

**DISTRICT OF COLUMBIA  
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Office of Dispute Resolution  
1050 First Street, N.E., Third Floor  
Washington, D.C. 20002

OSSE  
Office of Dispute Resolution  
May 06, 2024

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<i>Student</i> , <sup>1</sup>	)	Case No.: 2024-0022
through <i>Parent</i> ,	)	
<i>Petitioner</i> ,	)	Date Issued: 5/6/24
	)	
v.	)	Hearing Officer: Keith L. Seat, Esq.
	)	
District of Columbia Public Schools	)	Hearing Dates (using Microsoft Teams):
("DCPS"),	)	4/24/24 & 4/25/24
Respondent.	)	
	)	

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**HEARING OFFICER DETERMINATION**

**Background**

Petitioner, Student’s Parent, pursued a due process complaint alleging that Student had been denied a free appropriate public education (“FAPE”) in violation of the Individuals with Disabilities Education Improvement Act (“IDEA”) due to DCPS’s failure to provide a sufficiently restrictive Individualized Education Program (“IEP”) and placement. DCPS responded that Student’s IEP and placement were appropriate.

**Subject Matter Jurisdiction**

Subject matter jurisdiction is conferred pursuant to the IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; and Title V, Chapter A30, of the District of Columbia Municipal Regulations (“D.C.M.R.”).

**Procedural History**

Following the filing of the due process complaint on 2/5/24, the case was assigned to the undersigned on 2/6/24. Respondent filed a response on 2/15/24 and did not challenge jurisdiction. Petitioner filed a motion to amend her complaint to modify the remedy sought, which was granted by the undersigned effective 3/15/24, restarting the timeline. A

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

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resolution meeting took place on 4/3/24, but the parties did not settle the case or shorten the 30-day resolution period, which ended as to the amended complaint on 4/14/24. A final decision in this matter must be reached no later than 45 days following the end of the resolution period, which requires a Hearing Officer Determination (“HOD”) by 5/29/24.

A prehearing conference was held on 4/4/24 and a Prehearing Order was issued that same day, addressing, among many other things, the use of a videoconference platform to conduct the due process hearing. The due process hearing took place on 4/24/24 and 4/25/24, and was closed to the public. Petitioner was represented by *Petitioner’s counsel*. DCPS was represented by *Respondent’s counsel*. Petitioner participated in the entire hearing.

### Documents and Witnesses

Petitioner’s Disclosure, submitted on 4/17/24 and revised on 4/26/24, contained documents P1 through P25, all of which were admitted into evidence over certain objections. Respondent’s Disclosure, submitted for filing on 4/17/24 (with a substantial email delay in serving Petitioner that was waived), contained documents R1 through R26, of which only R1, R3-R4, R7-R11, R17-R18, R22-R23, and R25-R26 were offered by Respondent and admitted into evidence over an objection.<sup>2</sup>

Petitioner’s counsel presented 4 witnesses in Petitioner’s case-in-chief (*see* Appendix A):

1. *Psychologist* (qualified without objection as an expert in Clinical Psychology, Evaluations and Autism)
2. *Educational Advocate* (qualified over objection as an expert in Special Education)
3. *Behavior Technician*
4. Parent

Respondent’s counsel presented 4 witnesses in Respondent’s case (*see* Appendix A):

1. *Specialist* (qualified without objection as an expert in Special Education Programming)
2. *School Social Worker* (qualified without objection as an expert in Special Education)

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<sup>2</sup> Citations herein to the parties’ documents are identical except that Petitioner’s documents begin with a “P,” while Respondent’s documents begin with an “R,” followed by the exhibit number and then a “p” (for page) and the Bates page number or numbers (which are numbered consecutively through to the end of the exhibits), with any leading zeros omitted.

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3. *Special Education Teacher* (qualified without objection as an expert in Special Education Programming)
4. *Manager* (qualified without objection as an expert in Special Education Programming for Students with Autism)

Petitioner's counsel offered no rebuttal evidence.

### **Issue and Relief Requested**

The issue to be determined in this Hearing Officer Determination is:

**Issue:** Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and/or placement since the beginning of the 2023/24 school year to present, with increased specialized instruction needed to allow Student to progress. (*Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.*)

The relief requested by Petitioner is:

1. A finding that Student has been denied a FAPE.
2. DCPS shall fund a nonpublic placement that can meet Student's academic, social, and language needs.
3. DCPS shall provide compensatory education for any denial of FAPE from the beginning of the 2023/24 school year to present.

