

**District of Columbia**  
**Office of the State Superintendent of Education**  
**Office of Dispute Resolution**  
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OSSE  
Office of Dispute Resolution  
May 19, 2023

**Confidential**

Parent on behalf of Student <sup>1</sup>	)	Case No. 2022-0148
	)	
Petitioner	)	Hearing Dates: April 25-28, 2023
	)	
v.	)	Conducted by Video Conference
	)	Date Issued: May 19, 2023
District of Columbia Public Schools	)	
	)	Terry Michael Banks,
Respondent	)	Hearing Officer

**HEARING OFFICER DETERMINATION**

**INTRODUCTION**

Petitioners are the parents of an X-year-old student (“Student”) attending School A. On August 15, 2022, Petitioners 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 provide him/her an appropriate Individualized Education Program (“IEP”) and placement for the 2022-23 school year. On August 26, 2022, DCPS filed *District of Columbia Public Schools’ Response*, denying that it had denied Student 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.

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

## PROCEDURAL HISTORY

Petitioners filed the *Complaint* on August 15, 2022, alleging that DCPS denied Student a FAPE by failing to provide [REDACTED] an appropriate IEP and placement for the 2022-23 school year. The *Complaint* alleged that Student's June 21, 2022 IEP was inappropriate because it misclassified Student, certain goals and Present Levels of Academic Performance ("PLOPs") were inadequate, Reading was not included as an Area of Concern, there were no goals to address executive functioning or occupational therapy ("OT"), the Classroom Aids and Services did not match those offered on the [REDACTED] IEP, and the IEP did not provide full-time specialized instruction. On August 26, 2022, DCPS filed its *Response*, denying that it had denied Student a FAPE in any way.

On November 21, 2022, Petitioners filed a *Motion to Amend the Hearing Request* to add further allegations involving DCPS' proposal to initiate the triennial review and the lack of updated assessment data. On November 28, DCPS filed *District of Columbia Public Schools' Opposition to Parent's Motion to Amend the Hearing Request*. DCPS argued that the hearing date was imminent, DCPS was prepared to go to hearing, and "DCPS and the District are entitled and have an obligation to speedy resolution and offer a FAPE." On December 1, 2022, I issued an order granting the *Motion*.

On December 8, 2022, Petitioner filed an *Amended Due Process Complaint Notice* alleging that DCPS failed provide Student an appropriate IEP and placement for the 2022-23 school year on June 21, 2022, failed to provide an appropriate disability classification, and failed to convene a timely Analysis of Educational Data ("AED") meeting. On December 19, 2022, DCPS filed *District of Columbia Public Schools' Response to Petitioners' Amended DPC* denying that it had denied Student a FAPE in any way.

The parties participated in resolution meetings on September 8, 2022 and December 20, 2022 that did not result in a settlement. A prehearing conference was conducted by video conference on September 9, 2022, and the Prehearing Order was issued on September 12, 2022. A *Second Amended Prehearing Order* was issued on January 4, 2023 to address the *Amended Complaint*, the *Response*, and new hearing dates.

The due process hearing was conducted on April 25-28, 2023 by video conference.<sup>2</sup> The hearing was closed to the public at Petitioners' request. Petitioners filed Five-Day Disclosures on April 3, 2023 containing a witness list of five witnesses and documents P-1 through P-49. DCPS filed objections to Petitioner's Disclosure on April 6, 2023. DCPS objected to the admission of Witness B as an expert witness based on the qualifications set forth in his resume. Ruling on this objection were deferred until *voir dire* of the witness was completed. DCPS also objected to P16 and P46 on the basis of "hearsay, relevance, and authentication." Petitioners' Exhibits P1-P15, P17-P45, and P47-49 were admitted into evidence.

Respondent's Disclosures, were also filed on April 3, 2022 and again on April 18, 2023 upon the postponement of April 11-14, 2023 hearing dates. DCPS' Disclosure contained a witness list of thirteen witnesses and documents R1-51, including R1a, b, c, and d, and R35a. Petitioners

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<sup>2</sup> The hearing was continued twice after the parties had filed Five-Day Disclosures. The December 7-9, 2022 dates were postponed to April 11-14, 2023 due to Petitioner's filing of the *Motion to Amend the Hearing Request*. The new dates were postponed to April 25-28, 2023 due to the unavailability of Petitioner's expert witness.

filed objections to Respondent's disclosures on April 6<sup>th</sup>. Petitioners objected to Witness D, Witness F, and Witness J being admitted as experts in special education. These objections were initially overruled as Petitioners offered no reason for the objection. Petitioners' counsel was subsequently permitted to conduct voir dire, but the objections to the testimony of Witness D and Witness F were overruled. During Respondent's direct case, Respondent's Exhibits R1-R32, R33-34, and R35a-R51 (including R1a, b, c, and d) were offered and admitted into evidence.

Petitioners presented as witnesses in chronological order: Witness A, Witness B, Witness A, and Petitioner/mother. Witness A was admitted as an expert in special education, and Witness B was admitted as an expert in social work. Respondent presented as witnesses in chronological order: Witness C, Witness D, Witness E, Witness F, Witness G, and Witness H. Witness C was admitted as an expert in social work, Witness D was admitted as an expert in special education programming and placement, Witness E was admitted as an expert in occupational therapy, Witness F was admitted as an expert in special education, Witness G was admitted as an expert in school psychology, and Witness H was admitted as an expert in special education. At the conclusion of DCPS' direct case, Petitioner/mother provided rebuttal testimony. Thereafter, the parties' counsel gave oral closing arguments. The Hearing Officer authorized counsel to file a list of authorities relied on by May 3, 2023. On May 3, 2023, *Petitioners filed Parents' Closing Authorities* and Respondent filed *District of Columbia Public Schools' Case Citations*.

## ISSUES

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

1. Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and placement for the 2022-23 school year on June 21, 2022. Specifically, Petitioners assert that DCPS should have incorporated more provisions of the IEP developed by School A on March 29, 2022: (1) there is no mention of Student's grade level performance in the Present Levels of Academic Performance ("PLOPs") in Math, Reading, and Writing, (2) Student is misclassified ED rather than Specific Learning Disability ("SLD") and Other Health Impaired ("OHI"), (3) the school year 2021-22 4<sup>th</sup> quarter grades at [REDACTED] were not referenced in the PLOPs, (4) the Math PLOP should delete challenges with anxiety, frustration, and hyperactivity and include the following weaknesses: "Understanding number concepts, use of tools and measurements, problem solving, analysis, sequencing, and checking work for miscalculations and errors," (5) the first math goal is a social-emotional goal, not a math goal, (6) the second, third, and fourth math goals do not match any of the School A goals, and two of the School A math goals are not included in the math goals, (7) the impact statement for written expression is based on outdated information, (8) reading is not identified as an area of concern, (9) the first written expression goal is inappropriate, (10) the second School A written language goal should have been adopted, (11) there are no executive functioning or occupational therapy goals; the two School A goals in these areas should have been adopted, (12) all of the Classroom Aids and Services in the School A IEP should have been adopted, and (13) the five additional hours of specialized instruction outside general education is insufficient to meet Student's unique

strengths and challenges. S/he needs a full-time special education placement.

2. Whether DCPS denied Student a FAPE by failing to convene a timely AED meeting to discuss evaluations. Specifically, Petitioners assert that DCPS should have convened an AED meeting after the June 21, 2022 IEP meeting, resulting in evaluations being completed within 120 days thereafter.
3. Whether School A is an appropriate placement for Student.

## FINDINGS OF FACT

1. Student is X years old and attended grade K at School A during the 2021-22 school year.<sup>3</sup>

2. Petitioners enrolled Student at School A in 2015 for grade F before they moved into the District from Fairfax County, Virginia.<sup>4</sup>

3. On February 25, 2020, when Student was in grade B at School A, DCPS completed a Comprehensive Psychological Reevaluation of Student. Student was first identified as a child with a disability in grade C in Fairfax County, Virginia, and was classified with Multiple Disability (“MD”): Other Health Impaired (“OHI”) and Specific Learning Disability (“SLD”). S/he was reported by her/his parents to carry diagnoses of Attention Deficit Hyperactivity Disorder (“ADHD”) and Anxiety Disorder and to be taking psychotropic medication.<sup>5</sup> At that time, Student was receiving 13.5 hours per week of special education services and two hours per month of occupational therapy to address his/her handwriting. Student was placed at School A for grade F and has been there ever since. OT services were terminated after the 2019-20 school year, and s/he received speech/language (S/L”) and behavior support services (“BSS”) from 2016-2018.<sup>6</sup> In conducting the evaluation, Examiner A interviewed Teacher A, Student’s math teacher, Teacher B, Student’s English teacher, Petitioners, and Student.

During testing, Examiner A observed Student to be cooperative and exerted maximum effort throughout. On the Reynolds Intellectual Assessment Scales (“RIAS-2”), Student scored in the Average range in all areas: Composite Intelligence (97), Verbal Intelligence (94), Nonverbal Intelligence (101), Composite Memory (92), and Speed Processing (99).<sup>7</sup> The Kaufman Test of Educational Achievement (“KTEA-3”) was administered to measure Student’s academic achievement. Student scored in the Average range in Reading Composite (90), Math Composite (96), Sound-Symbol Composite (103), and Comprehension Composite (103), Below Average in Academic Skills Battery (85) and Decoding Composite (87), and in the Low range in Written Language Composite (78). On supplemental subtests, Student scored in the Above Average range in Phonological Processing (117) and Listening Comprehension (111), in the Average range in

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<sup>3</sup> Petitioners’ Exhibits (“P:”) 21 at pages 1-2 (189-90). The exhibit number and exhibit page numbers are followed by the digital page number in the disclosure in parentheses, i.e., P21:1 -2 (189-90).

