science teacher, also discussed Student’s active participation in general education math and science classes with support. An unidentified DCPS participant noted that the more restrictive setting Attorney A requested may result in an environment in which his/her peers would be performing at a much lower level. The DCPS team members did not agree to Petitioner’s request for 20 hours of specialized instruction.¹²⁹

Witness H testified that she disagreed with the Petitioner’s representatives that Student requires 20 hours of specialized instruction. Witness H testified that Student is accessing grade level curriculum with supports; s/he earns 80’s on paper tests and quizzes and the more restrictive setting would be harmful to his/her social/emotional development. Witness H said it would be “disheartening to all of us” if Student were placed in a more restrictive environment because it would have a harmful effect on his/her language development. Witness J, student’s general education teacher, opined that it would

¹²⁴ *Id.* at 10-12 (265-67).

¹²⁵ *Id.* at 13 (268).

¹²⁶ *Id.* at 16-17 (271-72).

¹²⁷ P23:1 (275).

¹²⁸ *Id.* at 2-9 (276-283).

¹²⁹ *Id.* at 10-14 (284-88).

“break [Student’s] soul” and discourage him/her to be in a class with all lower performing students. She cited the latest i-Ready reading assessment on February 1, 2022, which reflected a year of growth since the beginning of year (“BOY”) assessment, although her overall score remained 70 points below the grade-level expected range of 581-640.¹³⁰ Witness K, the school social worker, opined that Student did not require services for inattention, citing the recent observation she conducted for the September 2021 AED in which Student exhibited on-task behaviors 87% of the time.

38. Witness A, Petitioner’s expert OT witness, opined that she would have recommended OT services for Student based on the findings in the 2016 OT evaluation. She referenced the 2017 IEP in which Student was described as struggling to identify letters, express thoughts, and punctuation. In the 2018 IEP, Student struggled with word recognition and getting words onto paper. His/her consistent errors in writing may be attributable to visual perceptual deficits. Witness A opined that Witness F’s May 2021 Psychological Reevaluation revealed the need for OT services as Student’s writing continued to be a consistent problem. Witness A explained that an OT could help Student’s organizational problems by breaking down assignments or tasks into manageable segments. When asked her opinion of Witness G’s October 29, 2021 OT evaluation. Witness A opined that Student’s performance on the evaluation, particularly with writing being a consistent problem,¹³¹ writing characterized as immature with poor spelling and no use of punctuation marks,¹³² her/his scores in General Visual Perception (Poor), Fine Motor Composite (Well Below Average), and difficulty on the Test of Handwriting warranted Student receiving (60) minutes per week of OT services. Witness A opined that the failure to provide such services would result in Student’s continued inability to access the curriculum.

39. Witness B, Petitioner’s expert special educational advocate testified that Student has not made adequate academic progress at School A; s/he has mastered no goals since the 2017-18 school year and his/her annual assessment show him/her to be well below grade level. Witness B noted that Student’s five hours of specialized services per week were changed from outside general education to inside general education on the 2018 IEP despite no improvement in his/her academic performance. Witness B opined that the September 2020 IEP was inappropriate because there was no updated evaluation data, Student had mastered none of his/her previous goals, and s/he was not progressing. Witness B further opined that the May and December 2021 IEPs are inappropriate because Student requires specialized instruction outside general education in all academic courses – 20 hours per week. She also opined that Student required BSS or OT services to address his/her newly added classification of OHI.

Witness B developed a Compensatory Education Proposal¹³³ in which she asserted that the failure to develop appropriate IEPs in October 2019, September 2020, and May 2021 resulted in 110 weeks in which Student should have received twice the amount of specialized services provided, a

¹³⁰ Respondent’s Exhibits (“R:”) 33, page 1 at Bates page 380. The exhibit number and page are followed by the electronic page number in the disclosure in parentheses, i.e., R33:1 (380). Student’s Comprehension: Literature improved to one grade below grade level, and Comprehension: Informational Text improved to three grades below grade level. In Math, Student’s January 19, 2022 i-Ready scores also reflected a year’s growth since the beginning of the year, but his/her overall score of 432 remained well below the grade level target range of 480- 540 at a grade C level, three grades below Student’s current grade.

¹³¹ P28:9 (384).

¹³² Id. at 14-15 (389-90).