### **Findings of Fact**

After considering all the evidence, as well as the arguments of counsel, the Findings of Fact<sup>3</sup> are as follows:

1. **Background.** Student is a resident of the District of Columbia; Petitioner is Student's Parent.<sup>4</sup> Student is *Age*, *Gender*, and in *Grade* during 2023/24<sup>5</sup> at *Public School*.<sup>6</sup>

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<sup>3</sup> Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

<sup>4</sup> Parent.

<sup>5</sup> All dates in the format "2023/24" refer to school years.

<sup>6</sup> Parent; P25p307.

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Student has a “sweet demeanor” and is very respectful, responsive, and receptive to redirection; Student shows empathy towards others and desires to be a good friend.<sup>7</sup>

2. Evaluations. A Diagnostic Evaluation on 1/19/21 conducted by Psychologist diagnosed Student with Autism Spectrum Disorder (“ASD”) via telehealth.<sup>8</sup> An in-person Psychological Evaluation was conducted by Psychologist on 10/25/23 to clarify Student’s diagnostic profile, which confirmed ASD with accompanying language impairment.<sup>9</sup> Student’s cognitive profile was uneven and variable, with relative strengths in visual-spatial reasoning (Average) and nonverbal (Below Average), compared to language/verbal knowledge (Very Low).<sup>10</sup> Student has many strengths and has shown improvements in the context of intervention.<sup>11</sup> Petitioner’s counsel emailed the 10/25/23 report to DCPS on Friday afternoon, 10/27/23, noting that there was little time to review it prior to the Monday, 10/30/23 30-day review meeting.<sup>12</sup>

3. A 7/27/23 Comprehensive Psychological Evaluation by DCPS noted that the test results should be reviewed “with caution” due to Student’s distraction throughout and that English was purportedly not spoken in the home; the DCPS report concluded that Student’s cognitive evaluation indicated overall intellectual ability in the low range (Full Scale IQ (“FSIQ”)=40), with overall academic achievement in the low range (66); Parent noted average social cognition and average communication and social awareness.<sup>13</sup> The DCPS evaluation concluded that Student met the criteria for Developmental Delay.<sup>14</sup> The entire IEP Team, including Parent, agreed with the shift from ASD to Developmental Delay.<sup>15</sup> Psychologist was surprised at the DCPS evaluation rejecting the classification of ASD for Developmental Delay, especially since Student would soon age out.<sup>16</sup>

4. IEPs. Student’s IEP was amended on 5/4/23 to increase specialized instruction to 20 hours/week, along with 240 minutes/month of speech-language outside general education, 120 minutes/month of occupational therapy (“OT”) outside general education, 60 minutes/month of OT inside general education, and 120 minutes/month of Behavioral Support Services (“BSS”) outside general education.<sup>17</sup> At Student’s 8/4/23 IEP meeting, Student’s specialized instruction services were reduced to 6 hours/week inside general education and 5 hours/week outside general education, along with 240 minutes/month of speech-language outside general education, 120 minutes/month of OT outside general

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<sup>7</sup> P5p43; P6p52; P14p183,184.

<sup>8</sup> P4p25,31,35; Psychologist.

<sup>9</sup> P5p37,43.

<sup>10</sup> P5p41; Psychologist (verbal in low range; nonverbal in average range).

<sup>11</sup> P5p43.

<sup>12</sup> P24p301; School Social Worker.

<sup>13</sup> P6p52,57,59; Psychologist (noted that DCPS warned that IQ results may not be valid).

<sup>14</sup> P6p47,59.

<sup>15</sup> R8p21 (8/4/23 Prior Written Notice (“PWN”)).

<sup>16</sup> Psychologist.

<sup>17</sup> P9p105,120.

