

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

Confidential

Parents on behalf of Student,¹)	Case Nos. 2025-0127
)	
Petitioner)	Hearing Dates: Oct. 14, 15, 17, 29 and 30, 2025
)	
)	Conducted by Video Conference
v.)	
)	Date Issued: November 3, 2025
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 D. On July 22, 2025, Petitioners filed a *Due Process Complaint Notice* (“*Complaint*”) alleging, *inter alia*, that the District of Columbia Public Schools (“DCPS”) denied Student a free appropriate public education (“FAPE”) by failing to provide appropriate Individualized Education Programs (“IEPs”) and placements for the 2023-24, 2024-25, and 2025-26 school years, failing to allow Petitioners’ designee to observe DCPS’ proposed placement for Student, failing to provide sufficient information to Petitioners about the proposed placement in order to assess its appropriateness, and by delaying the review of Student’s independent neuropsychological evaluation and failing to include it in Student’s proposed IEP. On August 1, 2025, Respondent filed *District of Columbia Public Schools’ Response* (“*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 regulations, 34 C.F.R. Section 300 *et seq.*, Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-A, Chapter 30.

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

PROCEDURAL HISTORY

On July 22, 2025, Petitioner filed her *Complaint* alleging that DCPS (1) failed to provide an appropriate IEP on January 24, 2024 for the 2023-24 school year, (2) failed to provide an appropriate IEP on January 24 and November 12, 2024 for the 2024-25 school year, (3) failed to develop an appropriate IEP on November 12, 2024 for the 2025-26 school year, (4) failed to allow an observation of School E by Petitioners' designee, and (5) failed to provide Petitioners a meaningful opportunity to participate in the determination of Student's placement for the 2025-26 school year. For relief, Petitioner requests (1) an order requiring DCPS be order to reimburse Petitioners for the costs incurred for Student's placement at School D for the 2023-24 school year after January 18, 2024, including tuition, related services, and transportation, (2) an order requiring DCPS to reimburse Petitioners for the costs incurred for Student's placement at School D for the 2024-25 school year, and (3) an order requiring DCPS to place and fund Student at School D for the 2025-26 school year.

On August 1, 2025, DCPS filed its *Response* to the *Complaint* denying that it had denied Student a FAPE. DCPS asserted, *inter alia*, that on January 18, 2023, DCPS proposed an annual IEP with seven hours of specialized instruction, assistive technology, and other classroom aids and services to support Student throughout the day. The IEP indicated that the team determined that general education was the least restrictive environment ("LRE") for Student. Petitioners were provided the opportunity to participate fully in the development of the IEP and placement discussion and did so. On January 24, 2024, DCPS proposed an IEP with six hours per week of specialized instruction in general education, two hours per week of specialized instruction outside general education, and one hour per week of specialized instruction consultation. August 1, 2024, DCPS completed a review of an independent evaluation ("IEE") of Student. IDEA does not set a timeline for the review of an IEE. Thereafter, on November 12, 2024, DCPS proposed an IEP with five hours per week of specialized instruction in general education, six hours per week of specialized instruction outside general education, two hours per month of behavior support services ("BSS"), and two hours per week of specialized instruction consultation. The annual IEP proposed on January 18, 2023 was available to Student for the remainder of the 1022-23 school year and the start of the 2023-24 school year. The January 24, 2024 IEP was available to Student for the remainder of the 2024-25 school year and it was available for the start of the 2025-26 school year. However, Petitioners have chosen unilaterally to enroll Student in a private school since the 2022-23 school year and have kept him/her there despite the multiple offers of FAPE that have been made available. DCPS denies that Petitioners and/or their advocate were denied an opportunity to visit School E. The *Complaint* does not allege that the LEA refused to allow a visit. DCPS further responds that the LEA deems the advocate to be representing the student in litigation and not eligible as a designee to observe at the school during litigation. Petitioners have confused a location of service (LOS) with the inboundary school for Student. Student has not had an LOS because her/his IEPs have been able to be implemented at her/his neighborhood or in-boundary schools. Further, because DCPS determined that Student's needs can be met in a general education environment in his/her in boundary school, a private placement is not required, not appropriate, is not his/her LRE, and all reimbursement/placement relief requested should be denied. Finally, DCPS asserted that School D is not proper or appropriate placement for Student or her/his LRE.²

² When asked at the prehearing conference if School D was inappropriate for any reason other than LRE, Respondent's counsel cited language from Case No. 2023-0169 in which this hearing officer found that School D student was

DCPS asserts that School D is not proper or appropriate because many of its teachers do not meet local standards for providing special education services.

The parties conducted a resolution meeting on August 6, 2025 that did not result in a settlement. A prehearing conference in this case took place by video conference on August 14, 2025 and the *Prehearing Order* was issued that day. An *Amended Prehearing Order* was issued on October 9, 2025 to correct an error in the Issues Presented noted by Attorney A. A *Second Amended Prehearing Order* was issued on October 10, 2025 to reflect an additional hearing date and a change in the *Hearing Officer Determination* (“HOD”) due date.

The due process hearing was conducted on October 14, 15, 17, 29, and 30, 2025 by video conference facilities. The hearing was closed to the public at Petitioner’s request. Petitioner filed Five-day Disclosures on October 6, 2025, containing a witness list of four witnesses, and 45 documents.—DCPS filed objections to Petitioner’s Disclosures on October 9, 2025. DCPS objected to P2, 4, 6, 8, 10, 12-14, 16-18, 22, 26-28, 30-38. 40, and 45. Petitioners’ Exhibits P1-P7, P9-P12, P14-P25, P27-P30, P33-P35 (pp.1-7), and P36-P44 were admitted into evidence.

Respondent also filed Disclosures dated October 6, 2025 containing a witness list of eleven witnesses and 31 documents. Petitioner did not file objections to DCPS’ disclosures. Respondent’s Exhibits R1-R31 were admitted into evidence, including R2A, B, C, and D, R3A, R5A, R11A, R12A, B, and C, and R18A.

Petitioner presented as witnesses in chronological order: Witness A, Mother, Witness B, and Witness C. Witness A and Witness B were admitted as experts in special education, and Witness C was admitted as an expert in psychology. Respondent presented as witnesses in chronological order: Witness D, Witness E, Witness F, Witness G, Witness H, and Witness J. Witness D, Witness F, Witness G, Witness H, and Witness J were admitted as experts in special education, Witness E was admitted as an expert in school social work, and Witness F was admitted as an expert in special education programming and placement. At the conclusion of Respondent’s direct case, Mother provided rebuttal testimony. At the conclusion of testimony, the parties’ counsel provided oral closing arguments. The hearing officer authorized the parties to submit authorities on which they rely no later than October 30, 2025. On October 30, 2025, Petitioners filed *Petitioners’ Closing Authorities* and Respondent filed *District of Columbia Public Schools’ Case Citations*.

ISSUES

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

1. Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and placement on January 24, 2024 for the 2023-24 school year. Specifically, Petitioners assert that the IEP did not provide a sufficient amount of self-contained special education services and that the proposed placement and/or location of services at

“instructed by individuals deemed unqualified [to provide special education services] by local standards in 75% of his/her classes.”

School E was too large of a setting for [him/her], including class sizes and school size.

2. Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and placement on January 24 and November 12, 2024 for the 2024-25 school year. Specifically, Petitioners assert that the IEP did not provide a sufficient amount of self-contained special education services and that the proposed placement and/or location of services at School E was too large of a setting for [her/him], including class sizes and school size. Petitioners also assert that they provided DCPS an independent neuropsychological evaluation on April 8, 2024 that DCPS failed to review and to incorporate into an appropriate IEP by the beginning of the 2024-25 school year.
3. Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and placement on November 12, 2024 for the 2025-26 school year. Specifically, Petitioners assert that the IEP did not provide a sufficient amount of self-contained special education services and that the proposed placement and/or location of services at School E was too large of a setting for [her/him], including class sizes and school size.
4. Whether DCPS denied Student a FAPE by failing to allow an observation of School E by Petitioners' designee. Petitioners' requests began in December 2024 and extended into January 2025.
5. Whether DCPS denied Student a FAPE by failing to provide Petitioners a meaningful opportunity to participate in the determination of Student's placement for the 2025-26 school year. Petitioners assert that the failure to allow their designee to observe the program at School E deprived them of a meaningful opportunity to participate in the decision-making. Petitioners also assert that after an abbreviated observation by Mother on April 9, 2025, they sent a list of questions that Mother did not have an opportunity to ask Witness G, Director of Specialized Instruction at School E. Petitioners never received a reply to their questions.
6. Whether School D is a proper and appropriate placement for Student.

FINDINGS OF FACT³

1. Student is an X-year-old student who was in grade B at School D during the 2024-25 school year and was eligible for special education services under the classifications of , Specific Learning Disability ("SLD"), primary, and Other Health Impairment ("OHI"), secondary.⁴

2. In June 2020, when Student was in grade C at School B, Witness C completed a Neuropsychological Evaluation of Student due to Petitioners' concerns for accurate and fluent word recognition, phonological decoding, and spelling. During pandemic-mandated virtual

³ The Findings of Fact includes all of the oral and written evidence that I considered material in rendering the decision in this matter. The quotations of oral testimony are from my notes during the hearing, not the transcript.

⁴ Petitioner's Exhibit ("P.") 29 at page 1. The exhibit number is followed by the exhibit page number and the digital page number in parentheses, i.e., P29:1 (445).

instruction in the spring of 2020, Petitioners reported that Student “tends to become more overloaded with screen time, gets overwhelmed, and ‘shuts down’ (e.g., frustration, refusal/avoidance of her/his schoolwork or responsibilities, behavioral rigidity).”⁵ In School A in grade E, Student had an IEP under a classification of SLD. S/he began receiving private tutoring in February and received support from a reading specialist at School B for thirty minutes per week. S/he received 30 minutes per day of pull-out reading support and 45 minutes per month of occupational therapy (“OT”) services as well as classroom accommodations.⁶

... [his/her] most recent report card indicated that [s/he] is a motivated and enthusiastic student. [S/he] displays strong reading comprehension skills and excels in the creative aspects of writing. In fact, [Student] loves all imaginative outlets and takes pride in [her/his] artistic discoveries. [Her/his] teachers also commended [his/her] strides in seeking support. At the same time, [Student] remains relatively quiet in the classroom, even when [s/he] understands the concepts at hand. [S/he] also works slowly and often has trouble finishing tasks within the allotted time. Moreover, [Student] continues to struggle with reading.⁷

Student was administered the Wechsler Intelligence Scale for Children (“WISC-V”) during the previous year and scored in the High Average range on the Full Scale IQ (111, 77th percentile), demonstrated “astounding verbal abilities” in the Very High range on the Verbal Comprehension Index (127, 96th percentile), “solid nonverbal reasoning abilities” (Fluid Reasoning Index - 97, 42nd percentile), visual spatial skills in the High Average range (Visual Spatial Index - 117, 87th percentile), and Working Memory in the Extremely High range (130, 98th percentile). On subtests administered by Witness C, Student scored in the Very High range in Working Memory (120, 91st percentile) and one point below the Average range in Processing Speed (89, 23rd percentile).⁸

[Student’s] performance on executive functioning tasks is consistent with [her/his] very bright intellect and excellent reasoning abilities, as [s/he] demonstrated strengths on higher-order tasks that stressed problem-solving (e.g., on a tower building task; DKEFS Tower: Total Achievement-84th percentile) and concept formation and deductive reasoning skills (e.g., on a 20 questions task; Total Achievement- 75th percentile). [S/he] also demonstrated very good verbal fluency skills when asked to quickly generate words that begin with a particular letter or belong to a specific category (Verbal Fluency: Letter and Category-both 63rd percentile).⁹

On the Conners-3, Student’s math teacher reported inattentive behaviors such as trouble concentrating, gets easily distracted, and avoids tasks that are not fun, but her/his homeroom teacher “did not indicate as many concerns regarding inattention.”¹⁰ Neither teacher had T-scores in the Clinical range for Student in Hyperactivity/Impulsivity, Executive Functioning, DSM-V

⁵ P2:1 (21).