¹³³ P65:1 (772).

deficit of 550 hours. For the period beginning with the implementation of distance learning in March 2020 through September 14, 2021, Witness B asserts that Student received half of the specialized services prescribed on her/his IEP, a loss of an additional 92.5 hours. Witness B opined that “if [Student’s] Specialized Instruction had been increased so that [s/he] received intense academic remediation, [s/he] would have been able to make one year’s worth of academic progress and to master the goals on [his/her] IEPs.” As compensation for Student’s loss, Witness B proposed 400 hours of tutoring, 60 hours of executive functioning coaching, and 60 hours of OT services.¹³⁴

40. Witness J, Student’s general education teacher during the last two school years, testified that Student could read aloud and fluently from grade level texts, but struggles with comprehension; s/he also struggles with math. Witness J testified that Student is reading S level texts in class, which is for students at the beginning of Student’s current grade. This is an improvement from level P at the beginning of the school year, the level for the end of grade F, two grades below Student’s current grade. Witness J attributed some of Student’s comprehension problems to his/her habit of rushing while reading.

CONCLUSIONS OF LAW

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

The burden of proof in District of Columbia special education cases was changed by the local legislature through the District of Columbia Special Education Student Rights Act of 2014. That burden is expressed in statute as the following:

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.¹³⁵

Some of the issues in this case involve the alleged failure to provide appropriate IEPs and placements. Under District of Columbia law, DCPS bears the burden as to these issues. Petitioner bears the burden as to all other issues.¹³⁶

Whether DCPS denied Student a FAPE by failing to provide Student appropriate IEPs on October 25, 2019, September 25, 2020, and May 26, 2021 by failing to increase Student’s service hours or provide a sufficient amount of specialized instruction in light of his/her lack of appropriate progress, the IEPs were not based on

¹³⁴ *Id.* at 7-8 (778-79).

¹³⁵ D.C. Code § 38-2571.03(6)(A)(i).

¹³⁶ *Schaffer v. Weast*, 546 U.S. 49 (2005).

comprehensive evaluations and failed to address her/his need for related services or extended year services (“ESY”), occupational therapy (“OT”) and behavioral support services (“BSS”), and failed to provide supports including small group instruction, one-to-one support, checks for understanding, modification of texts and assignments, and other supports to assist with inattentiveness, and organization and planning like graphic organizers or guided notes.

The Supreme Court’s first opportunity to interpret the predecessor to IDEA, The Education of the Handicapped Act (“EHA”), came in *Board of Education of the Hendrick Hudson Central School District v. Rowley*.¹³⁷ The Court noted that the EHA did not require that states “maximize the potential of handicapped children ‘commensurate with the opportunity provided to other children.’”¹³⁸ Rather, the Court ruled that “Implicit in the congressional purpose of providing access to a ‘free appropriate public education’ is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child...”¹³⁹ Insofar as a State is required to provide a handicapped child with a ‘free appropriate public education,’ we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction... In addition, the IEP, and therefore the personalized instruction should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public school system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.”¹⁴⁰

More recently, the Court considered the case of an autistic child under IDEA who, unlike the student in *Rowley* was not in a general education setting.¹⁴¹ The Tenth Circuit had denied relief, interpreting *Rowley* “to mean that a child’s IEP is adequate as long as it is calculated to confer an ‘educational benefit [that is] merely... more than *de minimis*.’”¹⁴² The Court rejected the Tenth Circuit’s interpretation of the state’s obligation under IDEA. Even if it is not reasonable to expect a child to achieve grade level performance,

... [h]is educational program must be appropriately ambitious in light of [his/her] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives... It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom, but is satisfied with barely more than *de minimis* progress for those who cannot.¹⁴³

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

¹³⁷ 458 U.S. 176, 187 (1982).

¹³⁸ *Id.* at 189-90, 200

¹³⁹ *Id.* at 200.

¹⁴⁰ *Id.* at 203-04.

¹⁴¹ *Endrew F. ex rel. Joseph F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (2017).

¹⁴² *Id.* at 997.

¹⁴³ *Id.* at 1000-01 (citations omitted).