<sup>4</sup> Testimony of Petitioner/mother.

<sup>5</sup> P2:1, 3 (23, 25).

<sup>6</sup> *Id.* at 3 (25).

<sup>7</sup> *Id.* at 13-16 (35-38).

Math Fluency (93) and Silent Reading Fluency (97), and slightly Below Average in Nonsense Word Decoding (88).<sup>8</sup>

Petitioners, Teacher B, and Student completed rating scales for the Behavior Assessment System for Children (“BASC-3”). Teacher B’s responses yielded clinical elevation on the Internalizing Problems composite scale (72) and At-Risk elevation on the Externalizing Problems (66), School Problems (63), Behavioral Symptoms Index (68), and Adaptive Skills (39). “Within the Internalizing Problems subscale, [Teacher B] rated significant elevations on Anxiety and Depression subscales. He reported that [Student] frequently displays behaviors that stem from worry, nervousness, and/or fear and presents as withdrawn, pessimistic, and/or sad... Within the Adaptive Skills subscale, he indicated At-Risk elevations on the Adaptability and Study Skills subscales. He noted that [Student] takes much longer to recover from difficult situations from most children and that [s/he] has weak study skills.”<sup>9</sup> Petitioners’ responses yielded At-Risk elevations on the Externalizing Problems (63), Internalizing Problems (66), and Behavioral Symptoms (62) composite scales, and endorsed significant elevations on the Hyperactivity (86), Attention (73), and Anxiety (70) subscales.<sup>10</sup>

The Conners-3 was administered to measure Student’s behavior and ADHD symptoms. Petitioners’ and Teacher B’s rating scales provided Clinically Significant scores in Inattention (86/86) and Hyperactivity/Impulsivity (90/79). Petitioners also yielded a Clinically Significant score in Learning Problems (86), while Teacher B had a similar rating in Defiance/Aggression (81). Petitioners’ rated Student At-Risk in Executive Functioning (60), while Teacher B rated him/her At-Risk in Peer Relations (68). “Results of the Conners-3 forms indicate that [Student] demonstrates significant difficulties with maintaining concentration and attention, impulsivity, and executive functioning. Reports by [his/her] teacher and parents appear consistent with [his/her] diagnosis of Attention Deficit Hyperactivity Disorder.”<sup>11</sup> Student’s executive functioning was also measured on the Behavior Rating Inventory of Executive Function (“BRIEF-2”). Both Teacher B and Petitioners yielded Clinically Elevated ratings on the Self-Monitor Scale (70/80). On the Behavior Regulation Index, Teacher B rated Student as Potentially Clinically Elevated (69), while Petitioners rated her/him Clinically Elevated (84). The same was true on the Global Executive Composite Index (66/72). Petitioners’ ratings also yielded Potentially Clinically Elevated scores on the Emotion Regulation Index (68) and the Cognitive Regulation Index (67).<sup>12</sup>

In determining whether Student met the classification criteria for Specific Learning Disability (“SLD”), Emotional Disability (“ED”) or OHI, Examiner A made the following observations and reached the following conclusions: Examiner A reiterated Student’s KTEA scores, s/he made reading progress during the school year using the Orton-Gillingham method, s/he began the year reading at grade level, D.0, and ended the year at D.6 according to “Read Naturally,” and “Academically, [Student’s] academic skills fell within the Low to Average range in all areas, with strengths in listening comprehension and weaknesses in spelling and writing. [S/he] is not performing significantly below her/his cognitive functioning...[Student] does not demonstrate an intellectual disability, cultural factors, environmental or economic disadvantage, nor does [s/he] demonstrate limited English proficiency. However, [s/he] does demonstrate an

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<sup>8</sup> *Id.* at 16-20 (38-42).

<sup>9</sup> *Id.* at 21 (43).

<sup>10</sup> *Id.* at 21-23 (43-45).

<sup>11</sup> *Id.* at 23-24 (45-46).

<sup>12</sup> *Id.* at 25-27 (47-49).

emotional disturbance...<sup>13</sup> Despite being capable of completing the work, [Student's] anxious thoughts can overwhelm and frustrate [her/him]. Conners and BRIEF-2 parent and teacher ratings also indicated significant concerns related to inattention, hyperactivity/impulsivity, and executive functioning. Given the test results, [Student] does meet the criteria for special education services as a student with a Multiple Disability (OHI and ED)."<sup>14</sup>

Examiner A's recommendations included, but were not limited to:

Given [Student's] cognitive profile, [s/he] would benefit from a multisensory approach and the use of visual and tactile supports along with verbal instruction...

[Student] will benefit from step-by-step instruction and breaking down information into easy steps as [s/he] learns new skills. [S/he] would also benefit from repeated and extra instructions and frequent check-ins.

Provide [Student] with extra time to process information as well as extra time to formulate oral and written responses...

The use of graphic organizers would be helpful in improving [Student's] reading and writing skills... The five-step spelling strategy is an effective, multisensory approach to improving spelling performance... Teach [Student] how to analyze the syllables in words to increase [Student's] ability to spell words... Repeated reading is a fluency-building intervention... Incorporating self-monitoring strategies may help [Student] to recognize and resolve [his/her] comprehension errors and practice self-regulation. Click or Clunk is one example of a self-monitoring strategy that teaches students to monitor their performance while reading... Use of manipulatives is essential for building conceptual understanding of math operations... Practice with math fact charts may assist [Student] in memorizing [his/her] math facts... Repetition is an important factor in building speed...

Limit distractions: Often it is important to limit distractions that are problematic for students with attention difficulties. This might include visual and auditory distractions, other students, or activities that can pull [Student's] attention away from a task. Open classroom settings often have too many distractions and too many opportunities for impulsive behavior.

Strategic seating: Students like [Student] often benefit from careful placement in the classroom... Placement in proximity to the teacher can facilitate greater interaction without disturbing other students... Working in small groups with good peer models may also be helpful...

Increase environmental structure: Increased structure in the environment or in an activity can help with initiation difficulties. Building in routine for [Student] for everyday activities is often important, as routine tasks and their completion become

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<sup>13</sup> *Id.* at 28-29 (50-51).

<sup>14</sup> *Id.* at 33 (55).

more automatic, reducing the need for independent initiation... External prompting may be necessary to help [Student] get started...

[Student] would benefit from behavior support services to help [him/her] develop appropriate coping strategies to manage [his/her] anxiety...<sup>15</sup>

4. On April 30, 2021 Hearing Officer Peter B. Vaden issued a Hearing Officer Determination (“HOD”) resolving a due process complaint that was filed on Student’s behalf on January 8, 2021.<sup>16</sup> Petitioners alleged that DCPS developed an IEP in the spring of 2020 “that did not provide for a full-time special education setting” and improperly classified Student MD (OHI and ED) “contrary to the parents’ belief that Student should be eligible as a student with a Specific Learning Disability and OHI – but not ED...”<sup>17</sup> On the issue of classification, Hearing Officer Vaden concluded that “the parents have not show that by not finding Student eligible under SLD, in addition to the OHI-ADHD and ED disabilities, DCPS denied Student a FAPE.”<sup>18</sup> DCPS’ May 14, 2020 IEP proposed a full-time setting in a general education classroom with ten hours of “push-in” specialized instruction. Hearing Officer Vaden found that this setting was inconsistent with aspects of Examiner A’s evaluation:

School Psychologist stated in her February 25, 2020 psychological evaluation report that often, it is important to limit distractions that are problematic for children, like Student, with attention difficulties, including visual and auditory distractions, other students, or activities that can pull Student’s attention away from a task. In her report, School Psychologist cautioned that open classroom settings often have too many distractions and too many opportunities for impulsive behaviors. School Psychologist also recommended in the report that Student may benefit from increased environmental structure and working in small groups with good peer models... [h]er report recommendations, particularly the concern about open classroom settings with too many distractions, do not appear to be consistent with the May 14, 2020 IEP team’s decision to place Student full-time in the general education classroom...<sup>19</sup>

I did not find the hearing evidence persuasive that Student currently requires a full-time special education setting... However, to satisfy the first prong of the *Burlington Carter* test, it need only be established that DCPS failed to offer Student a FAPE with *its* proposed educational placement... I find that DCPS, which has the burden of persuasion on this issue, has not offered a “cogent and responsive explanation” for the decision of the May 14, 2020 IEP team to place student full-time in the regular education classroom with only 10 hours per week of push-in Specialized Instruction Services... I conclude that DCPS failed to offer Student a FAPE with the full-time placement in the general education setting, as proposed in the May 14, 2020 IEP... To be clear, while I find that DCPS’ proposed full-time placement of Student in the general education setting was not appropriate and

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<sup>15</sup> *Id.* at 33-36 (55-58).

<sup>16</sup> P6:1 (87).

<sup>17</sup> *Id.* at 3 (89).

<sup>18</sup> *Id.* at 16 (102).

<sup>19</sup> *Id.* at 19 (105).