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education, and 120 minutes/month of BSS outside general education.<sup>18</sup> Student's disability classification was changed from Autism to Developmental Delay (following the DCPS evaluation on 7/27/23).<sup>19</sup>

5. Placement. Student was in general education at Prior Public School in 2022/23; Student was in a Communication & Education Support ("CES") self-contained setting at CES Public School for only about 10 days.<sup>20</sup> CES was considered appropriate for Student in May 2023, so the IEP team (including Parent) agreed to amend Student's IEP to include 20 hours/week of specialized instruction at CES Public School.<sup>21</sup> In August 2023, the school IEP team determined the CES classroom was not appropriate; the IEP team, including Parent and her counsel, agreed to return Student to a general education classroom with 6 hours/week of specialized instruction inside general education (push-in) and 5 hours/week of specialized instruction outside general education (pull-out).<sup>22</sup> Psychologist testified that CES was not appropriate due to the lack of challenge for Student and that Student should be on a diploma track, rather than certificate track in CES.<sup>23</sup> Educational Advocate stated that CES was not appropriate for Student, as Student was functioning at a higher level; nor was Early Learning Support ("ELS") appropriate to meet Student's ASD needs.<sup>24</sup> Educational Advocate agreed that with the right special education supports, Student had the capacity to pursue a diploma.<sup>25</sup>

6. Public School. In August 2023, Student was accepted by lottery to Public School (where Student's sibling attended) and placed in a general education classroom based on Student's IEP.<sup>26</sup> Student needed more support than Student received in the general education setting, so that Student could be moved away from classroom noises into a calm space in the classroom, and could have adult prompting.<sup>27</sup> Student was not making sufficient progress in general education at the time of Educational Advocate's limited observation in October 2023.<sup>28</sup>

7. ABA. Behavior Technician provides Student 25 hours of Applied Behavior Analysis ("ABA") services over 5 days per week at Student's home and understands that another provider gives Student ABA services on the other 2 days each week.<sup>29</sup> Parent requested academic support during the ABA services that Student receives from Behavior

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<sup>18</sup> P25p327.

<sup>19</sup> P12p175; P25p307; P11p147.

<sup>20</sup> R11p29 (7/10/24 Analysis of Existing Data ("AED")).

<sup>21</sup> P12p175; P23p293.

<sup>22</sup> P12p175; Specialist; R9p23 (8/4/23 PWN).

<sup>23</sup> Psychologist.

<sup>24</sup> Educational Advocate; Special Education Teacher (Student too high functioning for the CES classroom); P23p294.

<sup>25</sup> Educational Advocate.

<sup>26</sup> P12p175.

<sup>27</sup> Educational Advocate.

<sup>28</sup> *Id.*

<sup>29</sup> Behavior Technician.

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Technician each week.<sup>30</sup> Student's ABA services are not school services based on Student's IEP.<sup>31</sup> Student does not need daily ABA sessions in the classroom because Student has no negative behaviors in the classroom that need to be replaced.<sup>32</sup>

8. Nonpublic School. It is important for Student to be around broadly average children; exposure to verbal and average peers is helpful with the right supports.<sup>33</sup> Psychologist didn't say that Student needs to be completely separated from general education peers.<sup>34</sup> Student doesn't need to be away from general education peers; placing Student completely away from general education peers would be a disservice; either a nonpublic school or full-time placement would be bad for Student as Student should be with nondisabled peers.<sup>35</sup> Student really benefits from general education and peers at all levels; a full-time/nonpublic school is not needed; Student is better placed at Public School than in a nonpublic school.<sup>36</sup> Based on a review of the record, Manager concluded that Student could access the general education curriculum with support.<sup>37</sup>

9. The school IEP team did not agree that a nonpublic placement was appropriate on 11/7/23 when sought by Parent's team.<sup>38</sup> Student's IEP team had removed Student from a more restrictive setting of 20 hours/week as too restrictive, so would not and did not agree to an even more restrictive nonpublic setting.<sup>39</sup> October 2023 was too soon to tell if a nonpublic school or more restrictive placement was needed; neither Special Education Teacher or Student's general education teacher ever said Student should go to another school.<sup>40</sup> Public School agreed to monitor Student's progress and proposed to review Student's IEP in 60 days.<sup>41</sup> Petitioner's counsel stated that if Public School did not respond to the request for a nonpublic school by 11/17/23, Petitioner would pursue the due process timeline and file a complaint; after that point, Petitioner did not request a meeting to change Student's IEP.<sup>42</sup>

10. Progress. Student is eager to learn and responds well to pull-out sessions in math and reading.<sup>43</sup> Student can access the general education curriculum with accommodations and modifications.<sup>44</sup> Educational Advocate observed instruction of Student at school for

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Special Education Teacher.