When all is said and done, a student offered an educational program providing ‘merely more than *de minimis*’ progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to ‘sitting idly... awaiting the time when they were old enough to drop out...’ The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”¹⁴⁴

October 25, 2019 IEP

Thus, to meet her burden of establishing a *prima facie* case of a violation of IDEA, Petitioner must introduce some evidence that the IEP was not reasonably calculated to enable Student to make progress. The first IEP in the record, developed on November 9, 2017, provided goals in math, reading, and writing, and prescribed five hours per week of specialized instruction outside general education. By the end of the 2017-18 school year, Student had made no progress on any of his/her goals. Her/his grades were Below Basic in Reading, and Basic in Writing & Language, Speaking and Listening, Math, World Languages, and Social Studies. That year, s/he was absent 39 days. In October 2018, Witness F completed a psychological reevaluation that showed Student to be Low Average in Basic Reading Skills, Broad Mathematics, and in the Low range in Broad Written Language. Witness F concluded that Student exhibited no significant social-emotional or behavioral concerns and recommended a classification of SLD in written expression and “to a lesser degree” in reading fluency and math calculation skills.

Student’s next IEP was developed one month later in November 2018. An i-Ready math assessment in August 2018 found Student to be “significantly behind the grade level expectation of 450 points for the [grade C] range.” A reading assessment in September found Student to be reading at two grades below grade level, and an SRI assessment found his/her comprehension to be a beginning reader level. In writing, Student’s writing did not reflect complete thoughts, topic sentences, details or conclusions. Nevertheless, the IEP team not only did not increase Student’s services, it moved his/her five hours of specialized instruction from outside general education to inside general education. At the end of the 2018-19 school year, Student’s grades were Below Basic in Writing & Language, and Basic in Reading and Math. S/he was absent 26 days during the school year. His/her Progress Report indicated that s/he was progressing on all of his/her goals, but had mastered none.

The IEP team met next on October 25, 2019 to develop Student’s 2019-20 IEP. According to the Mathematics PLOP, the latest i-Ready math assessment reported Student to be “significantly behind the grade level expectation of 449 points for the [grade F] range. Therefore, [Student] will benefit from intensive intervention connecting counting patterns and concepts of addition and subtraction...” The Reading PLOP had no updated testing information. On a September 2019 writing assessment, Student did not demonstrate comprehension of the non-fiction, grade level passage s/he had read. The only change to Student’s services was to add testing with a familiar adult as an accommodation.

In *Rowley*, the Supreme Court ruled that if a child is being educated a general education classroom, his/her IEP should be reasonably calculated to enable the child to achieve passing marks

¹⁴⁴ 137 S.Ct. at 1000-01.

and advance from grade to grade. Here, for consecutive years, Student's grades in math, reading, and written expression were no better than Basic. "Basic" is defined on DCPS report cards as "Approaches expectation for this grade level," while Proficient is the grade for meeting grade level expectations. I-Ready and SRI assessments showed Student to be at least one grade level behind in math and two or more grades behind in reading. Although the math PLOP noted the need for "intensive intervention," DCPS failed to make tangible changes in Student's IEP to address his/her failure to make any objective progress in math, reading, or written expression over a two-year period. Thus, I conclude that DCPS has failed to meet its burden of proving that it provided Student an appropriate IEP on October 25, 2019.

September 25, 2020 IEP

The 2019-20 school year was marred by school closures due to the COVID-19 pandemic. DCPS implemented virtual learning for all students in late March 2020 through the end of the school year at the end of May. As a result, DCPS did not provide year-end letter grades for Student. While Student received passing grades in math, reading, and written expression, his/her third term grades were Below Basic in math, and Basic in Reading and Writing & Literature. Student was absent seven days during the school year. The Progress Report issued on June 2, 2020 reflected that the first math goal was never introduced, and there was inconsistent progress on the other two, with a report of "Not Introduced" in the fourth reporting period. There was similar inconsistency with the reading and writing goals with some progress reported early in the year, but goals were "Not Introduced" in the fourth reporting period.

The next IEP meeting was convened on September 25, 2020. There was no new testing data to report, as assessment were not designed to be conducted virtually. The math goals related to adding, subtracting, and multiplication were unchanged from the 2019 IEP. The first reading goal, that s/he will improve his/her ability to apply grade-level comprehension skills and analysis of texts on his/her benchmark assessments represents nothing more than the IEP team's hope that s/he will do better on the next assessments. The writing PLOP concedes that Student has made no progress as s/he does not demonstrate comprehension, is undeveloped to the task, purpose, and audience, does not use language to express ideas with clarity, his/her responses to prompts do not demonstrate command of the conventions of standard English at the appropriate level of complexity, and s/he has frequent and varied errors in mechanics, grammar, and usage. The IEP team made no substantive changes to Student's services.