⁶ *Id.* at 3 (23).

⁷ *Id.*

⁸ *Id.* at 17 (37). Witness C confirmed the hearing officer’s understanding that the average range in percentiles is from the 25th to the 75th percentile.

⁹ *Id.* at 5 (25)

¹⁰ *Id.* at 6 (26).

ADHD Inattentive, or DSM-V Hyperactive Impulsive.¹¹ Student scored at or above average ranges on the Clinical Evaluation of Language Fundamentals (“CELF-5”) in Sentence Comprehension (84th percentile), Word Classes (91st percentile), Linguistic Concepts (63rd percentile), Receptive Language Index (68th percentile), and Core Language Score (88th percentile). However, Student struggled to remember and follow directions of increasing complexity (Following Directions – 9th percentile). Nevertheless, s/he “showed an excellent ability to learn and remember verbal information on the Wide Range Assessment of Memory and Learning (“WRAML-3”): Short Memory (99th percentile), Verbal Learning (50th percentile), Picture Memory (63rd percentile), and Recognition (50th percentile), but had difficulty with more abstract visual information: Design Memory (37th percentile) and Recognition (16th percentile). evinced excellent visual perception abilities: Visual (98th percentile) and demonstrated age-appropriate basic visual scanning when given a scattered visual array (Visual Scanning 63rd percentile) and demonstrated an average rate of completion when asked to quickly scan visual arrays (WISC-V Symbol Search, 37th percentile and DKEFS TMT: Motor Speed-25th percentile).¹²

On a Woodcock-Johnson Tests of Achievement in 2019, Student scored in the Average range in Oral Reading (27th percentile), Passage Comprehension (37th percentile), math subtests: Applied Problems (58th percentile), Calculation (40th percentile), Math Facts Fluency (30th percentile), and Writing Samples (34th percentile). On assessments administered by Witness C, Student scored in the 10th percentile on the Feifer Assessment of Reading subtest of Orthographical Processing, and in the Average range on the Gray Oral Read Tests (“GORT-5”) Oral Reading Quotient (92, 30th percentile). On the Comprehensive Test of Phonological Processing (“CTOPP-2”), s/he scored in the Above Average range in Phonological Awareness (112, 79th percentile), in the Average range in Phonological Memory (104, 61st percentile), and in the Below Average range in Rapid Symbolic Naming (82, 12th percentile). Student also scored in the Above Average range on the Test of Early Written Language Subtest of Contextual Writing (115, 82nd percentile).¹³

On the Behavior Rating Inventory of Executive Function (“BRIEF-2”), two of Student’s teachers completed rating scales on 13 subtests. Teacher 1’s responses yielded no T-scores in the Clinical range and Teacher 2’s responses yielded T-scores in the Clinical range only in Shift (71), Working Memory (76), and on the Emotional Regulation Index (72). On the Behavior Assessment System for Children (“BASC-3”), neither teacher rated Student in the Clinical range in Attention Problems (T-scores of 57 and 63).¹⁴

Witness C described Student as follows:

[Student] is an incredibly bright, creative, and hard-working [boy/girl] who was a pleasure to meet and work with over this 2-day evaluation. [S/he] always appeared motivated and invested in doing [his/her] very best. In addition to [her/his] previous evaluation that detailed [her/his] excellent verbal reasoning abilities and solid nonverbal and visual conceptual abilities (i.e., bright intellect), strong visual spatial skills, and astounding working memory, findings from our evaluation also revealed

¹¹ *Id.* at 21 (41).

¹² *Id.* at 6-7 (26-27).

¹³ *Id.* at 7-8 (27-28) and 17-18 (37-38).

¹⁴ *Id.* at 21-22 (41-42).

several strengths on objective measures. Consistent with [her/his] previous evaluation, [s/he] continues to demonstrate an excellent ability to hold both verbal and visual information in working memory, displayed strong receptive and expressive language and verbal fluency, showed a very good ability to grasp concepts and deductively reason to solve novel problems, and showed an incredible ability to learn and remember both verbal and visual information when given a meaningful context. At the same time, [Student] continues to show challenges in visual scanning and sustained attention, and some aspects of executive functioning, including inhibition, flexibility, and organization and planning, and graphomotor processing speed.¹⁵

Witness C diagnosed Student with an SLD with impairment in Reading (Dyslexia) and Attention Deficit Hyperactivity Disorder (“ADHD”), Predominantly Inattentive Presentation. Witness C supported Student’s level of IEP support in reading and recommended support in accessing technology and word processing software for reading and writing and occupational therapy of 45 minutes per month to support his/her fine motor speed and dexterity weaknesses “that impact [his/her] handwriting and organization of written work.”¹⁶

3. In November 2021, when Student was in grade A at School C, Examiner A completed a Psychological Reevaluation of Student as part of Student’s triennial review.¹⁷ Examiner A observed Student in a classroom of 20 students and one teacher. Student “was occasionally observed to be staring off unfocused, but [s/he] still was typically focused and on-task. [Student] also occasionally used [his/her] fingers to support [his/her] independent math work. [Her/his] academic behaviors clearly supported [her/his] ability to access [his/her] educational opportunities, get the most out of [his/her] classwork practices, and seek help appropriately when [s/he] had questions about the work.”¹⁸ During the “few days we took to complete the assessment” Student exhibited self-advocacy and determination “One of these behaviors was [her/his] great self-advocacy and willingness to acknowledge [his/her] own needs... Another one of these behaviors was [her/his] particular and deliberate way of engaging in expected work. [Student] did not quickly respond to any prompted tasks, instead showing (often visibly with paper/pencil or quiet muttering of words/sounds to [him/herself]) an active effort to always attempt difficult tasks.”¹⁹

On the WJ-IV, Student scored in the Average range in Reading (95), Broad Reading (92), Reading Comprehension (102), Reading Fluency (90), Written Language (101), Broad Written Language (94), and Academic Applications (97), and in the Low Average range in Mathematics (87), Broad Mathematics (84), Applied Problems (87, Calculation (88), Fluency (81)), Math Calculation (83, Calculation (88), Fluency (81)), and Math Problem Solving (87). Examiner A concluded that Student was average in reading skills, low average in math skills, but that s/he should be able to access grade-level math content:

¹⁵ *Id.* at 10 (30).

¹⁶ *Id.* at 11-12 (31-32).

¹⁷ P3:1 (43).

¹⁸ *Id.* at 6 (48).

¹⁹ *Id.*

... [Student] has made progress in reading such that these needs are unlikely to be primary at this time. As suspected, [his/her] performance in [her/his] reading skills is now average as compared to [her/his] same-aged peers, and [s/he] has made great growth with the support [s/he] has received. The skills associated with reading/writing that are currently low average are spelling and sentence reading fluency. Also as suspected, [his/her] math skills are now low average. For comparison, in March of 2019, [her/his] Broad Math performance on the WJ-IV was a 96 [average], and [her/his] performance on the Broad Math WJ-IV cluster during this assessment was an 84. [Student's] performance on the subtests focused on applied problems, calculation skills, and number matrices (quantitative reasoning) resulted in standard scores of 87, 88, and 89 respectively. [Her/his] lowest math skill was math fact fluency, and [his/her] performance on that assessment resulted in a standard score of 81. All four of these subtests and all four math clusters resulted in standard scores within the low average range, so there was not a critical need that would suggest [s/he] will struggle to access grade-level content without modification of content, but there are still skills that [s/he] would benefit from practicing, especially when developing [his/her] fluidity and speed of [her/his] math skills.²⁰

Examiner A discussed the criteria for a classification of SLD but deferred to the multidisciplinary team (“MDT”) to make the determination as to whether Student remained eligible under that classification.²¹

4. During an IEP team meeting on December 9, 2021, Examiner A discussed Student's reading performance:

We are working towards growth in reading fluency as it is still behind [his/her] peers. Functionally, it is not impacting [her/him] greatly. Right now, [s/he] is able to access grade level text (not quickly) but it is not holding [her/him] back from accessing it. When texts get harder, we expect fluency to impact [her/his] access to text. The other area of difficulty we see in written expression is spelling. Though a lot of [Student's] skills are average to low average, when you look at [his/her] work samples, you can see skills well below grade level (e.g. spelling on second grade level). It is clear [s/he] has a lot of content knowledge and has a lot of strengths. We want to explore the assistive technology options that will help [him/her] fully access the general ed curriculum. We are not wondering today if eligibility is up for debate. With [her/his] rate of growth, we wonder when [s/he] might be able to access the general education curriculum with only accommodations. Not now in [grade A], but maybe in middle or high school. [S/he] is still “baking the skills” right now, and if [s/he] continues the trajectory [s/he] is on, [s/he] will need fewer supports.²²

²⁰ *Id.* at 7-13 (49-55).

²¹ *Id.* at 13-16 (55-58).

²² R5A:1-2 (80-81).

Mother attributed Student's progress both to School C and to private tutoring: "I appreciate the acceleration academy opportunity for math at school and the consistent at-home tutoring [s/he] received at the beginning of the pandemic for putting on [him/her] a great path."²³ Mother indicated that the family was considering School D and asked Teacher A, Student's special education teacher, if Student met the profile of students Teacher A had recommended for School D in the past. Teacher A replied, "The previous student had a significantly different profile than [Student] did, truly." Mother then stated, "I just don't want [Student] to feel like [she's] in the deep end if [s/he] goes to middle school. It sounds like [s/he] might not be." Teacher A agreed: "I agree, and I would even like to clarify... [s/he] does not even seem like [s/he] is in the deep end right now. We want to focus on some of these skills still, but [s/he] is largely able to keep up with the grade-level expectations and content overall with some modified work and additional instruction on gap-skills."²⁴ Teacher B, Student's general education teacher, concurred with Teacher A: "I completely echo that."²⁵ When Mother was asked how Student was feeling about the current school year, she replied, "Settled in and not overly stressed, avoidant/frustrated by math some, not especially a kid who would report loving school, and making social relationships that seem to matter to [her/him]. School is really hard work for [him/her]... It's hard for [him/her], and [s/he] doesn't report always loving school, but [s/he] seems to have acclimated well after returning from home-instruction (Covid) and all the other changes this year."²⁶

5. On December 21, 2021, DCPS conducted an IEP Annual Review meeting. Student was classified with an SLD.²⁷ In Consideration of Special Factors, the IEP team reported that Student's behaviors did not impede his/her learning or that of his/her classmates. It also reported in the Assistive Technology section, that Student used a Surface Pro device with the following features: dictation, text-to-speech, typing, editing support and predictive text.

[S/he] has had recent success in using dictation (inbuilt) to produce written work with accurate spelling. [S/he] shared with the A/T specialist that [s/he] finds dictation very helpful and would like to continue using the feature on the school provided laptop. The A/T specialist also reviewed word prediction/predictive text with [him/her] on the laptop and shared how it can assist with spelling while typing [her/his] work. When asked for feedback, [Student] shared that [s/he] prefers dictation but would be willing to trial word prediction as well.²⁸

In Mathematics, the Present Levels of Academic Achievement and Functional Performance ("PLOP") noted that Examiner A's evaluation found "some gap areas in mathematical problem solving." The goals were: (a) Given a 2-step word problem with whole numbers requiring addition and/or subtraction within 1000 and multiplication and/or division within 100, Student will use any of the 4 operations to solve by paraphrasing the problem in his/her own words, eliminating irrelevant information, representing the problem with a visual model, identifying the operation(s) needed to solve the problem as evidenced by accurately writing equations in four out of five

²³ *Id.* at 2 (81).

²⁴ *Id.* at 3 (82).