Student's IEP must be revised, I make no finding as to what is Student's appropriate educational setting and least restrictive environment.<sup>20</sup>

5. For school year 2020-21, when Student was in grade L, his/her final grades were as follows: English – B-, Science – A, Innovation – A, Democracy – B, and Algebra – A.<sup>21</sup>

6. On August 4, 2021, Petitioners' counsel notified DCPS, in a letter attached by email, that due to DCPS' failure to provide Student a FAPE, Student would be placed at School A for the 2021-22 school year. The email requested funding of the placement by DCPS.<sup>22</sup>

7. On August 26, 2021, Petitioners filed a due process complaint alleging that DCPS denied Student a FAPE by failing to propose an appropriate IEP and placement for the 2021-22 school year. Petitioners alleged that DCPS failed to propose a sufficient amount of specialized instruction and failed to include reading goals.<sup>23</sup> On November 29, 2021, the parties executed a settlement agreement in which DCPS did not agree that Student required placement in a self-contained private school or that School A was an appropriate setting for Student, but agreed, *inter alia*, to fund Student's placement at School A for the 2021-22 school year.<sup>24</sup>

8. On December 10, 2021, DCPS notified Petitioners that School A was Student's location of service for the 2021-22 school year. "The location of service decision was based on being current location of service, review of most recent IEP and educational records and available space in the appropriate program was also considered in determining the location of service."<sup>25</sup>

9. On March 29, 2022, when Student was in grade K, School A developed an IEP for Student. The IEP prescribed 34.25 hours per week of specialized instruction and 45 minutes per week of OT.<sup>26</sup> In Reading, the IEP indicated Student's "Instructional Level" to be two grades below his/her current grade with his/her needs being abstract comprehension, evaluative/analytical skills, annotating text, and scaffolding. Student's Measures of Academic Progress ("MAP") reading score on April 27, 2022 was 216, in the 39<sup>th</sup> percentile.<sup>27</sup> In Written Expression, the IEP indicated Student's "Instructional Level" to be two grades below his/her current grade with his/her needs being paragraph development, independent spelling, complexity of sentences, providing context for ideas, supporting statements, communicating subtleties and analytical thinking, using effective transitions to connect ideas, writing So What? Conclusions that analyze rather than simply summarize. "Within a small class setting, with teacher cueing and encouragement,

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<sup>20</sup> *Id.* at 20-21 (106-7).

<sup>21</sup> P8:1-2 (121-22).

<sup>22</sup> P10:1 (137).

<sup>23</sup> Respondent's Exhibit ("R:") 1c at page 8 (64). The exhibit number and exhibit page numbers are followed by the digital page number in the disclosure in parentheses, i.e., R1c:8 (64).

<sup>24</sup> R50:2 (402).

<sup>25</sup> P12:1 (143).

<sup>26</sup> P19:1 (169).

<sup>27</sup> *Id.* at 2 (170). The MAP testing apparently took place after the IEP was developed in March. The MAP Student Progress Report in Petitioners' disclosure featured line graphs which did not provide precise grade-level expectations. P27:1 (233). Curiously, DCPS's disclosure provided a MAP Progress Report that featured bar charts instead of line graphs, and provided grade level mean scores for the MAPs Student took from the fall of 2019 through the fall of 2021 in Math and through the spring of 2022 in Reading. Student's April 27, 2022 score of 216 was six points below the District's Grade Level Mean score of 222 and five points below the Norm Grade Level Mean of 221. In the fall of 2022, Student's score of 227 exceeded the Norm Grade Level Mean of 221. R31:1 (272).

[Student] can be focused. While it took some time for [Student] to adjust to the classroom expectations, [her/his] effort and attention have greatly improved over the course of the year. [Student] participates in class discussions and engages in the learning process. There were times when [Student] struggled with redirection to stay on task but that has also greatly improved as the year has progressed. [Student] is submitting work on time and mostly well done... [Student] completes grade/course level work with moderate teacher support.<sup>28</sup>

In Math, the IEP indicated Student's "Instructional Level" to be two grades below his/her current grade with his/her needs being understanding number concepts, use of tools and measurements, problem solving, analysis, sequencing, and checking work. His/her October 20, 2021 MAP score was 206, in the 15<sup>th</sup> percentile.<sup>29</sup> "Within a small class setting, with teacher cueing and encouragement, [Student] can be focused. [S/he] participates in class discussions and will give answers with called on. [Student] can get off task during class but can also be redirected to focus on the task at hand... [Student] is a student who can complete grade/course level work independently with the use of [his/her] accommodations but still requires moderate teacher support."<sup>30</sup> In Social Behavior, Student's needs were said to be difficulty focusing, concentration wanders, difficulty initiating effort, difficulty maintaining relationships, has difficulty building & maintaining positive relationships, does not effectively read social cues, difficulty sustaining attention, difficulty working independently, easily influenced by peer pressure, impulsive, exhibits weak self-confidence, restless – cannot sit still, often complains of headaches, stomach aches or sickness, many worries/fears or often seems worried, often unhappy, depressed.<sup>31</sup> In OT, Student's needs were reported to be self-advocacy, attention management, self-regulation/body awareness, time management, multi-step planning of less structured complex tasks, pacing, and note-taking. "[Student] requires additional support (minimal to moderate verbal prompting) to manage [his/her] time, complete multi-step complex or long-term tasks, and self-advocate for support or clarification when needed. [Student] demonstrates some independence in planning skills, but this varies based on [her/his] familiarity and complexity of the task, as well as the amount of structure/directions initially provided... [Student] demonstrates difficulties managing [his/her] attention and energy levels appropriately which impact [her/his] participation, engagement, and the quality of [his/her] academic work. In the classroom, [Student] is frequently distracted or may be focused on other off-topic tasks... When completing academic work, [Student] demonstrates a short attention span, focusing on a targeted task for approximately 15 minutes before visibly needing a break... At this time, [Student] requires verbal prompts from adult for redirection when distracted and to properly return to a task following a rest break... [Student] demonstrates appropriate functional keyboarding skills to keep up with the written demands of [grade K]. During note-taking tasks, however, [Student] does not always use effective methods... to document [his/her] notes unless directly prompted to do so. [Student's] disorganization in [her/his] notes impact [his/her] ability to accurately and thoroughly complete academic tasks and locate targeted information when needed (e.g. studying for midterm/finals)."<sup>32</sup>

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<sup>28</sup> P19 at 3 (171).

<sup>29</sup> Student's score of 221 was one point below the District's Grade Level Mean score of 222 and nine points below the Norm Grade Level Mean of 230. In the fall of 2021, Student's score of 206 was fifteen points below the District's Grade Level Mean score of 221 and twenty points below the Norm Grade Level Mean of 226. In the fall of 2022 (there were no spring 2022 scores in Math), Student's score of 208 was 21 points below the Norm Grade Level Mean of 229. R31:1 (272).

<sup>30</sup> P19:3-4 (171-72).

<sup>31</sup> *Id.* at 3 4 (172).

<sup>32</sup> *Id.* at 4-5 (172-73).

The Reading goals were: (1) given reading instruction and a reading assignment, Student will produce written reading annotation to facilitate the incorporation of new information to long-term memory, and (2) given reading instruction and a reading assignment, s/he will make explicit use of active reading strategies to develop literary analysis skills. The June 2022 Progress Comments indicated that Student was making progress on both goals. The Written Language goals were: (1) when provided with a rubric or checklist, Student will accurately proofread, edit, and revise his/her work for word choice, sentence variation, and clarity, and (2) given a variety of writing prompts and use of the Writing Process, s/he will convey original ideas derived from literary analysis using valid reasoning and relevant evidence in support of a thesis and made relevant to his/her reading audience. The Progress Comments reported that Student was making progress on both goals. In Math, the goals were: (1) using a teacher provided checklist, Student will demonstrate problem solving skills, (2) given data for several linear equations, Student will use patterns, functions, and appropriate mathematical operations to solve problems and identify similarities among the equations, (3) s/he will accurately convert and connect information from 3 different formats – a table of values, a graph, and an equation – to model and calculate the corresponding linear equation, and (4) s/he will demonstrate improved use of geometry vocabulary. S/he was reported to have made no progress on the first goal in May 2022, to have mastered the second and third, and the fourth had not been introduced. The OT goals were: (1) Student will demonstrate adequate self-management strategies, (2) s/he will demonstrate adequate functional independence skills for academic and pre-vocational tasks. Student was reported to be progressing on the both, recently introduced goals.<sup>33</sup>

10. On June 1, 2022, Therapist A, [REDACTED] issued Student's Occupational Therapy Annual Report. The report indicated that Student was receiving three (3) hours per month of OT services at School A. Student had two goals. The first goal addressed functional independence skills for academic and pre-vocational tasks. Therapist A noted that Student requires minimal to moderate verbal prompting to manage his/her time, complete multi-step complex or long-term tasks, and self-advocate when needed. S/he demonstrated "some independence" in planning skills, but demonstrated difficulty properly sequencing steps and adjusting his/her pace, causing him/her to miss key details or fail to use all provided resources. On an April 2022 keyboarding screening, Student demonstrated appropriate functional keyboarding skills. However, s/he does not always use effective note-taking techniques. "[Student's] disorganization of [his/her] notes impacts [him/her] ability to accurately and thoroughly complete academic tasks and locate targeted information when needed. The second goal addressed self-regulatory strategies. The report noted that Student has difficulty managing his/her attention and energy level, which affects his/her participation, engagement, and quality of academic work. S/he frequently distracted or focused on other, off-topic tasks. "At this time, [Student] requires verbal prompts from an adult for redirection when distracted and to return to the assigned task. Recommendations included note-taking templates, preferential seating, noise cancelling headphones, use of computer for written work, calendars, planners, checklists, and visual organizers.<sup>34</sup>

11. On June 21, 2022, DCPS convened an IEP Annual Review meeting for Student. Student was classified with MD (ED and OHI).<sup>35</sup> During the meeting, School A provided DCPS Student's MAP scores, third quarter report card and OT Annual Report for the 2021-22 school

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<sup>33</sup> *Id.* at 6-13 (174-81)

<sup>34</sup> P17:1-3 (155-57).