In the previous section, I found that DCPS failed to meet its burden of proving that it provided Student an appropriate IEP on October 25, 2019. The record does not support a finding that Student made any objective academic progress in math, reading, or written expression during the 2019-20 school year. Yet, the new IEP was substantially the same as the previous IEP. Therefore, I conclude that DCPS has failed to meet its burden of proving that it provided Student an appropriate IEP on September 25, 2020.

May 26, 2021 IEP

On the AED report in March 2021, Student was reported to know less than one half of the multiplication facts expected at his/her grade level. A middle of the year SRI assessment found Student

still at a beginning reader level, although his/her words correct per minute reading speed was deemed “age appropriate” although it was seven points below the grade-level threshold. In writing, Student could write in complete sentences with proper capitalization and punctuation, s/he was incapable of writing a five-paragraph essay, the grade level expectation, and could only write a three-paragraph essay with significant teacher support. On May 5, 2021, Witness F completed a psychological reevaluation in which Student scored in the Very Low range in Mathematics, Low in Written Language, and Low Average in Broad Reading. Witness F also concluded that Student’s organizational difficulties have a negative impact on his/her ability to solve problems, and recommended an assessment to determine his/her eligibility under the classification of OHI. On May 10, 2021, Student took an i-Ready reading assessment that placed his/her performance three grades below his/her current grade level. An i-Ready math assessment on May 14, 2021 found him/her to be four grades behind grade level. On an SRI Reading Comprehension Assessment on May 20, 2021, Student’s comprehension was at a grade E level, up from beginning reader for the first time, but still four grades below grade level.

At the IEP meeting, the team did not change Student’s math, reading, or writing goals from the September 2020 IEP. Nor did it change any of his/her services or accommodations. Attorney C objected on Petitioner’s behalf, asking for an unspecified additional amount of specialized instruction. The team reconvened on June 9, 2021 to consider amendments to the IEP. However, DCPS’ proposal did not increase the amount of specialized instruction.¹⁴⁵ On August 6, 2021, Witness B, Petitioner’s educational advocate, formally dissented to the May 26, 2021 IEP.

In the previous sections, I found that DCPS failed to meet its burden of proving that it provided appropriate IEPs on October 25, 2019 and September 25, 2020. Since that time, the record supports no objective improvement in Student’s performance in math, reading, or writing, and DCPS made no substantive changes from the previous IEP when it developed Student’s May 26, 2021 IEP. Therefore, I conclude that DCPS has failed to meet its burden of proving that it provided Student an appropriate IEP on May 26, 2021.

Extended Year Services

Petitioner complains that DCPS failed to provide ESY for the summer of 2021. However, at the IEP meeting on May 26, 2021, Petitioner, who was represented by counsel, was clearly equivocal as to whether she wanted Student to attend ESY.¹⁴⁶ I conclude that DCPS’ failure to prescribe ESY on the May 26, 2021 IEP did not constitute a denial of FAPE.

Occupational Therapy Services

On the OT assessment conducted on December 28, 2016, Student scored in the Average range on all subtests on the WRAVMA. S/he had age-appropriate gross motor skills, balance, and coordination needed in the school environment. Examiner B made no recommendation as to the need for services. Witness A, Petitioner’s expert OT witness, opined that she would have recommended OT services for Student based on the findings in the 2016 OT evaluation, as Student was described as struggling to identify letters, express thoughts, and punctuation. In the 2018 IEP, Student struggled

¹⁴⁵ P13:12 (163).

¹⁴⁶ P12:8 (148).

with word recognition and getting words onto paper. His/her consistent errors in writing may be attributable to visual perceptual deficits. Witness A opined that Witness F's May 2021 Psychological Reevaluation revealed the need for OT services as Student's writing continued to be a consistent problem. Witness A explained that an OT could help Student's organizational problems by breaking down assignments or tasks into manageable segments. Witness A opined that Student's performance on Witness G's October 29, 2021 OT warranted Student receiving (60) minutes per week of OT services. However, Witness G opined at the hearing that based on her evaluation, Student did not qualify for OT services. Student was average in visual motor and fine motor skills, his/her handwriting was legible, despite some low scores on the assessments, s/he was capable of accessing the curriculum, and there were no concerns as to sensory integration.