²⁵ *Id.*

²⁶ *Id.*

²⁷ Respondent's Exhibit ("R.") 3 at page 1. The exhibit number is followed by the exhibit page number and the digital page number in parentheses, i.e., R3:1 (35).

²⁸ *Id.* at 2 (36).

problems in two consecutive sessions, (b) Given 10 expressions requiring addition and/or subtraction within 20, Student will solve correctly and state the answer orally within 6 seconds for 90% of expressions in three consecutive observations, and (c) Given 10 expressions requiring multiplication and/or division within 100, Student will solve correctly and state the answer orally within 6 seconds for 90% of expressions in 3 consecutive observations.²⁹ In Reading, the PLOP noted that Student scored in the Average range on Examiner A's evaluation. On a November 15, 2021 Fountas and Pinnell ("F&P") assessment, Student scored at the beginning of grade A performance level. The goal was: Student will read an end of grade A text orally with 97% accuracy, appropriate rate, and expression at 90 words correct per minute.³⁰ In Written Expression, the PLOP reported that Student's disability impairs his/her ability to spell both high frequency words and words that can be spelled by applying known patterns, but writing samples and classroom observations reveal that spelling does not impact his/her ability to generate ideas and develop writings from beginning to end. The PLOP reported further that scores on Examiner A's evaluation were low-average in the area of letter word identification and spelling. School C provided Student a speech-to-text device with word prediction software to support her/him in the writing process. "The use of technology significantly improved [him/her] written expression in the area of spelling and punctuation." The goals were: (a) With access to a sound reference chart, Student will correctly spell words with long and short vowel sounds that are formed by the combination of two vowels. (ou, oa, oo, ow, au, ea, etc) during her/his independent writing with 85% accuracy, and (b) Using assistive technology ("A/T") that includes word production software and voice dictation, Student will spell grade-level words that include digraphs, blends and silent letters, correctly in her/his writing with no more than five errors per 150 words.

The IEP team prescribed five hours of specialized instruction per week inside general education and noted that Student had been provided with a Surface Pro A/T device. It also prescribed the following Other Classroom Aids and Services: extra time to complete tasks with clear expectations before starting, worksheets with reduced information and extra spacing, specific guidance and/or pre-teaching when new content is taught in the classroom, class assignments and tests should be untimed, with access to extra time outside of the normal testing environment, use of speech-text technology to support his/her written work and word-prediction software for spelling.³¹

6. On June 8, 2022, Witness B, Petitioners' educational consultant, observed Student in his/her Reading class at School C. Witness B made the following observations:

[Student] was observed to be intermittently attentive both during instruction and when working independently. [S/he] was observed to stare off frequently for varying lengths of time ranging from a few seconds for up to a minute. These periods of staring appeared to be a combination of visual breaks and attentional lapses. When the children were directed to share their ideas with their table groups, [Student] was not engaged. [S/he] spoke a few words at one point but did not follow through ([s/he] never said anything else). [Student] was also observed to have difficulty on a sustained basis holding [him/herself] up against gravity. This was

²⁹ *Id.* at 3-4 (37-38).

³⁰ *Id.* at 4-5 (38-39).

³¹ *Id.* at 8 (42).

seen by [his/her] persistent use of [his/her] left hand to hold up [his/her] head while [s/he] was sitting. When [s/he] was writing, [her/his] left hand hung at [her/his] side and was not used as an assist to stabilize [his/her] paper. Finally, when [Student] wrote, [s/he] used [his/her] right hand consistently with a very tight grasp that incorporated a hyperflexed pointer finger, a thumb wrap, and a closed web space. This is a grasp that leads to hand fatigue which might limit the amount of writing [Student] is able or willing to produce. It is recommended that an occupational therapist observe [him/her] and determine the need for direct services. [Student] was observed to move slowly regardless of what [s/he] was doing and to take breaks after most actions. For example, [s/he] opened [his/her] composition book but then did not begin to write. [S/he] picked up [his/her] Book Club book (from the My America series) and opened it but did not read it ([her/his] visual attention was elsewhere). [S/he] wrote for a few seconds and very slowly but did not continue.³²

7. On June 23, 2022, DCPS issued Student's year-end IEP Progress Report. In Mathematics, Petitioner was reported to be Progressing on all three goals: "Over three sessions, [Student] solved 75% of 2-step word problems. [S/he] can accurately identify the operation needed for addition, subtraction, and multiplication. [S/he] benefits from help paraphrasing or understanding problems involving division... Given 10 expressions requiring addition or subtraction within 20, [Student] can accurately solve for the answer with 100% accuracy but is not yet meeting the timed part of the goal. When adding 5 expressions it took [Student] 12 seconds, and when subtracting 5 expressions it took [Student] 26 seconds... Given 10 expressions requiring addition or subtraction within 20, [Student] can accurately solve for the answer with 100% accuracy but is not yet meeting the timed part of the goal. When adding 5 expressions it took [Student] 12 seconds, and when subtracting 5 expressions it took [Student] 26 seconds."³³ In Reading, Student was reported to be Progressing on [her/his] goal: "[Student] is reading at a level R on the Fountas and Pinnell benchmark system, which represents a middle-of-year fourth grade level. On that text, [Student] read with 98% accuracy and at a rate of 70 words per minute. In terms of [his/her] fluency, [s/he] paused to decode 9 times, with 5 of those times self-correcting the error, slowing [her/his] reading rate, but not affecting [her/his] comprehension. Errors appear to be visual (noodled for nodding, and floating for flooding)."³⁴ In Written Expression, Student was reported to be Progressing on both goals: "During a progress check, [Student] was able to read long-vowel words (decoding) with 100% accuracy on the /oa/ /ee/ and /ea/ word lists. When asked to write the words (encoding) [s/he] made 2 errors with the long-e sound when deciding on when to use /ee/ or /ea/, for example [s/he] wrote cheaky instead of cheeky. [S/he] was able to encode 100% of the /oa/ words. [S/he] is showing improved accuracy with the /ou/ sound and spelling pattern in [his/her] own handwritten work, accurately using it in the words jealous, thoughtful, through and about... Student's] spelling accuracy in typed work has greatly improved with the support of word prediction and spell-check tools. We have noticed a significant amount of growth in editing when [s/he] is able to type using the word prediction software. In a recent side by side comparison of a handwritten draft and a typed copy, [s/he] fixed 5/6 of the errors without teacher support. In about 150 words of an essay, [Student] had 3 mistakes in the typed version. All three mistakes were

³² P4:1-2 (61-2). The quoted passages in this and other observations herein were chosen, primarily, to the extent they related to Student's attentiveness during the class.

³³ R8:14-15a (100-1).

³⁴ *Id.* at 16 (102).

where [s/he] used another word that was spelled correctly (buddy instead of body, and strip instead of stripe).”³⁵

8. For the 2022-23 school year, when Student was in grade D, Petitioners enrolled Student at School D.³⁶

9. On January 18, 2023, DCPS conducted an IEP Annual Review meeting. Mother was represented at the meeting by Attorney A³⁷ and Witness B.³⁸ The IEP included goals in Mathematics, Reading, Written Expression, and Cognitive. In Cognitive, the PLOP reported that Examiner A’s 2021 psychological evaluation indicated challenges in sustained attention, processing speed, and cognitive flexibility. The goals were: (a) Given a directive to begin an assignment and a list of required materials, [Student] will gather the required materials and begin working (e.g. reading the assignment, brainstorming on paper, beginning to solve a math problem), within 3 minutes of directions being given... (b) In a 20-minute work period, [Student] will complete an assignment by working consistently within the designated timeframe as evidenced by progress in a text or written production, with no more than two pauses in work of at most one minute (or up to 5 minutes when seeking teacher support)... (c) Given oral and/or written directions for an assignment and when asked by a teacher, [Student] will correctly explain assignment expectations with up to 2 prompts at least two times per day, 4 out of 5 days per week in at least two different content areas.³⁹ The IEP prescribed 6.5 hours per week of specialized instruction inside general education, thirty minutes per week of specialized instruction in Written Expression outside general education, and noted that Student was provided a Surface Pro with predictive text software turned on.⁴⁰

10. During the January 18, 2023 IEP meeting, Mother reported that Student was doing well:

“Parent update: [Student] is doing really well. Besides obvious concerns of academic performance, [his/her] social/emotional/confidence is really improving. [Her/his] teachers are saying [s/he’s] participating more and more. [S/he’s] telling mom about [her/his] friends and school. Family noticing confidence.”⁴¹

Attorney A opined that “We have added some new goals today and feel like [s/he] demonstrates needs that require the full-time support class at [School D]. We don’t believe [s/he] can be successful in the general ed class.” Teacher A, Student’s special education teacher at School C replied, “We didn’t see the level of need at [School C] that you all are describing.”⁴² Attorney A also requested that DCPS conduct a speech and language evaluations of Student⁴³ but would defer

³⁵ *Id.* at 17-18 (103-4). All of the comments were provided by Teacher A, Student’s special education teacher.

³⁶ Testimony of Mother.

³⁷ R11A:1 (151).

³⁸ R11:1 (135).

³⁹ *Id.* at 10-11 (144-45).

⁴⁰ *Id.* at 12 (146).

⁴¹ R11A-1 (151).

⁴² *Id.* at 5 (155).

⁴³ *Id.*

a request for an OT evaluation until an AED meeting.⁴⁴ DCPS offered to send Petitioner a revised draft of the IEP.⁴⁵

11. On February 6, 2023, DCPS issued a PWN indicating that DCPS agreed to some of the changes suggested by Petitioner's team at the IEP meeting, but did not agree that Student's needs required 32.5 hours of specialized instruction:

[Student's] team including [School D] staff and educational consultant provided feedback on the revised draft. Feedback included slight revisions to the adaptive goals. Upon discussions with parents and parents' legal team, DCPS changed the wording of some goals (e.g. adding a materials list) but did not agree to the following suggestions: - A modified goal that only expected [Student] to gather required materials for an assignment with a list of required materials. [Student] demonstrated the ability to gather required materials when [s/he] was a student at [School C] so the proposed goal did not reflect appropriate growth for [him/her]. The IEP team also disagreed with parents' legal team suggestion about adding a goal about breaking down long-term assignments. The IEP team disagreed with this suggestion because, in [grade D], students are still being introduced to and instructed on long-term assignment breakdown in the General Education classroom environment and [Student] has not had a chance to benefit from this instruction at this time to know that [s/he] would require specialized instruction in this area. Parents' legal team also requested an increase in specialized instruction service hours to 32.5. Available data does not support that this level of increase is warranted. [Student's] most recent comprehension assessments indicate [s/he] has access to text that is close to grade level. [S/he] exhibits some math skills at grade level and others at late 3rd and into 4th grade level. Writing samples from when [Student] attended [School C] indicated [s/he] had grade appropriate organization and development skills when given visual supports, and that spelling was the greatest area of need, a need that was addressed through the use of assistive technology.⁴⁶

12. On February 16, 2023, DCPS conducted an AED meeting to address Petitioners' requests for OT and speech and language evaluations.⁴⁷ OT Therapist A advised against conducting an OT evaluation: "All the anecdotal information given today falls under accommodations that can be supported in the classroom. [School D] can send more progress monitoring data which will be reviewed." Petitioners' Attorney D disagreed with this determination.⁴⁸

13. On February 22, 2023, DCPS issued a PWN indicating its agreement to proceed with a speech and language evaluation but refusal to conduct an OT evaluation: "Executive

⁴⁴ *Id.* at 6 (156).

⁴⁵ *Id.*

⁴⁶ R12:2 (158).

⁴⁷ R12A:1 (159).