<sup>35</sup> P21:1 (189).

year by email.<sup>36</sup> The Consideration of Special Factors indicated that Student's behavior impeded his/her learning or that of other children and s/he could benefit from BSS. "[S/he] has a history of having overwhelming thoughts and feelings, anxiety, low frustration tolerance related to academics, is distractible, and displayed poor/low overall self-concept. S/he was diagnosed with ADHD and Anxiety Disorder. S/he was treated with medication to address the symptoms."<sup>37</sup> The Math Present Level of Performance ("PLOP") included information from the March 29, 2022 School A IEP including, but not limited to, Student's 206 MAP score from October 2021, the report of Student's off-task behavior, his/her struggles to work independently, and his/her ability to complete grade level work with moderate teacher support. The PLOP did not include School A's determination of Student's instructional level being two grades below grade level.—The baselines were: (1) Student exhibits anxiety when taking math tests and it is difficult for him/her to complete the test without exhibiting anxiety and/or frustration. On the WJ-IV, s/he scored in the Average range in Math Composite, Math Concepts and Applications, and Math Computation, and (2) s/he is not yet able to distinguish the differences between the properties of operations. The goals were: (1) after recognizing that an adverse emotion is interrupting a math task, Student will use a self-regulation strategy and continue working on the task within three minutes, (2) when provided with a set of 15 expressions, s/he will correctly identify the property of operations with 80% accuracy, (3) given data for several linear equations, Student will use patterns, functions, and appropriate mathematic operations to solve problems and identify similarities among the equations, (4) s/he will convert and connect information form three different formats (a table of values, a graph, and an equation) to model and calculate the corresponding linear equation.<sup>38</sup>

In Written Expression, the PLOP reported that Student is partially meeting standards for punctuation, using transition words and phrases, overall effectiveness, and organizing the conclusion and organizing textual evidence. The PLOP also included comments from the PLOP of the School A March 2022 IEP cited in paragraph 9 above. The baseline was: (1) Student writes multi-paragraph essays that respond to a variety of prompts demonstrating the use of all parts of the Writing Process. The goals were: (1) given a writing assignment, s/he will draft, proofread, edit, and revise for overall effectiveness, by incorporating appropriate organization, citing textual evidence, grammar, and punctuation to produce a final draft, and (2) given prompts and use of the Writing Process, s/he will convey original ideas derived from literary analysis using valid reasoning and sufficient evidence in support of the thesis.<sup>39</sup>

In Emotional, Social, and Behavioral Development, the PLOP reported that Student is described as "creative, outgoing, congenial, forthright, social, perceptive, and cooperative who desires to be academically successful. [Student] is generally responsible and is accountable for [his/her] behavior." The PLOP reported on a Strengths and Difficulties Questionnaire ("SDQ") for which rating scales were completed by Witness B, School A's Associate Head of the Upper School. ■■■ scores yielded Diagnostic Predictions of High Risk for Any Disorder and for Emotional Disorder (anxiety, depression), Medium Risk for Hyperactivity or Concentration Disorder, and Low Risk for Behavior Disorder. The PLOP also reported the scores from the BRIEF-2 on Examiner A's evaluation. The baseline was (1) scores and Diagnostic Predictions from the SDQ, and (2) the scores from the BASC-3, Conner's, and BRIEF-2 from Examiner A's

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<sup>36</sup> P20:1 (187). School A sent DCPS Student's fourth final report card on June 27, 2022. P23:1 (219).

<sup>37</sup> P21:2 (190).

<sup>38</sup> *Id.* at 4-5 (192-93).

<sup>39</sup> *Id.* at 7-8 (195-96).

evaluation. The goals were: (1) when presented with a class-based task, Student will demonstrate agency with regard to work habits by recalling and applying at least one familiar strategy to complete the task (positive self-talk. Chunking, goal-setting), and (2) given task directions, s/he will start the task and/or ask for clarification within one minute, and remain on-task until completion with no more than two verbal or visual cues from the teacher, and refrain from distractible behaviors, (3) s/he will increase her/his ability to manage, reframe and redirect anxiety-producing stressors during class discussions and completing academic tasks, and (4) s/he will increase interpersonal skills and positive social interactions.<sup>40</sup>

The IEP prescribed ten hours of specialized instruction per week inside general education, five hours outside general education, two hours per month of BSS outside general education, and one hour per week of consultation specialized instruction services. Other Classroom Aids and Services included: modified workload, step-by-step instructions, graphic organizers, use of manipulatives, increased environmental structure, external prompting, checklist, scaffolding, interim deadlines, advance notice of tests, extra time for processing information and formulating both oral and written responses.<sup>41</sup> The IEP team also prescribed the following Classroom Accommodations during assessments: clarification/repetition of directions, redirect student to test, preferential seating, location with minimal distractions, small group testing, extended time, and frequent breaks.<sup>42</sup>

12. On June 30, 2022, DCPS issued a Prior Written Notice (“PWN”) stating its willingness to implement the June 21, 2022 IEP. The PWN included the following regarding the IEP team’s deliberations: the March 29, 2022 School A IEP for Student was sent to DCPS on June 20, 2022, a holiday, and additional data was submitted by School A during the IEP meeting. Witness A, Petitioners’ educational consultant requested text-to-speech and word prediction software, but DCPS “is not in receipt of data indicating the student’s educational needs require these forms of assistive technology.” DCPS committed to update the Math and Written Language PLOs to incorporate the impact statements from the School A IEP. Witness A requested removal of the first Math goal, but DCPS responded that the data did not justify removal of the goal. Witness A requested that the IEP team adopt all of the Math goals from the School A IEP. DCPS agreed to adopt the second and third School A Math goals. DCPS agreed to Petitioners’ request to adopt the second Written Language goal from the School A IEP. “Parents, educational consultant, and parents’ attorney indicated their disagreement with the proposed hours and believe [Student] requires a full-time IEP and a separate day school... DCPS is not in receipt of data justifying a full-time placement.” DCPS agreed to adopt the transition plan from the School A IEP.<sup>43</sup> The PWN also reported that DCPS had requested Student’s updated academic data for the IEP meeting on May 5, 2022.<sup>44</sup> “Parents, educational consultant, and parents’ attorney indicated their disagreement with [Student’s] disability classification. They believe [Student] is a student with a specific learning disability. DCPS proposed an AED and Eligibility meeting to discuss the concerns. The team did not indicate agree[ment] to the proposal. Parents, educational consultant, and parents’ attorney indicated [Student] needs occupational therapy. DCPS is not in receipt of data that qualifies the student for this related service.”<sup>45</sup>

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<sup>40</sup> *Id.* at 9-14 (197-202).

<sup>41</sup> *Id.* at 15 (203).

<sup>42</sup> *Id.* at 17 (205).

<sup>43</sup> P21:25 (213).

<sup>44</sup> *Id.* 25-26 (213-14).

<sup>45</sup> *Id.* at 27 (215).

13. Student earned the following final grades for the 2021-22 school year: English – B, Ancient World History – B, Algebra – B+, Physical Science – B, Spanish – A-, Freshmen Seminar – Pass, Digital Photography – A, and Jewelry Making – A-.<sup>46</sup>

14. On July 7, 2022, Petitioner’s counsel forwarded Petitioners’ objections to the June 21<sup>st</sup> IEP,<sup>47</sup> prepared by Witness A, Petitioners’ educational consultant.<sup>48</sup> Witness A’s primary objection was that the IEP did not adopt the provisions of School A’s March 29, 2022 IEP: “I have reviewed the draft IEP prepared by DCPS and compared it to the 3/29/22 prepared by [School A]...”<sup>49</sup> Petitioners’ objections to the DCPS IEP included, but were not limited to, the following: the IEP did not include grade level performance in Math, Reading, and Writing, the IEP classifies Student ED instead of SLD, Student’s fourth quarter grades were not included,<sup>50</sup> the Math PLOP included references to Student’s “challenges with anxiety, frustration, and hyperactivity rather than the Math needs described in the [School A] IEP: Understanding number concepts, use of tools and measurements, problem solving, analysis, sequencing, and checking work for miscalculations and errors,” particularly the first Math goal “as it is a social-emotional goal, not a Math goal,” the remaining Math goals did not match the School A Math goals, the Written Language PLOP was based on “outdated information,” Reading was not included as an Area of Concern in the IEP, there were no executive functioning or OT goals in the IEP, the IEP did not include all of the accommodations provided in School A’s IEP, and the amount of specialized instruction was insufficient in that Student “needs a full time special education placement.”<sup>51</sup>

15. On July 18, 2022, Petitioners’ counsel notified DCPS that Petitioners would maintain Student’s placement at School A for the 2022-23 school year, because “we do not believe that an appropriate special education program has been identified or offered by DCPS for the upcoming year...” and requested that DCPS fund the placement.<sup>52</sup> On July 25, 2022, DCPS replied, denied the request for funding, and asserted that it had made a FAPE available at School B.