The record does not support that Student's motor skills have a significant impact on his/her ability to access the curriculum. There was no evidence from Student's teachers that her/his vision, handwriting, or fine or gross motor functioning impair his/her ability to perform in the classroom. I conclude that DCPS has met its burden of proving that it did not deny Student a FAPE by failing to prescribe OT services on any of Student's IEPs.

Behavior Support Services

In her October 21, 2019 psychological reevaluation, Witness F found that Petitioner rated Student Average in all categories on the ABAS-3, while Teacher A's scores reflected "a developmental level slightly lower than [his/her] same aged peers across several areas of adaptive functions." Witness F also found that Student exhibited no significant social-emotional or behavioral concerns. Student's report cards reflect a student who is generally well behaved and easily redirected in the classroom. In her May 5, 2021 reevaluation, Witness F recommended that Student be assessed to determine his/her eligibility for a classification of OHI. However, the record does not support a finding that Student exhibited disruptive behavior, inattentiveness, or lack of organization to such a degree that DCPS should have provided services on any of the three IEPs at issue in this section. I conclude that DCPS has met its burden of proving that it did not deny Student a FAPE by failing to include BSS on the IEPs developed in 2019, 2020, or on May 26, 2021.

Whether DCPS denied Student a FAPE by failing to provide Student an appropriate IEP on or about December 7, 2021. Specifically, Petitioner alleges that the IEP was inappropriate because it did not address Student's need for assistive technology, the goals did not reflect that Student would receive instruction at his/her "instructional" level rather than grade level, the IEP did not include occupational therapy ("OT") goals or goals to address Student's Attention Deficit Hyperactivity Disorder ("ADHD"), and the IEP did not provide a sufficient amount of specialized instruction.

Specialized Instruction

In the previous section, I concluded that DCPS denied Student a FAPE by failing to provide IEPs in 2019, 2020, and on May 26, 2021 that were calculated to afford Student the opportunity to make academic progress. Thereafter, Student's 2020-21 year-end grades were reported, and s/he again

earned Basic grades in reading, writing, and math. On the i-Ready math assessment on September 8, 2021, Student's performance remained at a grade E level, four grades below his/her current grade. At an AED meeting on September 14, 2021, the team agreed that DCPS would conduct S/L, OT and psychological evaluations of Student. On September 15, 2021, an i-Ready reading assessment showed Student to be reading at a grade C level, three grades below grade level, a one-year improvement from his/her previous i-Ready reading score. On October 29, 2021, Witness F completed an Addendum to her May 2021 psychological reevaluation. The most significant finding in the evaluation was that Student's had challenges with impulsivity, sustaining attention, retaining information, and working independently. Witness F recommended that Student be reclassified MD, adding OHI as a new classification.

At the IEP meeting on December 7, 2021, the IEP team prescribed 11 hours of specialized instruction, more than twice as much as in the previous IEP, split equally, 5.5 hours per week inside and outside general education. Attorney A objected, reiterating Petitioner's request for 20 hours per week outside general education. Witness J and Witness H, Student's teachers, argued strenuously against a more restrictive environment than was proposed in the IEP citing Student's high level of class participation.

In light of the testimony of Student's teachers and the recent improvement in his/her i-Ready reading scores, I conclude that DCPS' increase of Student's specialized instruction from 5 hours inside general education to 5.5 hours inside general education and 5.5 hours outside provides Student with a FAPE. I note that as late as the March 26, 2021 IEP meeting, Attorney C was not pressing for full-time specialized instruction. In addition, it is apparent from the meeting notes that Petitioner was reluctant to remove Student from School A, which would occur if Student were prescribed 20 hours of services outside general education. It is my hope that with the increase in individualized instruction in a more restrictive environment, along with an equal amount of support in his/her general education classes, that Student makes objectively demonstrable improvement in reading, writing, and math. Should this not occur, the IEP team must consider the possibility of an even more restrictive environment. However, as IDEA mandates mainstreaming to the extent possible, this doubling of Student's specialized instruction is an appropriate measure to address the dual goals of increased intensity of instruction and maintaining Student in the least restrictive environment as possible.