⁴⁸ *Id.* at 5 (163).

functioning concerns shared are being supported through accommodations in the classroom. No other OT concerns were expressed that warranted an OT evaluation at this time.”⁴⁹

14. On April 2, 2023, Examiner B completed a Speech and Language Initial Evaluation Report. Student was referred by the IEP team at the AED meeting to assess his/her oral communication skills based on reports from School D that “structuring of multi-step tasks was difficult resulting in [Student] presenting as overwhelmed.” Additionally, OT Therapist A opined that Student may benefit from the use of strategies to support auditory processing needs.⁵⁰ In her observation of Student in a class of twelve students Examiner B noted that

“[Student] did not appear to be distracted by the disruptive interactions and noises as [s/he] glanced up but continued to look at and read [her/his] book. Classroom door was open which allowed the noise of the hallway to come into the room (i.e., students talking loudly in the hallway) while the classroom teacher gave verbal 2-step directions for what to do next (get book, turn to page #). [Student] was observed to follow the directions without repetition.”⁵¹

... Overall, [Student] was observed to actively engage in the academic tasks presented by the classroom teachers. [S/he] attended to the video shown, participated in the game/movement break activity, and answered questions posed directly to [him/her] as well as to [her/his] small literacy group. It was noted that there were various auditory distractions within the classroom setting; including more than one verbal altercation between another student and the classroom teacher, yelling by one to two students in the classroom, the electric sharpening of pencils while the teacher gave verbal directions, and hallway noise that entered the classroom through the open classroom door. Despite these distractions, [Student] was observed to continue to attend to the academic task (reading [his/her] book, following verbal directions the first time given), with one exception. [Student] interacted appropriately with both the teacher and [his/her] peers.⁵²

On the Goldman Fristoe Test of Articulation (“GFTA-3”), Student scored in the Average range for articulating single words and in intelligibility.⁵³ His/her voice, speech fluency were also within the normal range for classroom communication.⁵⁴ Student’s receptive and expressive vocabulary were measured on the Peabody Picture Vocabulary Test (“PPVT-5”) and the Expressive Vocabulary Test (“EVT-3”). Student’s expressive and receptive vocabulary skills were both found to be Above Average.⁵⁵ Student’s spoken language functioning was measured on the Comprehensive Assessment of Spoken Language (“CASL-2”). On both the Expressive Language Index (107) and the Syntactic Index (104), Student scored in the Average range. His/her phonological processing, auditory memory, and listening comprehension were assessed on the TAPS-4 Language Processing Skills Assessment. S/he scored in the Average range on the

⁴⁹ R12C:1 (167).

⁵⁰ P5:1 (63).

⁵¹ *Id.* at 9 (71).

⁵² *Id.* at 10 (72).

⁵³ *Id.* at 13 (75).

⁵⁴ *Id.* at 13-14 (75-76).

⁵⁵ *Id.* at 14-15 (76-77).

Phonological Processing Index (99), the Auditory Memory Index (114), and the Listening Comprehension Index (113). “Overall, [Student] presents with language processing skills on par with that of [his/her] age matched peers. These subtests require attention, concentration, and mental control in the absence of visual stimulus or cues.”

Examiner B concluded that Student’s communication skills were well within normal limits:

Overall, [Student] demonstrated standard scores that ranged from the average range to the above average range. [Student’s] oral language ability, when compared to [his/her] age matched peers, would not be a source of weakness in [her/his] academic environment... Given formal and informal data from multiple sources, [Student’s] oral communication skills are commensurate with that of [her/his] age matched peers and are not consistent with a disabling oral communication disorder that would prevent [her/him] from accessing or gaining benefit from [his/her] educational environment.⁵⁶

15. On April 25, 2023, DCPS conducted an AED meeting. The team agreed that Student did not require direct speech and language services and did not require an auditory processing assessment at that time.⁵⁷

16. During the 2022-23 school year, Student was administered a MAP Reading and assessments in the spring. Her/his Reading score of 193 was in the 13th percentile; his/her Math score on 204 was in the 19th percentile.⁵⁸

17. On August 3, 2023, Attorney A notified DCPS that Student would be enrolled at School D for the 2023-24 school year “in order to provide [him/her] the free appropriate public education (“FAPE”) to which [s/he] is entitled,” and requested that DCPS place and fund Student at School D. On August 11, 2023, DCPS acknowledged receipt of the notice and stated its position that it had offered Student a FAPE “with an appropriate IEP and a placement in the LRE at [School E].”⁵⁹

18. On October 20, 2023, DCPS issued an Amended IEP to the January 18, 2023 IEP to reflect the recommendations in Examiner B’s April 2, 2023 Speech and Language Initial Evaluation Report.⁶⁰ The IEP team added the following Other Classroom Aids and Services:

Specific guidance and pre-teaching for new content including defining new vocabulary, Visual supports across subject areas including: (a) papers with reduced information and extra spacing proofreading and organizational checklists, (b) Use of highlighters, and (c) Math visuals and manipulatives, Chunking of texts, Organizational system for materials, Preferential Seating, Extra time to complete tasks with the opportunity to clarify with his/her teacher before initiating,

⁵⁶ *Id.* at 25-26 (87-88).

⁵⁷ R12B:2-3 (165-66).

⁵⁸ P33:1 545.

⁵⁹ P6:1-2 (92-93).

⁶⁰ R18A:1 (308).

Scaffolding and questioning to build comprehension, Repeated readings as needed, Repeated and rephrased directions, Frequent checks for understanding and monitoring of independent work, Option to use speech-to-text technology, Option to use word prediction software, Movement breaks as needed, Making certain Student is attending to the source of information, and Teaching Student to be a strategic listener by having her/him (a) Figure out the purpose for listening, (b) Attend to the parts of the listening input that are relevant to the identified purpose and ignore the rest, (c) Select top-down and bottom-up strategies that are appropriate to the listening task and use them flexibly and interactively, and (d) Check comprehension while listening and when the listening task is over.⁶¹

19. On or about November 30, 2023, when Student was in grade G at School D, Witness B, Petitioners' educational consultant, provided DCPS suggested revisions to the draft IEP proposed by DCPS.⁶²

20. On December 8, 2023, DCPS issued a Prior Written Notice ("PWN") indicating that an IEP meeting was held on December 4, 2023 but not concluded. The parties agreed to conduct a joint Analysis of Existing Data ("AED")/IEP meeting at a later date.⁶³

21. On or about January 21, 2024, Witness B provided DCPS suggested revisions to the IEP proposed by DCPS.⁶⁴

22. On January 24, 2024, DCPS conducted an IEP Annual Review meeting. Student was classified with an SLD. Mother was represented at the meeting by Attorney A and Witness B, her educational consultant.⁶⁵ The IEP included goals in Mathematics, Reading, Written Expression, and Cognitive. The Mathematics PLOP reported that Student's spring 2023 MAP score of 204 was slightly below his/her norm grade level peers. The Reading PLOP reported that Student's spring 2023 MAP score of 193 was slightly below his/her norm grade level peers. The Cognitive goals addressed Student's executive functioning needs. The IEP team prescribed six hours per week of specialized instruction inside general education and two hours per week outside general education as well as one hour per week of specialized instruction consultation services. Other Classroom Aids and Services included the following: Specific guidance and pre-teaching for new content including defining new vocabulary, Visual supports across subject areas (papers with reduced information and extra spacing, proofreading and organizational checklists, use of highlighters, math visuals and manipulatives), Chunking of texts, Organizational system for materials, Preferential Seating, Extra time to complete tasks with the opportunity to clarify with his/her teacher before initiating, Scaffolding and questioning to build comprehension, Repeated readings as needed, Repeated and rephrased directions, Frequent checks for understanding and monitoring of independent work, Gaining Student's attention prior to giving directions, asking questions, or instruction, Option to use speech-to-text technology, Option to use word prediction

⁶¹ *Id.* at 33-34 (340-41).

⁶² P10:1-29 (125-153).

⁶³ P11:1 (161).

⁶⁴ P14:1-42 (197-238).

⁶⁵ P15:1 (249).

software, Make certain Student is attending to the source of information (e.g., eye contact is being made, hands are free of materials, and movement breaks).⁶⁶

23. On April 8, 2024,⁶⁷ Petitioner’s counsel provided DCPS a neuropsychological Evaluation of Student that was developed by Witness C in January 2024. Mother reported that Student “has made strong progress in [his/her] learning at [School D],” but “shared ongoing challenges in attention and executive function,” math, emotion regulation challenges, anxiety, and mood.⁶⁸ On the WISC-V, scored in the Very High range in Working Memory (120), in the High Average range in Verbal Comprehension (116), in the Average range in Full Scale IQ (107), Visual Spatial (100), Fluid Reasoning (100), and in the Low Average range in Processing Speed (86).⁶⁹ On the WJ-IV, Student scored in the Average range in Reading (90) and Broad Reading (90), in the Low range in Mathematics (78), Broad Mathematics (73), and Math Calculation Skills (71), in the Low Average range in Written Language (86) and Broad Written Language (88), and in the Average range in Passage Comprehension (90), Writing Samples (105), and Sentence Writing Fluency (94).⁷⁰ In terms of executive functioning, Witness C stated that “[his/her] teachers reported challenges in areas of task initiation, completing multi-step tasks, and some task performance monitoring skills in the classroom setting.”⁷¹ However, on the BRIEF-2, both teachers provided T-scores in the Clinical Range only in Working Memory. Teacher 2 rated Student in the Clinical range in Initiate, but neither of the teachers nor Mother rated her/him in the Clinical range in Plan/Organize, Task-Monitor, Organization of Materials, or Global Executive Composite (54, 64, and 67, respectively).⁷² The teachers did not complete rating scales on the BASC-3, and Mother’s T-score in Attention Problems (66) was not in the Clinical range.⁷³

Witness C concluded that Student continued to meet the criteria for ADHD, Inattentive Presentation:

... [Student] also demonstrated a consistent pattern of vulnerabilities in areas of attention, completion rate/processing speed, and executive function skills (e.g., retrieval, planning/organization), that underlie many aspects of learning and day-to-day tasks. As such, on tasks where [Student] was asked to plan and organize more complex material, [s/he] had trouble retrieving the information after a delay, which impacted [his/her] learning efficiency. [Her/his] parents and teachers also reported frequent inattention and executive function challenges that impact [him/her] both at home and at school-consistent with [her/his] previous diagnosis of ADHD. [Her/his] parents noted more impulsivity at home, while [her/his] teachers indicated observing more challenges in the behavioral aspects of executive function (e.g., task initiation, completing multi-step tasks, task performance monitoring).⁷⁴

⁶⁶ *Id.* at 40 (288).

⁶⁷ P16:2 (302).

⁶⁸ P12:1 (163).

⁶⁹ *Id.* at 5-8, 16 (167-170, 178)

⁷⁰ *Id.* at 18 (180).

⁷¹ *Id.* at 7 (169).

⁷² *Id.* at 22 (184).

⁷³ *Id.* at 23 (185).

⁷⁴ *Id.* at 10 (172).

Witness C also found that Student continued to meet the criteria for SLD in Reading, Written Expression, and Math.⁷⁵

Witness C opined that Student “needs to continue attending [School D] which offers specialized education and individualized evidence-based structured literacy interventions for students with language-based learning disabilities and ADHD.” In addition to support in Reading, Writing, and Math, Witness C recommended that Student have access to assistive technology (“A/T”) text to speech, audiobooks, a computer with Grammarly/word prediction, and a calculator) and support in executive functioning. Witness C also recommended the following classroom accommodations: multisensory presentation, instructions read aloud, repeated, and clarified, worksheets with less information on each page, examples of completed work provided in advance, assistance breaking down tasks, assistance double checking work, and lecture slides/teacher notes provided in advance.⁷⁶

24. On an 2023-24 year-end Assessment Summary, Student evinced mastery of decoding grade level real word patterns and six of eight nonsense word patterns.⁷⁷ In Oral Reading Fluency, Student was found to be proficient in comprehension of a grade level passage, reading at 72 wcpm with 98% accuracy of decoding.⁷⁸ In Word Identification and Sound-Symbol Knowledge, Student scored in the Average range; in Spelling, s/he scored in the Poor range. On the MAP Reading Assessment, Student scored in the Average range (47th percentile).⁷⁹ In Written Expression, Student was reported to be Proficient in writing Detail Sentences and Developing in writing Topic Sentences, Concluding Sentences, and Conventions.⁸⁰ Student earned the following year-end grades: Literacy – A-, Exploring Math – A, Science – A, Digital Art – A, Folk Lore – A, Beginner Dance – A-, and Shakespeare and Beyond – A.⁸¹

25. During the 2023-24 school year, Student’s fall and spring MAP Reading scores of 210 and 217 were in the 51st and 55th percentile; his/her fall, winter, and spring Math scores of 200, 210, and 220 were in the 18th, 28th, and 43rd percentile.⁸²

26. On June 1, 2024, DCPS conducted an AED meeting. The team agreed not to conduct an audiology assessment that had been requested by Witness B until School D submitted data justifying the need for one. The team agreed that Witness C’s evaluation would be reviewed without the need for an additional observation.⁸³

27. On August 1, 2024, Examiner D completed a Review of Independent Educational Evaluation of Witness C’s January 2024 Neuropsychological Evaluation (“*Review*”). The Review highlighted the following findings:

⁷⁵ *Id.* at 10-11 (172-3).