16. On September 13, 2022, DCPS convened an Analysis of Existing Data (“AED”) meeting to review OT and Reading concerns. Examiner A stated that as for Reading, DCPS’ position had not changed as there was no new data that had changed. She noted that Student’s MAP scores ranged from low average to high average. Witness A, Petitioners’ educational consultant argued that School A “reports that [s/he] is below grade level...” Examiner A/Witness G reiterated her opinion that Student did not qualify for an SLD classification in Reading based on the current data available. Therapist B, DCPS’ occupational therapist, opined that without a more recent evaluation than from 2016, a determination of eligibility for OT services could not be made. Petitioners’ representatives requested expedition of the triennial evaluation process. Witness H, DCPS’ Program Specialist, committed to issue consent forms for OT and comprehensive psychological evaluations and to schedule another AED meeting “if needed.”<sup>53</sup>

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<sup>46</sup> P22:1-2 (217-18).

<sup>47</sup> P25:1 (227).

<sup>48</sup> P24:1 (221).

<sup>49</sup> *Id.*

<sup>50</sup> As noted in n.36, *supra*, School A did not provide DCPS Student’s fourth quarter grades until six days after the IEP meeting.

<sup>51</sup> P24:1-4 (221-24).

<sup>52</sup> P26:1 (229).

<sup>53</sup> P28:1-2 (235-36).

17. On October 26, 2022, DCPS issued a PWN indicating its intention to initiate Student's triennial eligibility process and to conduct a comprehension OT evaluation, a comprehensive psychological evaluation, behavioral observations, and SDQs. A form for Petitioners to provide consent for evaluations was attached to the PWN.<sup>54</sup> Attorney A, Petitioner's counsel, responded immediately, and inquired about setting up a meeting to discuss "an evaluation plan."<sup>55</sup> On November 21, 2022, DCPS proposed dates in January 2023 for an AED meeting.<sup>56</sup> On December 2, 2022, Petitioners agreed to meet on January 20, 2023.<sup>57</sup> On January 19, 2023, DCPS postponed the AED meeting due to the unavailability of one of the evaluators.<sup>58</sup> On January 25, 2023, DCPS offered to meet on February 27<sup>th</sup> or March 3<sup>rd</sup>.<sup>59</sup> Petitioners' team was unavailable on either date and asked DCPS to propose new dates.<sup>60</sup> On January 30, 2023, the parties agreed to meet on March 13, 2023.<sup>61</sup>

18. The AED meeting was conducted on March 13, 2023. Witness A, Petitioners' educational consultant reiterated Student's needs in reading, math, writing, and executive functioning. He stated that Student was receiving therapy outside of school, but s/he was not receiving and did not need BSS on his/her IEP. Witness C, a DCPS social worker, stated that Student qualified for consultation services due to the anxiety symptoms s/he exhibited in the classroom. Therapist C, a School A occupational therapist, agreed with Witness E, a DCPS occupational therapist, that "there are no OT foundations involved" in the OT services Student receives at School A. The services were assigned to occupational therapists in the School A IEP because they were "more than what a teacher can do with other student in the room." Witness E stated that she "does not see why skilled OT services are required," but agreed to have an OT assessment conducted. When asked what specific areas of reading Petitioners wanted to be tested, Petitioner/mother identified comprehension, synthesizing information, and reading for meaning. Petitioner requested the GORT and the Test of Written Language ("TOWL"). Examiner A/Witness G confirmed that she would also assess Student's executive functioning.<sup>62</sup>

19. On or about March 29, 2023, Petitioner/mother signed a Consent for Initial Evaluation/Reevaluation.<sup>63</sup>

20. Witness A opined that there is "no question" that Student has a learning disability in writing. He also opined that s/he has a learning disability in reading. Witness A further opined that Student is not ready to be mainstreamed due to his/her deficits in executive functioning and reading fluency, and needs to remain in a small class environment. He opined that ED is not an appropriate classification for Student because his/her anxiety does not interfere with his/her learning; s/he presents no behavioral issues in the classroom. Witness A also opined that the DCPS IEP should have included more of the classroom accommodations recommended by Examiner A and in the School A IEP. He testified that the self-contained classes of up to fifteen students at

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<sup>54</sup> P33:1-2 (267-68).

<sup>55</sup> P34:1 (271).

<sup>56</sup> P39:2-3 (336-37).

<sup>57</sup> *Id.* at 2 (336).

<sup>58</sup> *Id.* at 1 (335).

<sup>59</sup> P45:5 (387)

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 4 (386).

<sup>62</sup> R28:1-4 (259-63).

<sup>63</sup> P48:1 (421); R29:1 (264).

School B would be too large for Student, and limiting Student's small class environment to five hours per week is inadequate to address his/her inattention and distractibility.

21. School A has a current Certificate of Approval from the Office of the State Superintendent of Education ("COA"). Student's teachers at School A in Biology, English, Modern World History, Geometry, Spanish, and Photography are not certified to provide special education services in the District. Only Student's teachers in Music and Conditioning are certified in the District in special education. Student made progress on all of her/his goals during the 2022-23 school year.<sup>64</sup>

22. Petitioner/mother testified that Witness A's requests at the June 21, 2022 IEP meeting and his testimony is consistent with Petitioners' desires as to Student's programming. Petitioners' team wanted Student to receive full-time specialized instruction services, reading added to the IEP as an area of concern, small class sizes, and for SLD to replace ED as a disability classification. Petitioner/mother conceded that Student's anxiety affects his/her schoolwork when more is expected of him/her and when demands are placed on him/her. Petitioner/mother also testified that Student receives private psychological therapy. Petitioners did not sign the consent form sent to them in October 2022 because they wanted an AED meeting. "We didn't know what we were signing for." Petitioners are not concerned that Student's teachers at School A are not certified in special education; they are more concerned with Student being in a small class environment.

23. Witness C, a DCPS social worker who participated in the June 2022 IEP meeting, opined that ED is an appropriate classification for Student because it is consistent with the SDQ in the record, and the parent interview revealed concerns that anxiety was impairing Student's learning. The goals in the Emotional, Social, and Behavioral Development section of the IEP were designed to address Student's executive functioning deficits. The first goal addresses initiating tasks, and the second addresses remaining on-task. There was no disagreement with these goals at the June 2022 IEP meeting. Witness C opined that the first Math goal, addressing Student's anxiety, was appropriate because of Student's frustration doing math assignments.<sup>65</sup>

24. Witness D, DCPS' Monitoring Specialist, opined that School A is not an appropriate placement for Student because her/his teachers are not certified to provide special education services in the District. School A's COA does not include authority to provide services to ED students.<sup>66</sup>

25. Witness E, a DCPS occupational therapist, opined that there was no data in the record to support providing Student OT services. She opined that the services prescribed in the OT section of the March 2022 School A IEP are not OT services and can be provided by other staff members; it is not appropriate to prescribe OT services merely to reduce teachers' workloads. Occupational therapists provide sensory, motor perception, and motor planning services, none of which are prescribed on the School A IEP. She further opined that the baselines in the OT section of the School A IEP are not based on data from a recent assessment.<sup>67</sup>

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<sup>64</sup> Testimony of Witness B

<sup>65</sup> Testimony of Witness C.

<sup>66</sup> Testimony of Witness D.

<sup>67</sup> Testimony of Witness E.

26. Witness F, the Director of Specialized Instruction at School B, testified that School B has inclusion classrooms (special educators “push-in” to general education classes to assist special education students), resource classrooms (self-contained special education classes), and special programs: Communication Education Support (“CES”), Intellectual Learning Support (“ILS”), and Specific Learning Support (“SLS”). She opined that School B could provide the services prescribed on DCPS’ June 2022 IEP. There are 15-20 students in an inclusion classroom and 10-12 in a self-contained classroom. General education class sizes range from 12-15 in Asian Studies, to 15-16 in electives, to 25-30 in physical education, to 30-32 in World Languages.<sup>68</sup>

27. Examiner A/Witness G opined that the data available at the June 2022 IEP meeting, including her own still-current 2020 evaluation of Student, supported an ED classification, including the teacher and Student rating scales. Witness G opined that it was “clear” that Student exhibited anxiety that affected his/her ability to access the curriculum along with OHI symptoms. She further opined that there was no data at the June 2022 IEP meeting to support adding reading as an area of concern. DCPS offered to conduct a comprehensive psychological evaluation, an OT evaluation, a behavioral observation, and an SDQ at the meeting on September 13, 2022. Witness G opined that an additional AED meeting was not needed to proceed with those evaluations.<sup>69</sup>

28. Witness H, a DCPS Program Specialist who also attended the June 2022 IEP meeting, testified that the IEP team did not have time to review updated data from School A because it was sent the day before the meeting, a holiday, and additional data was sent during the meeting, despite the fact that the School A IEP was developed in March 2022. The IEP team also did not have access to Students third and fourth quarter grades. She opined that the first math goal was appropriate because of Student’s anxiety completing math tasks. She agreed that there was no data to support OT as an area of concern; School A’s June 2022 OT Progress Report was one of the documents sent by School A after the IEP meeting had begun. DCPS did not finalize the IEP until it received Students third and fourth quarter grades several days after the IEP meeting. Witness H opined that the level of services prescribed in DCPS’ IEP was appropriate because Student’s grades and MAP data reveal that s/he is “doing very well” academically. Witness H opined that School A is not an appropriate placement for Student because the record does not support that s/he requires the level of environmental restriction offered at School A.<sup>70</sup>

## CONCLUSIONS OF LAW

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

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

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<sup>68</sup> Testimony of Witness F.