Occupational Therapy

In the previous section, I found that the record did not support that Student's motor skills had a significant impact on her/his ability to access the curriculum. After the IEPs addressed in that section were developed, Witness G completed an OT evaluation on October 29, 2021. I am persuaded by Witness G's evaluation and testimony that despite Student's uneven performance on her evaluation, s/he has good bilateral coordination skills, is independent in feeding, dressing, and toileting skills demonstrates functional fine motor skills to use classroom materials independently, can remain focused when minimum verbal cues are provided for redirection, is just like the majority of student of the same age in his/her interest in sensory experiences, reaction to sensory experiences, detection of sensory cues, and ability to notice sensory cues, can copy written work from the board in the classroom, and overall demonstrates good line adherence when copying a sentence on triple lined paper. Therefore, I conclude that DCPS did not deny Student a FAPE by failing to prescribe OT services on Student's December 7, 2021 IEP.

Assistive Technology

Petitioner alleges that DCPS failed to provide A/T services on the December 7, 2021 IEP. However, when Attorney A raised the issue of A/T at the meeting, there was no objection to Witness L's offer to start the process with an observation by an A/T specialist.¹⁴⁷ I conclude that DCPS did not deny Student a FAPE by failing to include A/T on the December 7, 2021 IEP.

ADHD Goals

As was discussed above in this section, Witness F recommended that Student's classification be changed to MD with the addition of OHI as a new, additional disability. The IEP accepted this recommendation and changed Student's classification accordingly. However, the IEP team did not address this disability in a new Area of Concern with PLOPs, baselines, and goals. I conclude that DCPS has not met its burden of proving that it provided Student an appropriate IEP on December 7, 2021, in that it failed to address Student's OHI classification.

Specificity as to Goals

Petitioner argues that the goals in the IEP did not reflect that Student would receive instruction at his/her "instructional" level rather than grade level. It is not a Hearing Officer's role to edit IEPs or to question teaching methodologies. That is the role of the school districts' educational professionals, parents, and their representatives on IEP teams. Our role is to determine, on a case-by-case basis, whether the chosen methodologies were adequate for the individual children at issue to make progress.

Whether DCPS denied Student a FAPE by failing to implement Student's IEP during distance learning by failing to provide Student the full amount of specialized instruction required by the IEP.

Witness B and Petitioner testified that Petitioner received only two of the five hours per week of specialized instruction to which s/he was entitled during distance learning. In her Compensatory Education Proposal, Witness B calculated the lost time to be 92.5 hours over a period of 37 weeks. When this issue was discussed at the IEP team meeting on May 26, 2021, DCPS IEP team members did not dispute the assertion,¹⁴⁸ and DCPS offered no testimony to refute the allegation at the hearing. Therefore, I conclude that Petitioner has met her burden of proving that DCPS failed to implement Student's 2019-20, 2020-21, and May 26, 2021 IEPs by failing to provide the specialized instruction prescribed in the IEP.

¹⁴⁷ P23:2 (276).

¹⁴⁸ P12:7 (147).

Whether DCPS failed to provide full and timely access to Student's records. Specifically, Petitioner alleges that DCPS has failed to provide access to standardized testing results for the last 4 years, report cards all four school year terms – not just the end of year report cards, and Student's initial psychological and OT evaluations.

The regulations require the local education agency to allow parents to examine their student's records:

Opportunity to examine records. The parents of a child with a disability must be afforded, in accordance with the procedures of §§300.613 through 300.621, an opportunity to inspect and review all education records with respect to—

- (1) The identification, evaluation, and educational placement of the child;
- and
- (2) The provision of FAPE to the child.¹⁴⁹

and

(a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to § 300.507 or §§ 300.530 through 300.532, or resolution session pursuant to § 300.510, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes—

- (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
 - (2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
- The right to have a representative of the parent inspect and review the records.¹⁵⁰

Petitioner offered testimony from Witness C, Attorney A's legal assistant, in support of the allegation that DCPS has failed to provide access to records requested by Petitioner's counsel. While Witness C testified that DCPS did not fully respond to the request, he did not specify which records Petitioner did not receive. More important, there was no showing that Petitioner suffered any harm from DCPS failure to provide full access. This is a procedural violation and "[O]nly those procedural violations of IDEA which result in loss of educational opportunity or seriously deprive parents of their participation rights are actionable."¹⁵¹ Here, Petitioner's disclosures comprised more than 800 pages and provided a complete record of Student's history with DCPS. I conclude that Petitioner has failed to meet her burden of proving that she was denied a FAPE by DCPS' failure to provide full access to Student's educational records.

¹⁴⁹ 34 C.F.R. §300.501.

¹⁵⁰ 34 C.F.R. §300.613.

¹⁵¹ *Lesesne ex rel. B.F. v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. (2006), citing *C.M. v. Board of Education*, 128 Fed.Appx. 876, 881 (3d Cir. 2005).