⁷⁶ *Id.* at 12-13 (174-5).

⁷⁷ P17:1-2 (303-4).

⁷⁸ *Id.* at 3 (305).

⁷⁹ *Id.* at 4 (306).

⁸⁰ *Id.* at 6 (308).

⁸¹ P18:1-4 (317-20).

⁸² P33:1 (545).

⁸³ R20:1-3 (385-87).

A discrepancy between [Student's] ability and [his/her] achievement at or greater than 1.5 standard deviations below the mean was identified in [his/her] performance on the subtests measuring word encoding (spelling), numeric calculations, and mathematics fluency.⁸⁴

Information obtained from the WIST, the End of Year Writing Assessment, and IXL [Student] is not making sufficient progress toward meeting grade-level standards.⁸⁵

Examine C opined that Student met the criteria of a Student with an SLD:

[Student] appears to meet the criteria for special education services as a student with a specific learning disability. [Her/his] standard scores were > 1.5 standard deviation below the mean of the assessment and [Student's] global cognitive functioning. The results of the evaluation indicated [Student] presents with inattention and executive dysfunction. This was identified in performance-based assessments and the results of ratings scales (e.g., the BRIEF and Conners-4). Additionally, [s/he] has been diagnosed with ADHD, predominantly inattentive presentation. Likewise, [Student] has been prescribed medication to treat the symptoms associated with ADHD. However, it appears that [Student's] learning disability is the cause of [her/his] academic weaknesses. Thus, interventions to support [his/her] inattentive behaviors can be addressed through the specific learning disability classification. However, final disability determination should be made at the behest of the multidisciplinary team.⁸⁶

28. On July 31, 2024, Attorney A notified DCPS that Student would be enrolled at School D for the 2024-25 school year “in order to provide [him/her] the free appropriate public education (“FAPE”) to which [s/he] is entitled,” and requested that DCPS place and fund Student at School D. On August 2, 2024, DCPS acknowledged receipt of the notice and declined to fund the placement.⁸⁷

29. On September 16, 2024, DCPS issued a PWN determining that Student remained eligible for services under classifications of SLD (primary) and OHI (secondary). The PWN reported that Mother agreed with this determination.⁸⁸

30. On September 25, 2024, Witness J conducted observations of Student in three classes at School D. In Global Citizenship,

During the lesson, [s/he] appeared on task and focused... When asked about using specific maps for help navigating around a city, [s/he] responded yes. When asked to explain how [s/he] could be helped by the teacher, [s/he] shared that [s/he] could see the

⁸⁴ P21:12 (356).

⁸⁵ *Id.* at 14 (358).

⁸⁶ *Id.* at 17 (361).

⁸⁷ P22:1-2 (364-5).

⁸⁸ P24:1 (371). *See also* Final Eligibility Determination Report. *Id.* at 3 (373).

roads and gave further details. [S/he] did not need the question to be asked again or repeated. [S/he] was able to independently answer the response quickly and thoroughly without prompting or support. When asked follow up questions, [s/he] responded appropriately (i.e. what city, what type of map). When [s/he] was not responding, [s/he] was tracking the speaker and board throughout the observation. [S/he] did not partake in any off-task behavior nor show any inattentiveness...

In English, “During the entire period, [Student] worked independently. [S/he] highlighted the passage at times; however, [s/he] did not highlight the entire article. [S/he] flipped pages at an appropriate rate. The substitute checked in with [him/her] once and gave [her/him] praise. When [s/he] finished reading the passage, [s/he] began working on the comprehension questions.” In Reading, Witness J described Student reading aloud to the class, receiving praise from the teacher on a number of occasions, and generally actively participating in the class discussion. The three observations took 84 minutes including transitions.⁸⁹

31. On October 20, 2024, Witness J conducted observations of Student in three classes at School D. In Yearbook, “The class was working on a 2-part lesson (weather report and then going into the community to take pictures of student life.) The student was able to conduct an interview that was part of the class “weather report.” [S/he] was able to speak clearly, remembered all of [her/his] lines, and did not need any prompting or support.” In Math, “Students were told to complete their Warm-up which consisted of 5 questions. [Student] got [her/his] binder and got started immediately. During this time, [s/he] did not get distracted by peers talking. The teacher reminded students to ask clarifying questions. [Student] got up at a point to get a multiplication chart table as a resource... For the next problem, the teacher told the students that this was a trial and error problem. She told them to do the multiplication and then the addition. She said if it doesn't equal 19, move the numbers around. Students needed to create equations that would equal 19 with given numbers. [Student] was able to complete this on the first try. [S/he] then explained to the teacher how it worked. [S/he] noted that if you multiply 5x3 you get 15 and then if you add 4, you get 19. [S/he] then moved onto the next problem. [S/he] solved it independently... [Student] then began working on the next problem and solved it. [S/he] then began working on the last and appeared to solve it by [him/herself]. [S/he] was stopped by [his/her] teacher before [s/he] moved onto the next problem. [S/he] was the first in the class to finish. [S/he] was told to get out [her/his] classwork as [s/he] waited from yesterday. [Student] submitted [his/her] homework before [s/he] began working on classwork...” In Science, the report included nothing of significance relating to Student’s attentiveness. The total time of the observations was 89 minutes including transitions.⁹⁰

32. During the fall of 2024, when Student was in grade B at School D, Student’s MAP Math score of 215 was in the 38th percentile; his/her Reading score of 221 was in the 66th percentile.⁹¹

33. On November 7, 2024, Witness B, Petitioners’ educational advocate, provided DCPS suggested revisions to the draft EP proposed by DCPS.⁹² On November 13, 2024, Witness

⁸⁹ R23:1 (395-96).

⁹⁰ R24:1 (2).

⁹¹ P33:1 (545).

⁹² P28:1-39 (401-39).

B provided DCPS suggested goals and objectives for the IEP proposed by DCPS. She indicated that she would disagree with the goals and objectives in the IEP if her suggestions were not incorporated.⁹³

34. On November 12, 2024, DCPS conducted an IEP Annual Review meeting. Student was classified with an SLD. Mother was represented at the meeting by Attorney A and Witness B, her educational consultant.⁹⁴ In Special Considerations, the IEP team reported that Student had exhibited episodes of emotional dysregulation with executive functioning being her/his primary behavioral concern: “[Student] is reported to have difficulty navigating social situations previously, has demonstrated emotional dysregulation, impulsivity, anxious thoughts, and a depressed mood. While these areas were elevated at times, these symptoms do not appear to be a consistent area of concern but should be addressed. The primary area of need would be the executive functioning deficits that are also inherent with [her/his] diagnosis of ADHD.”⁹⁵ The IEP included goals in Mathematics, Reading, Written Expression, and Emotional/Social/Behavioral Development. The IEP team prescribed five hours per week of specialized instruction inside general education, six hours per week outside general education, two hours per month of behavior support services (“BSS”), and two hours per week of specialized instruction consultation services. In addition to the Other Classroom Aids and Services in the previous IEP, the IEP added the following: Utilizing graphic and semantic organizers and mindmaps, re-teach phonemic awareness skills to improve encoding and decoding, access to spell check and Grammarly, Encourage Student to break down written work into several smaller steps, attend to each aspect separately, use of word processing technology for work correction and completion, use of mathematics journal to provide information regarding steps and procedures to complex mathematics equations, redirection to task through nonverbal, gestural, visual cues and repetition of directions, reminders to check work, teach active reading techniques (underlining, highlighting, re-reading, marking, writing on margins, sticky notes, reading into tape recorder, etc), use of multimodal instruction (e.g. visual, auditory, tactile), writing down homework assignments or having assignments in virtual space (i.e. Google classroom), write on tests or materials to eliminate transfer errors, use of mnemonic techniques, check-ins with trusted and familiar adult check to make sure Student has recorded her/his answer accurately.⁹⁶

35. During the IEP meeting on November 12, 2024, Witness B, Petitioners’ educational consultant, opined that BSS be provided in the classroom rather than in pull-out. Witness A and Attorney A opined that Student required support throughout the day; Attorney A requested that DCPS refer the matter to the Office of the State Superintendent of Education (“OSSE”) for a change of placement.⁹⁷

36. On December 17, 2024, Witness B, Petitioners’ educational consultant, requested an observation of “the program that DCPS has proposed for [Student] at [School E]. Witness G, Director of Specialized Instruction at School E, replied later that day that she was “not familiar with this situation or student. Please provide more information regarding your ask, as this is not a

⁹³ P27:1-4 (397-400).

⁹⁴ P29:1 (445).

⁹⁵ *Id.* at 2 (446).

⁹⁶ *Id.* at 42-43 (486-7).

⁹⁷ R25:4 (404).

student attending [School E] and our team is not scheduled to host an open house until January 11, 2025.” On December 18, 2024, Witness B informed Witness G that Student was enrolled at School D, but DCPS had proposed that s/he attend School E. On January 16, 2025, Mother thanked Witness G for information she had sent regarding School E’s open house and informed Witness G that “I am seeking to observe, alongside my special education expert, to assess the appropriateness of the proposed program for my [child] at [School E]. Please let me know if a visit during the school day to observe [his/her] proposed program will be possible.” Mother sent a follow-up request on January 23, 2025.⁹⁸

37. On March 17, 2025, Witness E, DCPS’ expert witness in school social work, observed Student at School D. In a Math class, “The class was told to do a warm-up sheet with various math problems. [Student] got up to get a laminated multiplication table from a shelf. [S/he] worked well on the warm-up, twice asking the teacher for support with decimal places. When [s/he] finished ahead of the others, [s/he] sat quietly... The teacher started a lesson on Scientific Notation. ... [Student] maintained [his/her] attention and followed along. The class then watched a video called “Powers of 10” to show visually the powers of ten by zooming out of a video image meters to powers of 10. [Student] maintained attention during the video.”⁹⁹

38. Mother observed School E on April 9 and 10, 2025.¹⁰⁰ In Mother’s written report of her visit to School E, she recounted the class visit as follows: “Most students did get to work on the problem set though there was a fairly constant level of noise, some seeming to talk about the problem set, some just talking. 10:45 another student went out, one came in. At 10:46 another student went out. The students were mostly working on their problem sets, with the teacher actively visiting tables and answering questions. The teacher provided guidance to a few students to start working. At 10:49 a student entered the room. The teacher asked another student to sit up/raise her head from her desk, said she would get her a copy of her notes. At 10:50 another student left the room. At 10:52 another student was asked to leave the room and visit Mr. ... for throwing paper in the air. [Witness G] and I left shortly after.”¹⁰¹

39. On School D’s year-end Written Language Summary Report, Student was found to be Proficient in Topic Sentence and Concluding Sentence and Skilled in Detailed Sentences and Conventions.¹⁰² On the 2024-25 Assessment Summary, Student had mastered seven of the ten categories in the Phonogram Assessment, nineteen of the twenty categories in the Real Words Assessment, seven of the eight categories of Nonsense Words, three of the six categories in the Encoding Assessment, and five of the six stages in the Red Word Reading Assessment. In an assessment of Oral Reading Fluency, Student read a grade level passage at 119 wcpm with 98% accuracy for decoding and 55% for comprehension. On the winter 2025 Word Identification and Spelling Test, Student was Average in Word Identification and Sound-Symbol Knowledge and Poor in Spelling.¹⁰³ Student earned the following year-end grades: Yearbook – A, English – A-,

⁹⁸ P30:1-4 (499-502).