<sup>69</sup> Testimony of Witness G.

<sup>70</sup> Testimony of Witness H.

appropriateness of the existing or proposed program or placement; provided, that the party requesting the due process hearing shall retain the burden of production and shall establish a prima facie case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence.<sup>71</sup>

Two of the issues in this case involve the appropriateness of Student's IEP and placement. As to these issues, Respondent bears the burden of persuasion. Petitioners bear the burden of persuasion as to all other issues in this matter.<sup>72</sup>

**Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and placement for the 2022-23 school year on June 21, 2022. Specifically, Petitioners assert that DCPS should have incorporated more provisions of the IEP developed by [REDACTED] on March 29, 2022: (1) there is no mention of Student's grade level performance in the Present Levels of Academic Performance ("PLOPs") in Math, Reading, and Writing, (2) Student is misclassified ED rather than Specific Learning Disability ("SLD") and Other Health Impaired ("OHI"), (3) the school year 2021-22 4<sup>th</sup> quarter grades at [REDACTED] were not referenced in the PLOPs, (4) the Math PLOP should delete challenges with anxiety, frustration, and hyperactivity and include the following weaknesses: "Understanding number concepts, use of tools and measurements, problem solving, analysis, sequencing, and checking work for miscalculations and errors," (5) the first math goal is a social-emotional goal, not a math goal, (6) the second, third, and fourth math goals do not match any of the [REDACTED] goals, and two of the [REDACTED] math goals are not included in the math goals, (7) the impact statement for written expression is based on outdated information, (8) reading is not identified as an area of concern, (9) the first written expression goal is inappropriate, (10) the second [REDACTED] written language goal should have been adopted, (11) there are no executive functioning or occupational therapy goals; the two [REDACTED] goals in these areas should have been adopted, (12) all of the Classroom Aids and Services in the [REDACTED] IEP should have been adopted, and (13) the five additional hours of specialized instruction outside general education is insufficient to meet Student's unique strengths and challenges. S/he needs a full-time special education placement.**

The Supreme Court's first opportunity to interpret the predecessor to IDEA, The Education of the Handicapped Act ("EHA"), came in *Board of Education of the Hendrick Hudson Central School District v. Rowley*.<sup>73</sup> The Court noted that the EHA did not require that states "maximize the potential of handicapped children 'commensurate with the opportunity provided to other children.'"<sup>74</sup> Rather, the Court ruled that "Implicit in the congressional purpose of providing access to a 'free appropriate public education' is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child..."<sup>75</sup> Insofar

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<sup>71</sup> D.C. Code Sect. 38-2571.03(6)(A)(i).

<sup>72</sup> *Schaffer v. Weast*, 546 U.S. 49 (2005).

<sup>73</sup> 458 U.S. 176, 187 (1982).

<sup>74</sup> *Id.* at 189-90, 200

<sup>75</sup> *Id.* at 200.

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.”<sup>76</sup>

More recently, the Court considered the case of an autistic child under IDEA who, unlike the student in *Rowley* was not in a general education setting.<sup>77</sup> The Tenth Circuit had denied relief, interpreting *Rowley* “to mean that a child’s IEP is adequate as long as it is calculated to confer an ‘educational benefit [that is] merely... more than *de minimis*.”<sup>78</sup> The Court rejected the Tenth Circuit’s interpretation of the state’s obligation under IDEA. Even if it is not reasonable to expect a child to achieve grade level performance,

... [h]is educational program must be appropriately ambitious in light of [his/her] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives... It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom, but is satisfied with barely more than *de minimis* progress for those who cannot.<sup>79</sup>

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

When all is said and done, a student offered an educational program providing ‘merely more than *de minimis*’ progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to ‘sitting idly... awaiting the time when they were old enough to drop out...’ The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”<sup>80</sup>

### ***Hearing Officer Vaden’s HOD***

Hearing Officer (“H.O.”) Vaden issued an HOD on April 30, 2021 addressing the May 14, 2020 IEP that DCPS developed for the 2020-21 school year. H.O. Vaden significantly relied on the opinions of two of the expert witnesses that appeared before me, Witness A, Petitioners’ educational consultant and Examiner A/Witness G, who issued the February 25, 2020 Psychological Evaluation. H.O. Vaden found most persuasive Witness A’s testimony that Student “needs a small class room setting to focus and make progress.” This testimony was consistent with recommendations Examiner A/Witness G offered in her evaluation. There, Examiner A concluded

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<sup>76</sup> *Id.* at 203-04.

<sup>77</sup> *Endrew F. ex rel. Joseph F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (2017).

<sup>78</sup> *Id.* at 997.

<sup>79</sup> *Id.* at 1000-01 (citations omitted).

<sup>80</sup> 137 S.Ct. at 1000-01.

that Student qualified for services as a child with multiple disabilities, ED and OHI. The ED classification was derived from “significant elevations on Anxiety and Depression subscales” on the BASC-3, resulting in Student’s “anxious thoughts can overwhelm and frustrate [him/her].” The OHI classification was based on scores from the Conners-3 and the BRIEF-2. Her findings led to a critical recommendation: that it is important to limit distractions for Student because of his/her attentional difficulties, and that “open classroom settings often have too many distractions and too many opportunities for impulsive behavior.” The confluence of Examiner A’s recommendation and Witness A’s opinion testimony that was consistent with that recommendation, led H.O. Vaden to conclude that a full-time general education classroom was not an appropriate setting for Student. However, he also found that the evidence was not persuasive to establish Student’s need for full-time special education services,<sup>81</sup> and he declined to make a finding as to Student’s appropriate setting.<sup>82</sup> As H.O. Vaden’s decision was not appealed, I have no reason not to accord his findings and conclusions considerable deference. While H.O. Vaden found that DCPS’ failure to add reading as an area of concern on the IEP was appropriate, “in light of the parents’ concerns, he directed the next IEP team to “review whether Reading is an area of need for Student.”<sup>83</sup>

### ***The June 21, 2022 IEP***

The IEP at issue is the first IEP in the record subsequent to H.O. Vaden’s decision. While the previous IEP had all of student’s specialized instruction provided in general education, the June 2022 IEP prescribed ten hours per week of specialized instruction inside general education, five hours per week outside general education, and two hours per week of BSS outside general education. Thus, in the new IEP, all but five hours per week of Student’s instruction would be inside the general education environment. The new IEP, like the previous IEP, did not include reading as an area of concern.

#### **(1) There is no mention of Student’s grade level performance in the Present Levels of Academic Performance (“PLOPs”) in Math, Reading, and Writing.**

The Math PLOP included information from the School A IEP including Student’s 206 MAP score from October 2021, the report of Student’s off-task behavior, his/her struggles to work independently, and his/her ability to complete grade level work with moderate teacher support; it did not include School A’s determination of Student’s instructional level being two grades below grade level. Similarly, the Written Expression PLOP included the statement from the School A IEP that Student completes grade/course level work with moderate teacher support, but not the School A determination of Student’s instructional level being two grades below grade level. The DCPS IEP did not include Reading as an area of concern; consequently, there was no Reading PLOP.

The June 30, 2022 PWN indicated DCPS’ willingness to update the Math and Written Language PLOPs to incorporate the impact statements from the School A IEP, which were, in fact reflected in the final IEP. Thereafter, on July 7, 2022, Petitioners submitted a list of their continued objections to the IEP including the lack of grade level performance in Math, Reading, and Writing.

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<sup>81</sup> P6:20 (106).

<sup>82</sup> *Id.* at 21 (107).

<sup>83</sup> *Id.* at 23 (109).

There was no testimony offered by Petitioners as to the definition or significance of School A's "instructional level." The IEP did include teachers' reports that Student was performing at grade level with moderate teacher support in Math and Written Language. As for Reading, Examiner A found her/him to be in the average range, and the IEP team was aware of her/his April 216 MAP score that was but five points below the Norm Grade Level Mean of 221. DCPS was also provided Student's final report card for the 2021-22 school year six days after the IEP meeting, but before the PWN was issued, reflecting grades of B in English and B+ in Algebra. I conclude that the DCPS IEP was not deficient or inappropriate because it failed to include Student's School A instructional levels. There was ample data from the School A IEP, other School A records, MAP scores, and Examiner A's evaluation to develop appropriate IEP goals for Student.