RELIEF

For relief, Petitioner requests, *inter alia*, an order (1) requiring DCPS to convene an IEP team meeting to review evaluation results and amend the IEP as necessary, including providing Student up to 20 hours of specialized instruction, OT goals and services, goals and services to address Student's ADHD symptoms, and revisions to Student's Reading and Written Expression goals to reflect that s/he would be taught at his/her instructional level rather than at his/her grade level, (2) compensatory education services or a compensatory education evaluation followed by an IEP team meeting to address Student's need for compensatory education services, and (3) attorney's fees.

As for Petitioner's request for compensatory education services, the Petitioner has the burden of establishing entitlement to any requested relief, including the type and amount of compensatory education services that would compensate the student for the services that were allegedly denied. Absent such a showing, any award by the Hearing Officer would be arbitrary.

Accordingly, just as IEPs focus on disabled students' individual needs, so must awards compensating past violations rely on individualized assessments... In every case, however, 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.¹⁵²

Thus, Petitioner must show (1) what educational harm Student suffered as a result of the alleged denial of FAPE, (2) what type and amount of compensatory services Student requires to put him/her in the position s/he would be had there been no denial of FAPE, and (3) the assessments or educational, psychological, or scientific studies that support the type and amount of services requested.

Petitioner offered no credible evidence of the type and amount of compensatory services Student requires to put her/him in the position s/he would be had there been no denial of FAPE. Witness B prepared a Compensatory Education Plan requesting 400 hours of tutoring services, 60 hours of executive functioning coaching, and 60 hours of occupational therapy for (1) 550 hours of missed specialized instruction over two years to compensate Student for the 5 hours per week of additional instruction Petitioner believes Student needed, (2) for the three hours per week (92.5 hours) DCPS did not provide Student during distance learning, and (3) for OT services DCPS did not provide. In support of the proposal, Witness B testified that the plan would put Student in the position s/he would have been but for the denial of FAPE. However, the entire plan is based on Witness B's assertion that Student would be expected to make a year of growth in academic progress with adequate support. This assertion appears to be inherently suspect. All SLD students are different, with different learning patterns, different learning rates, different backgrounds, different deficits, and varied cognitive skills. Student also has deficits in all three core subjects, while many SLD students have deficits in but one

¹⁵² *Reid v. District of Columbia*, 401 F.3d 516, 524, (D.C. Cir. 2005). See also, *B.D. v. District of Columbia*, 817 F.3d 792, 799-800 (D.C. Cir. 2016).

area. Thus, I cannot accept Witness B's mere assertion that Student would be expected to achieve a year of academic growth each school year with appropriate supports. In fact, based on standardized testing scores, Student has never made any significant academic growth since becoming eligible for services. In addition, Witness B offered no empirical support for the request for OT services or executive functioning coaching. Therefore, I will order DCPS to fund 50 hours of compensatory education along with an independent evaluation to determine the appropriate type and amount of appropriate compensatory education Student requires consistent with the mandate set forth in *Reid*.

ORDER

Upon consideration of the *Amended Complaint*, DCPS' *Response*, the exhibits from the parties' disclosures that were admitted into evidence, the testimony presented during the hearing, *Petitioner's Closing Argument*, and *District of Columbia Public Schools' Case Citations*, it is hereby

ORDERED, that DCPS shall fund 50 hours of compensatory education tutoring services in Math, Reading Comprehension, and Written Expression for Student with no restrictions as to the time of day or deadlines for the completion of such services.

IT IS FURTHER ORDERED, that DCPS shall fund an independent evaluation to determine the appropriate type and amount of specialized instruction Student requires to make two years of grade level improvement in Math, Reading, and Written Expression.

IT IS FURTHER ORDERED, that within fifteen (15) business days of receipt of the independent evaluation, DCPS shall schedule an IEP team meeting through Petitioner's counsel to update the IEP including addressing Student's OHI classification, A/T services, and to consider the need for additional compensatory education services for Student for the denial of FAPE for the failure to provide 642.5 hours of specialized instruction.

APPEAL RIGHTS

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


Terry Michael Banks
Hearing Officer

Date: March 7, 2022

Copies to: Attorney A, Esquire
Attorney B, Esquire
OSSE Office of Dispute Resolution
OSSE Division of Specialized Education
[REDACTED], DCPS
[REDACTED], DCPS