⁹⁹ R27:1 (442).

¹⁰⁰ P34:5-7.

¹⁰¹ P34:6 (552).

¹⁰² P36:1-2 (573-74)

¹⁰³ P37:1-3 (575-77).

Reading – A, Investigating Variables – B, Global Citizenship – A-, Science – A-, Physical Education – A, and Advanced Theater – A.¹⁰⁴

40. On July 17, 2025, Attorney A notified DCPS that Student would be enrolled at School D for the 2025-26 school year “in order to provide [him/her] the free appropriate public education (“FAPE”) to which [s/he] is entitled,” and requested that DCPS place and fund Student at School D. On August 13, 2025, DCPS acknowledged receipt of the notice and declined to fund the placement.¹⁰⁵

41. Witness A was School D’s Director of Jurisdictional Services. She testified that School D serves students with above average intelligence and mild to moderate language-based disabilities. It currently has eleven students placed there by the District, four placed there during 2025. School D has a total of 370 students, 180 in its middle school. During the 2023-24 school year, and not including Physical Education, Student’s class sizes at School D ranged from six (Folk Lorists and Math) to eleven (Science) students. During the 2024-25 school year, they ranged from four (Math) to ten (Yearbook and Science) and thirteen (Theater). During the 2025-26 school year, the range was five (English), to thirteen (Theater). When asked how Student presents in the classroom, Witness A testified that between grades G and L, his/her confidence has grown: from being reluctant to participate to being willing to take risks and raise her/his hand and answer questions. Two years ago, Student was reluctant to read aloud. When asked if Student has needs in executive functioning, Witness A replied that s/he needs a lot of support. When asked if she offered an opinion as to the goals in the January 24, 2024 IEP, Witness A replied that the meeting was “very collaborative” and the Math goals were “tweaked.” With respect to the eight hours of specialized instruction proposed by DCPS, Witness A opined that the goals could not be achieved in the time provided in the IEP. Witness A described Student as a quiet student: “Just because [s/he] looks attentive does not mean [s/he] is.” When asked about the eleven hours of specialized instruction prescribed in the November 12, 2024 IEP, Witness A replied, that it was “getting closer but doesn’t match the program [s/he’s] receiving.” Witness A opined that Student is appropriately placed at School D. On cross-examination, Witness A testified that there is no “magic number” as to the class size Student needs to make progress. School D attempts to keep the class size in core subjects no greater than five. She conceded that she has conducted no formal observation of Student and has never observed her/him in a public school class. She also conceded that there is no empirical data to show that Student cannot make progress in a larger class or that the progress s/he has made is due to him/her being in small classes. Class sizes at School D are not managed to address an individual child’s needs: “We keep the class sizes small.” Witness A conceded that School D has developed no written plan to address Student’s executive functioning needs; there are no written executive functioning goals.¹⁰⁶

42. Mother testified that Student was enrolled at School A for grades Q through E, at School B for grade C, and at School C for grades F and A. Student was found eligible for services in grade E at School A. While Student was much happier emotionally at School B, they could not help him/her academically; s/he was not making the progress they expected. School C instruction was virtual at the beginning of the 2020-21 school year. When Student went back to in-person

¹⁰⁴ P38:1-4 (578-81).

¹⁰⁵ P40:1-2 (585-86).

¹⁰⁶ Testimony of Witness A.

classes, the class size was 10-12 students. For the 2021-22 school year, classes at School C were all in-person. While Student was at School C, Petitioners provided her/him a private tutor for reading support. Mother testified that Student started to “withdraw” during grade F; s/he had one good friend but did not make any new friends. Petitioners retained Witness B as an educational consultant while Student was at School C because “We were uncertain if we were in the right environment.” They enrolled Student at School D for grade D in 2022 because “[s/he] was not thriving at School C.” When asked if the level of services on the January 24, 2024 IEP was appropriate, Mother testified that it was not because it was not “the level s/he started to succeed with.” When asked if the level of services on the November 12, 2024 IEP was appropriate, Mother testified that it was not because the level of services was insufficient. Mother testified that she observed School E. The teachers “seemed to know what they were talking about,” but Student would not have been able to “keep up” there. There was “a lot of movement” that reminded her of the environment at School A, although the Literacy class at School E was “a bit calmer.” When the observation was concluded, Mother did not have an understanding of what the inclusion program would look like if Student came, and no one at School E provided her an answer. Mother opined that it would be difficult for Student to learn in the environment at School E due to the disruptions in the classroom (“students going in and out, getting into trouble, activities unrelated to what was being taught”) and the speed of instruction. “The teacher knew where she wanted to go, but was going fast – would move on – [Student] would never engage in that environment.” Mother opined that Student needs to be reminded to pay attention and was not convinced that a teacher in a class size of fourteen would notice that Student was not paying attention. Mother testified that this is the first year at School D that she feels Student is thriving; Student first started to feel competent at the end of the previous school year, finally “coming out of [his/her] shell.” Mother stated that she definitely saw progress in Student’s MAP scores. On cross-examination, Mother conceded that Student’s progress reports at School C showed s/he was making progress. Nevertheless, Petitioners placed him/her in School D because “[s/he] wasn’t doing well” socially/emotionally. Thus, in her view, Student was not making the progress Mother wanted. Mother conceded that at School C there were no reports of work avoidance or withdrawal. She also conceded that some of Student’s teachers at School D are not certified in special education, Student has no written education plan at School D, there is no written plan to address Student’s executive functioning needs at School D, there is no report indicating the maximum class size Student can tolerate, and that class sizes were never mentioned at the January 2024 IEP meeting, Mother conceded that she has never observed instruction in a class at School D or executive functioning support at School D, and has never received a report on Student’s executive functioning at School D. She also conceded that she agreed with all of the goals in the proposed IEPs as well as the Other Classroom Aids and Services. The only aspects of the IEPs she disagreed with was the hours of specialized instruction. No one on Petitioners’ team specified an amount of services other than full-time.¹⁰⁷

43. Witness B was Petitioners’ educational consultant. When asked about her observation of Student at School C, Witness B testified that Student “was not engaged in the way I wanted [him/her] to be” and that s/he needed more direct instruction. Student transitioned to School D in 2022 so that his/her learning disabilities and attentional and executive needs could be met. When asked about Student’s presentation at School D, Witness B testified that at first, Student’s attention was inconsistent, was reticent and lacking in confidence, his/her basic skills

¹⁰⁷ Testimony of Mother.

were not well-developed, and s/he evinced significant anxiety. Now, Witness B has perceived a significant change in confidence and in her/his ability to follow multi-step directions. Witness B testified that she provided feedback to DCPS on its draft January 2024 IEP. She ultimately agreed with all of the goals in that IEP. However, there were “not nearly enough” service hours. “[S/he] was appropriately placed at [School D] due to the need for services throughout the day.” Witness B also opined that Student required a small class environment. Witness B testified that she provided feedback to DCPS on its draft November 2024 IEP. She agreed with the goals in the final IEP, but opined that Student required full-time services: s/he was still building new skills that needed specialized instruction in every class, and every class needed to be small. Class size is important because Student “needs access to the teacher when [s/he] has questions.” When asked if Student has made progress at School D, Witness B cited curriculum-based testing results and standardized testing results. When I asked if Student needed to remain at School D if s/he was performing at grade level, Witness B replied, “I don’t know how to answer that; [s/he’s] not at grade level.” On cross-examination, Witness B could not recall if she said at the IEP meetings that the goals could not be implemented in the hours prescribed. She could not recall if anyone on Petitioners’ team at either IEP meeting stated that a particular class size was required for Student to make progress. She could not recall that Student’s spring 2025 MAP scores were above the national average, but then stated that that was but one data point. Witness B testified that she has testified in “hundreds” of cases in support of her clients’ efforts to secure placements at School D.¹⁰⁸

44. Witness C was Petitioners’ expert witness in psychology who conducted the evaluations of Student in June 2020 and January 2024. She discussed the findings from her January 2024 evaluation described in paragraph 23 above. Witness C recommended that Student continue attending School D because it offers (a) smaller classes, (b) a slower pace, and (c) a highly individualized, evidence-based structure. When asked why her recommendations 2024 differed from her recommendations in 2020, she stated that in 2020, Student had just entered public school and had been making progress. When asked what concerns she would have if Student were in a less restrictive environment, Witness C replied that Student “would benefit most in a small class,” a less restrictive environment would lead to gaps in learning, and s/he needs a slower pace. On cross-examination, Witness C conceded that she has never observed Student in any school setting. Witness C conceded that she did not talk to any of Student’s teachers at School C. She also conceded that Student’s 2021 scores on the WJ-IV reflected improvement over scores in Witness C’s 2020 evaluation, specifically her/his Reading Comprehension score of 102. She conceded that she has never observed instruction at School D, was unaware of the educational program School D uses for Student, that small classes do not equate to specialized instruction, was unaware if School D serves students with SLD or ADHD, that some of the progress Student made was at School C, that Student’s scores on the MAP assessment were largely in the average range, that when she recommended sharing her recommendations with the “learning support team at [School D]”¹⁰⁹ she did not know who that included, and that she was unaware if Student had a written education plan at School D. However, she reiterated that it was important for Student to have an individualized education plan. When Respondent’s attorney asserted that Witness C was recommending “what’s best” for Student rather than “what’s legally required,” Witness C replied, “I understand.” On redirect examination, Witness C testified that Student’s MAP scores indicate

¹⁰⁸ Testimony of Witness B.

¹⁰⁹ P12:12 (174).

academic improvement. When I asked Witness C for the objective data that Student required a self-contained classroom environment, she offered none. She conceded that Student made academic progress at School C, but stated that in a “self-contained classroom there are lower executive demands. [S/he] was not having the same level of dysregulation.” Witness C then conceded that her recommendation was based on Student’s emotional improvement. Upon follow-up cross-examination, Witness C conceded that she had no information about Student’s emotional status at School C.¹¹⁰

45. Witness D was a special education teacher and LEA Representative at School C when Student was enrolled there. She provided direct Student direct support in Reading during the first month of the 2021-22 school year. She recalled that Student needed help decoding multisyllabic words. She testified that the Cognitive goal in the January 2023 IEP addressing executive functioning was added because School D staff insisted that Student needed it. At an IEP team meeting on April 29, 2021, Mother volunteered that Student “has made such great progress this year.”¹¹¹ At another IEP team meeting on December 9, 2021, the team discussed the fact that Student was benefitting from the use of A/T devices.¹¹² Examiner A raised the possibility of terminating services due to Student’s achievement scores in the average range, but the team decided to maintain Student’s services. Witness D testified that during the 2021-22 school year, Student was able to access the general education curriculum with the services and accommodations in his/her IEP at that time. When asked how s/he presented socially and emotionally, Witness D testified that Student was a hard worker and had friends with whom s/he connected appropriately. When asked if the School C recommended the transfer to School D, Witness D replied that “We thought [s/he] was making progress in grade level content in general education.” School C’s staff saw no evidence of the need for the “extensive level of monitoring” suggested by the School D staff. School C staff was unaware of any data warranting 32.5 hours of specialized instruction or the need for a self-contained class. On cross-examination, Witness D testified that language in the Reading PLOP of the December 2021 IEP that Student “requires intensive phonological interventions to be able to access the general education curriculum” and in the Least Restrictive Environment (“LRE”) section that s/he “continues to need more intensive phonics instruction outside of the typical interventions provided in the general education setting” were mistakenly carried over from the previous IEP as is confirmed by the less restrictive setting actually prescribed in the IEP. When asked if Student mastered any of her/his goals, Witness D testified that Student left DCPS for School D midway through implementation of the IEP. On redirect examination, Witness D testified that anxiety was not an issue for Student at School C and Student was on track to mastering her/his goals.¹¹³

46. Witness E was Respondent’s expert witness in school social work. She participated in the November 2024 IEP meeting and observed Student at School D in March and September 2025. She testified that there was no disagreement at the IEP meeting as to any of the PLOPs or goals. She opined that the BSS services levels were appropriate based on the ratings provided in the Strengths and Difficulties Questionnaire (“SDQ”) to which Mother and three teachers submitted rating scales. There were no “red flags” indicating that Student’s academic

¹¹⁰ Testimony of Witness C.