<sup>33</sup> Psychologist.

<sup>34</sup> Psychologist; P5p43-44.

<sup>35</sup> Specialist; R7p19.

<sup>36</sup> School Social Worker.

<sup>37</sup> Manager.

<sup>38</sup> P12p175 (PWN).

<sup>39</sup> *Id.*

<sup>40</sup> Specialist; Special Education Teacher.

<sup>41</sup> P12p175.

<sup>42</sup> Special Education Teacher; R3p10.

<sup>43</sup> Special Education Teacher.

<sup>44</sup> *Id.*

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less than an hour in October 2023, when Student was often seen copying or mimicking actions of other children.<sup>45</sup> At the beginning of 2023/24, Student did not engage in lessons and would just sit; now Student is very independent and does tasks on own.<sup>46</sup> Over the course of 2023/24 Student made a lot of progress and developed own opinions and feelings; Student engaged more with peers without IEPs.<sup>47</sup> Student has not had significant behaviors since the beginning of 2023/24.<sup>48</sup>

11. As of 11/17/23, Student was making progress on many goals, did not progress on a few, and others were not introduced; there was no regression on goals; Student made more progress by 2/9/24.<sup>49</sup> Student's DIBELS Score Report for 2023/24 showed progress by Student, although still Well Below goals; Student had a Composite of 306 at Beginning of Year ("BOY") which increased to 359 at Middle of Year ("MOY") (with goal of 389); Student's Phonemic Awareness increased from 0 at BOY to 25 at MOY (with goal of 43); Student's Letter Sounds increased from 0 at BOY to 20 at MOY (with goal of 52).<sup>50</sup> Student was progressing through 2023/24 and making more than minimal progress; Student was making "moderate" or "meaningful" progress.<sup>51</sup>

### Conclusions of Law

Based on the Findings of Fact above, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law are as follows:

The overall purpose of the IDEA is to ensure that "all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). *See Boose v. Dist. of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (the IDEA "aims to ensure that every child has a meaningful opportunity to benefit from public education").

"The IEP is 'the centerpiece of the statute's education delivery system for disabled children.'" *Andrew F. ex rel. Joseph F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017), quoting *Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L.Ed.2d 686 (1988). "The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Andrew F.*, 137 S. Ct. at 994, quoting *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982).

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<sup>45</sup> Educational Advocate.

<sup>46</sup> Special Education Teacher.

<sup>47</sup> School Social Worker.

<sup>48</sup> *Id.*

<sup>49</sup> P14; P16; R17; Specialist.

<sup>50</sup> R23p300; Special Education Teacher (making progress, although scores could have been higher).

<sup>51</sup> School Social Worker; Special Education Teacher.

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

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

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

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

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

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**Issue:** *Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and/or placement since the beginning of the 2023/24 school year to present, with increased specialized instruction needed to allow Student to progress. (Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)*

Petitioner established a *prima facie* case concerning Student's IEP and placement through testimony and documents, shifting the burden to DCPS, which met its burden of persuasion, as discussed below.

The applicable legal standard for analyzing the appropriateness of the IEP at issue in this case was articulated by Chief Justice Roberts for a unanimous Supreme Court as whether it was "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. at 1001. As the U.S. Court of Appeals for the District of Columbia emphasized in *Z.B.*, 888 F.3d at 517, *Endrew F.* "raised the bar on what counts as an adequate education under the IDEA," requiring more than "merely some" educational benefit. *See also Damarcus S. v. Dist. of Columbia*, 190 F. Supp. 3d 35, 51 (D.D.C. 2016) (IEP must be "reasonably calculated to produce meaningful educational benefit"). The measure and adequacy of the IEP are determined as of the time it was offered to Student, rather than with the benefit of hindsight. *See Z.B.*, 888 F.3d at 524; *A.T. v. Dist. of Columbia*, CV 16-1086 (CKK), 2021 WL 1978792, at \*12 (D.D.C. 2021); *S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 66 (D.D.C. 2008). The appropriateness of Student's IEPs is analyzed by focusing on the specific concern raised by Petitioner, which is considered next.<sup>52</sup> *See* 34 C.F.R. § 300.320(a); *Honig*, 484 U.S. at 311.