**(2) Student is misclassified ED rather than Specific Learning Disability ("SLD") and Other Health Impaired ("OHI").**

Petitioners' strongly-held and consistently reiterated position on Student's classification is not supported by any objective evidence. There is no evaluation in the record that provides an SLD diagnosis of Student in any subject-matter area. The only current comprehensive psychological evaluation at the time of the IEP meeting was that of Examiner A in 2020. Examiner A was aware that Student was initially found eligible in Fairfax County in 2014 with classifications of OHI and SLD. However, no prior evaluation was referenced by Examiner A or offered by Petitioners. Examiner A's testing found Student to be in the average range cognitively, as well as in Reading Composite and Math Composite, and in the Low range in Written Language Composite. Examiner A did not find that Student qualified with an SLD in reading because s/he demonstrated the ability to make progress in reading, was performing at grade level in reading, and "[S/he] is not performing significantly below [his/her] cognitive functioning" in any area.<sup>84</sup> On the other hand, Examiner A found that ED was an appropriate classification for Student based on testing, a prior diagnosis of Anxiety, and interviews with Petitioners, Student, and teachers. "[Student] endorsed significant feelings of worry and anxiety as well as negative feelings or self-esteem. [Her/his] teachers reported that [Student] often expresses that [REDACTED] cannot do something and becomes easily frustrated and often engages in negative self-talk and anxious thoughts."<sup>85</sup> If Petitioners disagreed with this evaluation, they had the option of rejecting its conclusions and requesting DCPS to authorize an independent evaluation.<sup>86</sup> With the benefit of their current legal representation,<sup>87</sup> they elected not to challenge Examiner A's evaluation.

Witness A opined that there is "no question" that Student has learning disabilities in writing and reading, though he conceded that Student is "decoding and reading fluently." Witness A testified that has never conducted an assessment of Student. Witness A opined that ED is not an appropriate classification for Student because his/her anxiety does not interfere with his/her learning. However, Witness B, the Associate Head of School A's Upper School, testified that he is familiar with Student's strengths and weaknesses and that s/he tends to rush through math tasks. This trait is attributable to Student's anxiety, consistent with Examiner A's finding in her February 2020 evaluation. Petitioner/mother also contradicted Witness A's opinion when she conceded that Student's anxiety affects his/her schoolwork when more is expected of him/her and when demands

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<sup>84</sup> P2:29 (51).

<sup>85</sup> *Id.* at 30-31 (52-53)..

<sup>86</sup> 34 C.F.R. §300.502(b).

<sup>87</sup> R6:1 (160).

are placed on him/her. H.O. Vaden noted that despite the lack of an SLD classification, the May 14, 2021 IEP included goals in Written Language, and concluded that “DCPS met its burden of persuasion that the proposed IEP adequately addressed Student’s writing challenges.”<sup>88</sup> Finally, I note that during the cross-examination of Examiner A/Witness G, Petitioners’ counsel did not challenge her classification recommendations. Therefore, I find no persuasive support in the record for an SLD classification of Student or to refute the appropriateness of the ED classification.

**(3) The school year 2021-22 4<sup>th</sup> quarter grades at [REDACTED] were not referenced in the PLOPs.**

As noted above, School A did not provide DCPS Student’s year-end grades until six days after the IEP meeting. Nevertheless, the IEP team had adequate data from the School A IEP that the IEP was unable to review prior to the meeting due to its late delivery. Nevertheless, there was ample data in the School A IEP that the IEP team incorporated after the meeting from which to develop appropriate IEP goals for Student.

**(4) The Math PLOP should delete challenges with anxiety, frustration, and hyperactivity and include the following weaknesses: “Understanding number concepts, use of tools and measurements, problem solving, analysis, sequencing, and checking work for miscalculations and errors.”**

**(5) The first math goal is a social-emotional goal, not a math goal.**

As discussed above, Petitioners’ opposition to references to Student’s anxiety is inconsistent with their responses during the development of Examiner A’s evaluation as well as those of Students’ teachers. The first math goal encourages Student use a self-regulation strategy when s/he begins to feel adverse emotions during math tasks. This appears to be a reasonable effort to address the frustration noted by Petitioner/mother when demands are made of Student.

**(6) The second, third, and fourth math goals do not match any of the [REDACTED] goals, and two of the [REDACTED] math goals are not included in the math goals.**

At the IEP meeting, and confirmed through Witness A’s testimony and Petitioners’ Exhibit P24, Petitioners’ team requested that DCPS adopt, verbatim, provisions of the March 2022 IEP that School A developed for Student. DCPS adopted some provisions, but not all. The School A IEP was developed, presumably, with considerable influence by Student’s teachers, although the comments and opinions provided in the IEP were unattributed. Witness B, the Associate Head of School B’s Upper School, conceded that none of Student’s teachers in academic courses were certified to provide special education services in the District. Only Student’s teachers in Music and Conditioning are certified in the District in special education. Student’s teachers in Biology, English, Modern World History, Math, Spanish, and Photography were not certified.<sup>89</sup> I do not question their competence in the subject matters in which they are licensed to teach in the District. However, this proceeding is about the appropriateness of special education services that were

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<sup>88</sup> P6:23 (109).

<sup>89</sup> I define academic courses as those that necessarily require the core skills of reading, writing, and mathematics. Thus, academic courses would include all sciences, social studies, history, languages, etc. They would not include courses such as art, music, physical education, photography, etc.

proposed by DCPS, not the competence of Student's teachers in their academic areas of expertise. In her testimony, Petitioner/mother conceded that special education certification was of little importance to her in determining that School A was a preferable placement for Student. Petitioner/mother placed much more importance on the small class sizes at School A to maximize individualized instruction in an environment with minimal distractions. While Student's School A academic teachers may be quite competent in their respective areas of expertise, their opinions as to special education services are entitled to no deference in this jurisdiction.

**(7) The impact statement for written expression is based on outdated information.**

The Written Expression PLOP included language from the School A IEP's impact statement including that s/he completes grade level work with moderate teacher support. More important, in Exhibit 24, Witness A's conceded that the first DCPS Written Language goal was appropriate, but complained that the second School A goal was not. In fact, the second School A Written Language goal: "Given a variety of writing prompts and use of the Writing Process... [s/he] will convey original ideas derived from literary analysis using valid reasoning and relevant evidence in support of a thesis and made relevant to [his/her] reading audience..."<sup>90</sup> *is identical to the and the second Written Expression goal in the DCPS IEP*: "Given a variety of writing prompts and use of the Writing Process... [s/he] will convey original ideas derived from literary analysis using valid reasoning and relevant and sufficient evidence in support of a thesis and made relevant to [her/his] reading audience..."<sup>91</sup> Thus, both Written Expression goals in the DCPS IEP were acceptable to Petitioners.

**(8) Reading is not identified as an area of concern.**

As discussed above, Examiner A's testing revealed Student's reading scores to be in the average range, his/her April 2022 MAP score was within five points of the grade level mean, and his/her 2021-22 year-end grade in Reading was B. Petitioners offered no evidence that Student's reading performance had diminished to any degree in the year since H.O. Vaden found that DCPS had acted appropriately when it failed to include reading as an area of concern.

**(9) The first written expression goal is inappropriate.**

As discussed above, this assertion is inconsistent with Petitioners' Exhibit 24 in which Petitioners conceded on July 7, 2022 that this goal was appropriate.

**(10) The second [REDACTED] written language goal should have been adopted.**

As discussed above, the second School A goal and the second DCPS goal are identical.

**(11) There are no executive functioning or occupational therapy goals; the two [REDACTED] goals in these areas should have been adopted,**

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<sup>90</sup> P19:8-9 (176-77).

<sup>91</sup> P21:8 (196).

Witness B, School A's Associate Head of the Upper School, testified that Student's executive functioning needs are addressed in the OT section of the [REDACTED] IEP. However, the executive functioning goals provided in that section are as follows: "[Student] will demonstrate adequate self-management strategies to participate in academic and pre-vocational tasks," and "[Student] will demonstrate adequate functional independence skills for academic and pre-vocational tasks." First, these goals are vague and not measurable. Second, to the extent executive functioning goals are required in an IEP, they would be more appropriately provided in the academic areas in which Student demonstrates inattention, not in OT. Third, as Examiner A recommended, and Hearing Officer Vaden found, Student's inattention and distractibility is addressed by placement in a small class environment where distractions are minimized and individualized support is maximized.

Finally, Petitioners offered no evidence that Student requires OT services despite their inclusion on the School A IEP. Therapist C, a School A occupational therapist, agreed with Witness E, a DCPS occupational therapist, that "there are no OT foundations involved" in the OT services Student receives at School A. In Student's June 1, 2022 Occupational Therapy Annual Report, the only finding related to normal OT services revealed that Student demonstrated appropriate functional keyboarding skills.

**(12) All of the Classroom Aids and Services in the [REDACTED] IEP should have been adopted.**

As discussed above, in light of the lack of certification of Student's teachers, the assertion that DCPS should have simply adopted provisions from that IEP is unfounded. None of the comments about Student in the IEP were attributed to particular instructors. One might assume that the comments came from Student's teachers in the respective courses, but no individual instructors were identified for any of the areas of concerns addressed in the School A IEP. In both the Written Expression and Math Current Levels of Functioning, the author attributed Student's ability to be focused to the "small class setting." This observation tends to support continued placement at School A if Student can be expected to focus only in a small class setting that School A provides. It also supports Petitioners' position in this proceeding. Thus, it would be important to know who authored the comments about Student and made recommendations in the School A IEP and the bases for the comments. Student's uncertified teachers are entitled to no deference in this jurisdiction on issues related to special education. The DCPS IEP included classroom aids and services that were recommended in Examiner A's evaluation including step-by-step instructions, graphic organizers, use of manipulatives, increased environmental structure, checklists, and extra time.