¹¹¹ R2B:1 (30).

¹¹² R5A:1 (80).

¹¹³ Testimony of Witness D

performance was significantly adversely affected by inattention or deficits in executive functioning. She opined that the goals adequately met Student's executive functioning needs and that the Other Classroom Aids and Services largely targeted executive functioning as well. There was also no disagreement as to these. Witness E opined that Student would benefit in a general education environment from communication and behavior modeling from non-disabled peers: "They learn more from each other than from us." When asked if she had any concerns about Student being in a general education environment, she testified that during her observation of Student, s/he was paying attention, was on-task, would get up and get materials s/he needed, return to her/his seat and finish his/her work. His/her teachers at School D were complimentary of her/his executive functioning skills. When asked about Attorney A's comment at the IEP meeting that Student "struggled tremendously" at School C, Witness E testified that that was "inconsistent with our experience. S/he never required mental health support – s/he was quiet but coming out of her/his shell." BSS was prescribed as a concession to Petitioner's team, but the School C staff did not see the need for it when Student was at School C. When asked about Attorney A's request at the November IEP meeting for a referral to OSSE for full-time services in a private school, Witness E testified that there was no data to support that level of restriction: "It was all about executive functioning. There was no evidence of a behavioral problem, no red flags in the SDQ. S/he was a little bit distracted but able to complete [her/his] work... [S/he] was on top of what [s/he] needed - going to get materials when [s/he] needed them... S/he was keeping up, didn't seem lost" When asked what data supported Student's need to be in a small class environment, Witness E opined that there was none, citing the self-report and parent and teacher's rating scales on the BASC-3 and Conners-4 on Witness C's 2024 evaluation. When asked about support at School E, Witness E testified that in grade L, there are two teachers in each classroom for students with IEPs. After whole group instruction, there are small group sessions. On cross-examination, Witness E conceded that the Math class she observed at School D had four students and the teacher told her that Student's executive functioning had improved. She also conceded that on Witness C's 2021 evaluation, there were teacher ratings in the Clinical range.¹¹⁴

47. Witness F was Respondent's Non-Public Monitor. In that role, he monitors the progress of DCPS students placed in non-public schools and participates in IEP meetings of those students. Witness F testified that he annually receives a report from each school he monitors providing the teaching credentials held by each of the schools' teachers that he monitors. Based on Witness F's testimony and Student's class schedules at School D for grade G, grade D, and grade L,¹¹⁵ the teaching certifications for Student's teachers for the current school year and the past two school years are provided in Appendix 2. During the 2023-24 school year, when Student was in grade G, of his/her nine teachers, three were certified in the District in special education, two were certified in general education content areas, and four had no certification. During the 2024-25 school year, when Student was in grade D, of her/his nine teachers, one teacher was certified in special education, two had certification in general education content areas, and six had no certification. During the current school year, of Student's eight teachers, one has special education certification, three have certification in general education content areas, and four have no certification. Witness F testified that Student's largely average scores on achievement tests did not indicate that the severity of her/his disability warranted placement in a self-contained private school, segregated from non-disabled peers. Witness F opined that School D does not provide the

¹¹⁴ Testimony of Witness E.

¹¹⁵ P7:1 (95), P23:1 (365), P38:1 (587).

individualized instruction required by IDEA for several reasons: (a) only a small fraction of its teachers hold special education certification, (b) a large contingent of its teachers hold no teaching certification in any general education content area, (c) every student at School D gets the same level of services, 35 hours per week, whether they need it or not, (d) students like Student, who are unilaterally placed at School D by their parents, have no written education plan provided by School D. Witness F opined that based on the record, Student could have succeed within DCPS in general education with the IEPs DCPS has provided. On cross-examination, Witness F conceded that School D has a Certificate of Approval (“COA”)¹¹⁶ from OSSE.¹¹⁷

48. Witness G was the Director of Special Education at School E. She testified that School E offers services to children with disabilities with up to 20 hours of specialized instruction outside general education. Classes are co-taught with special education teachers if children with IEPs are in the class. When asked to describe Student’s performance on Witness C’s two evaluations, Witness G testified that Student’s achievement scores were generally average on the 2020 evaluation. On the 2024 evaluation, reading and writing were strengths while math was a concern. Student’s process speed depressed his/her scores, but given extended time, s/he performed well. Witness G opined that Student performed much better on the 2020 evaluation as well as DCPS’ 2021 evaluation. When asked to characterize Student’s performance on the MAP assessments,¹¹⁸ she opined that Student is “consistently improving” and is outperforming the norm. When asked what data supports Student’s need for being in a self-contained classroom environment, Witness G replied that “this student is not eligible for a self-contained class. It would stunt his/her growth. S/he should be exposed to the common core state standards.” After being directed to peruse Student’s IEP Progress Reports at School C, Witness G was asked what the reports reveal about the request for placement in a self-contained class. She opined that such would be an excessive amount of support hours. “We’re trying to minimize the restrictiveness of the environment.” Witness G testified that School E was capable of providing the services prescribed in each of the IEPs at issue. When asked if School E provides support for students with executive functioning needs, Witness G testified that support for executive functioning is embedded in curriculum with helping them to line their paper correctly, putting their name on their paper, making sure that they’re putting their homework assignments in their school agenda book, making certain that their notebooks are organized, and some teachers do notebook checks. If it’s something that’s more significant, such as self-regulatory needs, that can be implemented through our behavior support services.” Witness G testified that she would have no concerns about Student being able to succeed in general education classes at School E. She did not share Mother’s opinion that School E was not appropriate for Student, citing the school’s “rigorous content” and the intervention supports it provides. When asked if Student fits the profile of students at School E, she replied affirmatively, stating that Student is “typical of students in our inclusion program and they improve one to one and one-half grade levels” each year. On cross-examination, Witness G conceded that the skills Student needed to score in the average range were easier when s/he was younger, but noted that Student regressed at School D in phonological awareness which implicates the instruction s/he is receiving. Witness D expressed concern that Student’s service hours have

¹¹⁶ D.C. Code § 38-2561.07.

¹¹⁷ Testimony of Witness F.

¹¹⁸ P33:1 (545).

doubled since moving to School D: “what interventions are not happening that services have had to be increased?”¹¹⁹

49. Witness H was the Manager of DCPS’ Central IEP team (“CIEP”). That team conducts the IEP meetings for DCPS students attending private schools. When asked to characterize Student’s performance on Witness C’s 2020 neuropsychological valuation, Witness H testified that Student evinced high cognitive attributes with strength in working memory and weakness in fluency. When asked about Examiner A’s 2021 psychological evaluation, she testified that there were no marked differences; Student’s achievement scores were largely in the average range, his/her reading had improved while math was a weakness. Witness H concluded that the evaluations indicated that Student qualified for support in math and reading fluency with math requiring more support than reading. When asked about Student’s weaknesses in spelling and fluency, Witness H noted that Student scored in the Average range in Broad reading and Comprehension, so her/his weaknesses in spelling and fluency did not affect her/his comprehension/understanding. When asked to characterize Student’s performance on Witness C’s 2024 evaluation, Witness H testified that Student remained average in reading with a weakness in math. She discerned no emotional disability from the inconsistent responses on the behavioral assessments. Witness H testified that Student’s IEP Progress Reports during the 2021-22 school year at School C reflected progress with the level of support s/he was receiving. She opined that there was no data to support removing Student from general education and placing him/her in a full-time self-contained class. “To the contrary, [s/he] was reading and comprehending on grade level, not bored, and continuing to learn,” and continued to support her/him in math, but a Low Average math score on the WJ-IV did not justify a private placement; s/he could get adequate support in general education. A more restrictive placement would be justified if s/he was unable to make progress in general education, but s/he was making progress. When asked about the individualized instruction at School D, Witness H opined that there is none; many of the teachers have no special education certification or no teaching certification at all, and the students do not have individually tailored educational programs. Witness H testified that she has been visiting School D since 2014 but has never seen a class co-taught by a certified special education teacher. “I just see general education instruction.” She testified further that Witness E’s observation of Student revealed Student remaining on-task and asking for help as needed; from a behavioral standpoint, Student did not need to be segregated from non-disabled peers. She testified that Student’s executive functioning needs were addressed in goals in the January 2024 IEP as well as in the classroom accommodations; on the contrary, there is no documentation that School D ever provided Student support for her/his executive functioning needs. Witness H agreed with the increase in services in the January 2024 IEP to address Student’s continued weakness in math, and opined that no data supported segregation in a full-time self-contained classroom. Similarly, Witness H opined that the November 2024 IEP that increased services was appropriate because it was based on Student’s documented needs, but no data supported the need for placement in a full-time self-contained classroom. Witness H opined that Student would benefit from interaction with her/his non-disabled peers from modeling and being exposed to a more rigorous curriculum. On cross-examination, Witness H conceded that there is no way to determine how much of the progress Student made at School C is attributable to the independent tutoring s/he was receiving. She also conceded that she did not know if Student would have made the same amount of progress

¹¹⁹ Testimony of Witness G.

in a larger class.¹²⁰ Witness H also conceded that Examiner A noted at the December 2021 IEP meeting that Examiner A stated that Student had “some gap skills that are a few grade levels behind that we want to focus on.” At that meeting, Examiner A stated that Student was below grade level in spelling. However, Examiner A explained that Student was currently able to access grade level texts. Witness H insisted that Student’s reading needs could be adequately addressed inside general education. However, She conceded that Student’s MAP scores evince progress in Math and Reading from 2023 to 2025.¹²¹

50. Witness J was Respondent’s LEA Representative and Specialist on the Central IEP team. She was Student’s case manager for the development of the January 2024 IEP. When asked if Student required a full-time self-contained classroom setting due to his/her weakness in math, Witness J testified that s/he did not: “[S/he] was on-task, focused. Comprehending. Nothing indicated s/he needed intensive support or a self-contained class.” Witness J testified that the IEP meeting was “extremely” collaborative and that there was agreement on all of the goals. She testified that there was no data in the areas of Math, Reading, or Written Expression to support the need for Student to be placed in a full-time self-contained classroom environment. The Reading and Written Expression PLOPs referenced an observation of Student conducted by Witness J on December 11, 2023. Witness J testified that nothing she observed suggested the need for Student to be segregated in a self-contained classroom. The Cognitive goals were carried over from the previous IEP to address Student’s executive functioning needs, but the team had been provided no data from School D as to what they were doing in this area;¹²² School D had developed no written educational plan for Student in any area. Witness J testified that DCPS did not want to remove the executive functioning goals without data to support the removal. When asked if Student was still performing in the average range, Witness J testified that Student had regressed at School D in Math on the most recent psychological evaluation. She attributed the regression to the lack of specialized instruction at School D and lack of instruction by a certified special education teacher. She also testified that School D’s failure to submit data on Student’s support or progress in executive functioning is evidence of the lack of specialized instruction. When asked to explain the increase in services in the IEP (from 6.5 hours per of specialized instruction inside general education, and thirty minutes per week outside general education) to six hours per week inside general education and two hours per week outside general education, Witness J testified that Student was making progress, but the team wanted to provide more individualized support outside general education in math, “but I didn’t want [him/her] to be out of the classroom to such a degree that would hinder [his/her] progress.” When discussing the PWN that was issued following the IEP meeting, Witness J was asked what data supported the need for placement in a full-time day school, Witness J replied that there was none: “We would need to show [s/he’s] struggling throughout the day and not making progress. We didn’t get any such data. In fact, a lot of the data supported the opposite.” Witness J testified that Petitioners provided no data to support the need for a small class size or that s/he could not succeed in a large school building. She opined that general education was Student’s appropriate least restrictive environment because it met all of her/his needs and there was ample time to work on her/his goals. When asked if she agreed with Witness C’s recommendation in her 2024 evaluation that Student remain enrolled at School D, Witness J testified that she “strongly” disagreed: nothing in the evaluation supported the need for a restrictive

¹²⁰ Mother testified that Student’s post-pandemic class size at School C during the 2022-21 school year was 10.