Here, Parent's sole concern was whether Student needed a nonpublic school in order to make adequate progress. The short answer is that Student's IEP team – with agreement by Parent and her advocates – had just agreed in August 2023 to remove Student from a self-contained CES classroom setting with 20 hours/week of specialized instruction, finding it too restrictive. Thus, the IEP team did not find it appropriate to consider a nonpublic setting, which is even more restrictive as there are no general education or non-disabled children in NPs. Notably, experts on both sides of the case agreed that it is important for Student to be around average peers and not completely segregated from general education peers. Experts convincingly testified that placing Student completely away from nondisabled peers would be a disservice to Student, whether in a nonpublic school or a full-time setting such as the CES classroom from which the IEP team had just removed Student. Significantly, as noted above, the IDEA expressly mandates that students with disabilities be educated in their LRE to the maximum extent appropriate. 20 U.S.C. § 1412(a)(5); *see Leggett v. Dist. of Columbia*, 793 F.3d 59, 72 (D.C. Cir. 2015). Here, the undersigned is clear that Public School is Student's LRE at this time.

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<sup>52</sup> A Hearing Officer must also determine whether "the State complied with the procedures" set forth in the IDEA. *A.M. v. Dist. of Columbia*, 933 F. Supp. 2d 193, 204 (D.D.C. 2013), quoting *Rowley*, 458 U.S. at 206-07. Procedural issues are only incidentally discussed herein.

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Turning to Student's progress – the touchstone that determines whether Student's IEP and placement are appropriate under *Andrew F.* – the undersigned is persuaded that Student has made appropriate progress with Student's 8/4/23 IEP. Student is eager to learn and responds well to pull-out sessions in both math and reading. Student can access the general education curriculum with support and has made a lot of progress toward engaging in lessons and participating in class. Specifically, Student has shown increasing progress on IEP progress reports and standardized testing. Nor has Student had significant negative behaviors.

As for placement, the applicable legal standard under the IDEA requires “school districts to offer placement in a school and in programming that can fulfill the requirements set forth in the student's IEP.” *Middleton v. Dist. of Columbia*, 312 F. Supp. 3d 113, 143 (D.D.C. 2018), citing *O.O. ex rel. Pabo v. Dist. of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008) (placement must be in a school that can fulfill the student's IEP requirements). See also *A.T.*, 2021 WL 1978792, at \*12 (D.D.C. 5/18/21). Here, the 8/4/23 IEP at issue requires only 5 hours/week of specialized instruction outside general education and 6 hours/week inside general education, along with related services. Petitioner does not dispute that this IEP can readily be provided at Public School. Petitioner's assertion is simply that an entirely different IEP and placement should be required in a nonpublic school, which this Hearing Officer rejects for the same reasons that Student's IEP team rejected a nonpublic school, namely that if the CES program was too restrictive at the time the August IEP was developed – which is undisputed – it makes no sense to pursue a placement more restrictive than CES in August 2023 or in October 2023 or thereafter, given the testimony and documentary evidence in this case. Although Student may benefit from some additional support, the undersigned is persuaded that such support could be provided at Public School and certainly does not require a nonpublic school.

In short, as the Court noted in *S.M. v. Dist. of Columbia*, CV 19-2096 (RC), 2020 WL 7230266, at \*5 (D.D.C. 12/8/20), review of an IEP turns on whether it is reasonable, not whether it is ideal, quoting *Andrew F.*, 137 S. Ct. at 999. On balance, this Hearing Officer concludes that the IEP and placement at issue met the required standard and were appropriate for Student.

### **ORDER**

Petitioner has not prevailed on the issue in this case. Accordingly, **it is hereby ordered** that any and all claims and requests for relief are **dismissed with prejudice**.

**IT IS SO ORDERED.**

Dated in Caption

*/s/ Keith Seat*

Keith L. Seat, Esq.  
Hearing Officer

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**NOTICE OF RIGHT TO APPEAL**

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

Copies to:

Counsel of Record (Appendix A, by email)

ODR ([hearing.office@dc.gov](mailto:hearing.office@dc.gov))