**(13) The five additional hours of specialized instruction outside general education is insufficient to meet Student's unique strengths and challenges. S/he needs a full-time special education placement.**

In his April 30, 2021 HOD, H.O. Vaden found DCPS' May 14, 2020 IEP inappropriate because it prescribed a setting in which Petitioner would be in a general education classroom throughout each day. H.O. Vaden deemed this setting inappropriate, in large part, because Examiner A "cautioned that open classroom settings often have too many distractions and too many opportunities for impulsive behaviors," and also recommended increased environmental

structure and working in small groups with good peer models.<sup>92</sup> While Examiner A supported the IEP in her testimony before H.O. Vaden, found her testimony inconsistent with her recommendations in her evaluation, “particularly the concern about open classroom settings with too many distractions.”<sup>93</sup> While H.O. Vaden did not find that evidence supported a full-time special education placement, he found a full-time placement in the general educational setting inappropriate.<sup>94</sup>

Fourteen months later, the IEP team developed an IEP for Student that would have him/her in a general education setting for all but five hours per week. There were no new evaluations, and Student’s classroom performance, based on grades and progress reports, indicated sustained progress. Petitioners can justifiably argue that Student’s academic progress was made possible by ■ placement in small class environments. DCPS offered no persuasive expert testimony as to how its plan would address the concerns raised by H.O. Vaden, which concerns were based on the findings and recommendations of DCPS’ school psychologist.

As in H.O. Vaden’s proceeding, Petitioner offered no persuasive evidence of Student’s need to be separated from his/her non-disabled peers in non-core courses such as Art, Music, Photography, Physical Education, etc. DCPS’ plan could have proposed providing all of Student’s academic courses to be conducted in a resource classroom. Petitioners insist that Student requires full-time special education services. However, Petitioners concede, and the record supports, that Student does not present a behavior problem in class. Thus, his/her need for a small class environment is limited to those classes in which his/her inattention and level of executive functioning would have a demonstrable impact on his/her ability to access the curriculum.

Therefore, I conclude that DCPS has failed to meet its burden of proving that the offer of five hours per week of specialized instruction outside general education was an appropriate level of services or constituted Student’s least restrictive environment.

**Whether DCPS denied Student a FAPE by failing to convene a timely AED meeting to discuss evaluations. Specifically, Petitioners assert that DCPS should have convened an AED meeting after the June 21, 2022 IEP meeting, resulting in evaluations being completed within 120 days thereafter.**

In the June 30, 2022 PWN, DCPS acknowledged Petitioners’ disagreement with Student’s classification and desire for an OT evaluation at the June 21, 2022 IEP meeting, and that it had agreed to convene an AED and eligibility meeting to address those concerns.<sup>95</sup> DCPS convened an AED meeting on September 13, 2022. Examiner A, a DCPS school psychologist, and Therapist B, a DCPS occupational therapist, participated in the meeting. DCPS agreed to conduct a comprehensive psychological evaluation and an OT evaluation, and to schedule another AED meeting “if needed.” DCPS issued a PWN on October 26, 2022 indicating its intention to initiate Student’s triennial eligibility process and to conduct a comprehensive OT evaluation, a comprehensive psychological evaluation, behavioral observations, and SDQs. DCPS attached a

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<sup>92</sup> P5:19 (105).

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 21 (107).

<sup>95</sup> P21:27 (215).

form for Petitioners to give consent for the evaluations.

Petitioner/mother testified that they did not sign the consent forms in October 2022 because they had questions about the evaluations that would be conducted. Thus, they requested another AED meeting. That meeting did not take place until March 13, 2023. At that meeting, DCPS again agreed to conduct OT and psychological evaluations. Examiner A agreed to Petitioners' request for testing for comprehension, synthesizing information, and reading for meaning, as well as the administration of the GORT and TOWL.

Petitioners do not contend that Student's triennial reevaluation<sup>96</sup> was due or even imminent when they requested evaluations at the IEP meeting. Neither IDEA nor its regulations require LEAs to convene AED meetings; in fact, such meetings are not mentioned in the regulations. The September 13, 2022 meeting was scheduled within the first three weeks of the following school year. Petitioners' counsel did not address the "timeliness" of this meeting in the *Amended Complaint*, their opening statement, their closing argument, or in Parents' Closing Authorities. Thus, the alleged untimeliness of the meeting remains unexplained.

Petitioners contend that the evaluations they requested were delayed due to DCPS' recalcitrance. If Petitioners genuinely wanted to facilitate the two evaluations, they had the opportunity to do so at the September 13, 2022 meeting. DCPS agreed at that meeting to conduct the OT and psychological evaluations that Petitioners wanted. DCPS provided an OT and Examiner A at that meeting. Petitioner/mother is a practicing school psychologist and knew on September 13<sup>th</sup> exactly what areas she wanted to be tested. DCPS offered to reschedule another AED meeting "if needed," but none was needed. Any questions or requests Petitioners had concerning the evaluations should have been raised at that meeting.

DCPS can be faulted for not requesting parental consent to evaluate until October 26, 2022. Nevertheless, Petitioners missed yet another opportunity to accelerate the process if that was their desire. Once Petitioners received the consent form, they could have hand-written additional requirements onto the consent form or attached an addendum to the consent form indicating the specific areas of testing or specific tests they wanted to be administered, and the documents could have been attached to an email from Petitioners' counsel indicating that consent was conditioned on DCPS' agreement to Petitioners' requests. DCPS could then have elected to accept or reject those terms. Instead, Petitioners' counsel requested another AED meeting, and the parties played scheduling-tag for several months. When the meeting was finally held, DCPS readily agreed to the tests Petitioners wanted.

I conclude that Petitioners have failed to make a *prima facie* case that DCPS violated IDEA in any way involving Petitioners' requests for OT and psychological evaluations.

### **Whether School A is an appropriate placement.**

IDEA provides that if parents "enroll the child in a private ... school without the consent of [the school district], a court or a hearing officer may require the [school district] to reimburse [them] for the cost of that enrollment...."<sup>97</sup> The statute requires reimbursement, however, only

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<sup>96</sup> 34 C.F.R. §300.303.

<sup>97</sup> 20 U.S.C. § 1412(10)(C)(ii).

where the school district has failed to “ma[k]e a free appropriate public education available to the child.”<sup>98</sup> Reimbursement, moreover, may be “reduced or denied” if the parents fail to notify school officials of their intent to withdraw the child, deny them a chance to evaluate the student, or otherwise act “unreasonabl[y],”<sup>99</sup> The Supreme Court reiterated in *Florence County School District Four v. Carter*<sup>100</sup> that IDEA empowers courts to order school officials to reimburse parents for their expenditures on private special education if the private placement was “proper under the Act.”<sup>101</sup> If the private school selected by the parent is reasonably calculated to allow the child to receive educational benefit, the parent should be entitled to reimbursement regardless of whether the school follows IEPs or is certified.<sup>102</sup>

Here, Student’s academic progress at School is not disputed by DCPS. In fact, they argue that her/his academic achievement is such that s/he requires a significantly less restrictive academic environment than that offered by School A. DCPS’ contends that School A is inappropriate because (1) it does not provide Student the specialized instruction required on her/his IEP, because none of her/his academic courses are taught by teachers certified to provide specialized instruction, and (2) it offer a more restrictive environment than Student requires. This argument fails for two reasons. First, under *Burlington* and *Carter*, prevailing parents need only show that the private school they selected is reasonably calculated to deliver educational benefit; specialized instruction is not a requirement. Second, School A holds a COA in the District, although its authority does not include providing services to ED students. If the state agency responsible for setting educational policy in the District has determined that School A is approved to serve special education students, to rule otherwise would be in conflict with OSSE’s determination. While I have the authority to determine who can give expert testimony on special education in a proceeding before me, it is a completely different matter to suggest that I have the authority to override OSSE’s COA.

I conclude that Petitioners have met their burden of proving that School A is a proper placement for Student.

## RELIEF

For relief, Petitioners request an order requiring DCPS to place Student at [REDACTED] for the 2022-23 school year.

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<sup>98</sup> *Id.*

<sup>99</sup> 20 U.S.C. § 1412(10)(C)(iii)(III).

<sup>100</sup> 510 U.S. 7 (1993)

<sup>101</sup> *Id.* at 12, quoting, *School Committee of the Town of Burlington v. Department of Education of Massachusetts*, 471 U.S. 359, 369 (1985).

<sup>102</sup> *Carter v. Florence County School District Four*, 950 F.2d 156, 163 (4<sup>th</sup> Cir. 1984).

## ORDER

Upon consideration of the *Amended Complaint*, DCPS' *Response to Petitioners' DPC*, the exhibits from the parties' disclosures that were admitted into evidence, the testimony presented during the hearing, the closing arguments of counsel for the parties, *Parents' Closing Authorities*, and *District of Columbia Public Schools' Case Citations*, it is hereby

**ORDERED**, that DCPS shall reimburse Petitioners for tuition paid in furtherance of Student's placement at School A during the 2022-23 school year. DCPS is not responsible for any related services expenses incurred by Petitioners.

## APPEAL RIGHTS

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

*Terry Michael Banks*  
Terry Michael Banks  
Hearing Officer

Date: May 19, 2023

Copies to: Attorney A, Esquire  
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