¹²¹ Testimony of Witness H.

¹²² “DCPs does not have updated information as to whether this goal was mastered yet.” R19:26 (374).

environment. If s/he's making progress in a private school, s/he should not need the outside math tutoring that s/he's receiving, and her/his math scores should not be regressing. As for Student's "learning support team" at School D referenced in the Witness C's recommendations, no such entity exists and School D has developed no educational plan for Student. Witness J testified that at the November 2024 IEP meeting, there was no disagreement with the IEP PLOPs or goals. The team increased the level of specialized instruction outside general education to six hours to address Student's weakness in math. There was no data submitted by Petitioners to support the request for a placement in a full-time self-contained classroom. When asked if she agreed with Attorney A's statement at the IEP meeting that Student "struggled tremendously" at School C, Witness J replied that Student made gains at School C.

On cross-examination, Witness J conceded that the amount of specialized instruction prescribed in the January 2024 IEP did not provide support in all hours of Student's core subjects, but she stated that Student did not need that level of support. She also conceded that the Cognitive PLOP included a report from School D that Student does not start assignments in a timely manner and that it was not a new problem, but stated that Student did not exhibit the problem at School C to the extent reported by School D. On redirect examination, when directed to the Cognitive PLOP, it indicated that in grade A at School C, the team observed "instances where [Student] would not ask for help or required a check-in," Witness J reiterated that the behaviors were not at the level reported by School D.

51. In rebuttal testimony, Mother refuted testimony of Witness D that Student exhibited no social/emotional issues at School C. Mother testified that Student made no new friends in grade A at School C and School C did not offer support by a social worker. In response to testimony that Mother was "happy" with Student's progress at School C at the IEP meeting on December 9, 2021, Mother testified that they were happy with Student's progress during grade F. That year, when Student returned from virtual instruction, s/he was in a class of ten students and was seeing a tutor four days per week, but was not making progress in math. She testified that no one from DCPS questioned Student's progress at School D at any meeting. Nothing she heard during the hearing changed her opinion that School D is "totally" appropriate for Student.

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 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.¹²³

The issues in this case involve the alleged failure of DCPS to provide appropriate IEPs and placements. Under District of Columbia law, DCPS bears the burden of persuasion as to these issues. Petitioners bear the burden as to all other issues.¹²⁴

Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and placement on January 24, 2024 for the 2023-24 school year. Specifically, Petitioners assert that the IEP did not provide a sufficient amount of self-contained special education services and that the proposed placement and/or location of services at School E was too large of a setting for him/her, including class sizes and school size.¹²⁵

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*.¹²⁶ 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.'"¹²⁷ 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..."¹²⁸ Insofar as a State is required to provide a handicapped child with a 'free appropriate public education,' we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction... In addition, the IEP, and therefore the personalized instruction should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public school system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade."¹²⁹

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.¹³⁰ 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*.'"¹³¹ 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,

¹²³ D.C. Code § 38-2571.03(6)(A)(i).

¹²⁴ *Schaffer v. Weast*, 546 U.S. 49 (2005).

¹²⁵ Petitioners did not allege that the IEP developed prior to the beginning of the 2023-24 school year was inappropriate.

¹²⁶ 458 U.S. 176, 187 (1982).

¹²⁷ *Id.* at 189-90, 200

¹²⁸ *Id.* at 200.

¹²⁹ *Id.* at 203-04.

¹³⁰ *Andrew F. ex rel. Joseph F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (2017).

¹³¹ *Id.* at 997.

... [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.¹³²

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. 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.¹³³

The provision of a FAPE must be “in conformity with the [child's] individualized education program required under section 1414(d)...”¹³⁴ An IEP “is the means by which special education and related services are tailored to the unique needs of a particular child.”¹³⁵ An IEP must be in place for each disabled student “[a]t the beginning of each school year,”¹³⁶ and must outline a comprehensive plan to “meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum.”¹³⁷

Petitioners assert that the IEP developed in January 2024 is inappropriate primarily because it provides an insufficient amount of specialized instruction outside general education. Petitioners insist that Student cannot make academic progress unless s/he receives special education support throughout the school day. DCPS counters that Student has average cognitive skills and while s/he has weaknesses that require support, s/he is capable of accessing grade level content in a general education environment.

Student was in a general education environment at School B and School C before Petitioners unilaterally placed him/her at School D for grade D for the 2022-23 school year. When Student was evaluated by Witness C in 2020, her/his cognitive scores were generally in the High Average range (Full Scale IQ – 111) with a relative weakness in Processing Speed (89), one point below the Average range. On the BRIEF-2, two of Student's teachers completed rating scales on 13 subtests. Neither teacher rated Student in the Clinical range on the subtests related to attention or executive functioning: Plan/Organize, Task-Monitor, or Global Executive Composite. On the

¹³² *Id.* at 1000-01 (citations omitted)

¹³³ 137 S.Ct. at 1000-01.

¹³⁴ 20 U.S.C. § 1401(9)(D). *See id.* § 1414(d)(2).

¹³⁵ *Endrew, supra*, 580 U.S. at 391, quotation marks omitted, quoting *Rowley, supra*. 458 U.S. at 181.

¹³⁶ 20 U.S.C. § 1414(d)(2)(A).

¹³⁷ *Id.* at § 1414(d)(1)(A)(i)(II)(aa).

BASC-3, neither teacher rated Student in the Clinical range in Attention Problems. Curiously, Witness C diagnosed Student with ADHD, Predominantly Inattentive Presentation despite the fact that in the school environment, the only two raters did not provide T-scores in the Clinical range in either Conners-3 subtest related to ADHD, and there were no Clinical scores from either teacher related to attention on the BASC-3. Just before Student enrolled at School C, Witness C supported Student's level of IEP support in reading, 2.5 hours per week,¹³⁸ and recommended support in accessing technology and word processing software for reading and writing and occupational therapy of 45 minutes per month to support his/her fine motor speed and dexterity weaknesses "that impact [his/her] handwriting and organization of written work."

In November 2021, when Student was in his/her second year at School C, s/he was assessed by Examiner A. Examiner A observed Student in a class of 20 students. Student "was occasionally observed to be staring off unfocused, but [s/he] still was typically focused and on-task... [Her/his] academic behaviors clearly supported [her/his] ability to access [his/her] educational opportunities, get the most out of [his/her] classwork practices, and seek help appropriately when [s/he] had questions about the work." Examiner A conducted a full battery of WJ-IV achievement tests. Student scored in the Average range in Broad Reading, Reading Comprehension, Written Language, and Broad Written Language. S/he scored in the Low Average range in Broad Mathematics, but was only two points below Average in Calculation (88), and three points in Problem Solving (87). As for the somewhat lower scores in Math, Examiner A opined that "there was not a critical need that would suggest [s/he] will struggle to access grade-level content without modification of content, but there are still skills that [s/he] would benefit from practicing, especially when developing [his/her] fluidity and speed of [her/his] math skills.

At an IEP meeting less than a month later, Examiner A reported that she viewed Student to be on an academic trajectory that would warrant fewer services. "[S/he] is still "baking the skills" right now, and if [s/he] continues the trajectory [s/he] is on, [s/he] will need fewer supports." Mother attributed Student's progress both to School C and to private tutoring: "I appreciate the acceleration academy opportunity for math at school and the consistent at-home tutoring [s/he] received at the beginning of the pandemic for putting [him/her] on a great path... I just don't want [Student] to feel like [she's] in the deep end if [s/he] goes to middle school. *It sounds like [s/he] might not be.* Teacher A agreed: "I agree, and I would even like to clarify... [s/he] does not even seem like [s/he] is in the deep end right now... [s/he] is largely able to keep up with the grade-level expectations and content overall with some modified work and additional instruction on gap-skills," with which Teacher B completely agreed. When Mother was asked how Student was feeling about the current school year, she replied, "Settled in and not overly stressed... It's hard for [him/her], and s/he doesn't report always loving school, but [s/he] seems to have acclimated well after returning from home-instruction (Covid) and all the other changes this year." Thus, at the last IEP team meeting at School C for which meeting notes were disclosed by either party, Mother appeared to agree with School C staff that Student was making progress and meeting grade level expectations with the support s/he was receiving, five hours per week of specialized instruction inside general education. The IEP developed in December 2021 included the assistive technology recommended by Witness C in her evaluation. The year-end IEP Progress Report, in which Student's special education teacher provided comments as to Student's progress on each of her/his goals in paragraph 7 above, reported that Student was making progress on all of his/her

¹³⁸ P2:3 (23).

goals midway through the implementation period of the IEP. In Math, Student demonstrated a high degree of accuracy but processing speed was a weakness.

At the first IEP meeting conducted after Student enrolled at School D in January 2023, Petitioners were represented by Attorney A and Witness B. At that meeting, DCPS proposed specialized instruction of 6.5 hours per week inside general education and 30 minutes per week outside general education, an increase of two total hours from the December 2021 IEP. The IEP team also added Cognitive as an area of concern that included three goals addressing Student's executive functioning needs. Attorney A dissented, stating that Student "demonstrates needs that require the full-time support class at [School D]. We don't believe [s/he] can be successful in the general ed class." Teacher A, Student's special education teacher at School C replied, "We didn't see the level of need at [School C] that you all are describing." DCPS' PWN refuted Student's need for placement in a full-time self-contained class: "Available data does not support that this level of increase is warranted. [Student's] most recent comprehension assessments indicate [s/he] has access to text that is close to grade level. [S/he] exhibits some math skills at grade level and others at late 3rd and into 4th grade level. Writing samples from when [Student] attended [School C] indicated [s/he] had grade appropriate organization and development skills when given visual supports, and that spelling was the greatest area of need, a need that was addressed through the use of assistive technology."

The first IEP at issue in this proceeding was developed on January 24, 2024. The IEP team prescribed six hours per week of specialized instruction inside general education, two hours per week outside general education, one hour per week of specialized instruction consultation services and numerous Classroom Aids and Services. The Classroom Aids and Services addressed Student's needs in inattention and executive functioning and included, but was not limited to, the A/T and classroom accommodations consistent with those recommended by Witness C in her 2024 evaluation that was not provided to DCPS until three months later. Witness A, School D's Director of Jurisdictional Services, opined that the IEP was not appropriate because the goals could not be achieved in the time provided in the IEP. Witness B, Petitioners' educational advocate, conceded that Petitioners' team agreed with all of the goals in the IEP, but there were "not nearly enough" service hours. "[S/he] was appropriately placed at [School D] due to the need for services throughout the day." When asked if the level of services on the January 24, 2024 IEP was appropriate, Mother testified that it was not because it was not "the level s/he started to succeed with." On cross-examination, Mother conceded that Student's progress reports at School C showed s/he was making progress. Nevertheless, Petitioners placed her/him in School D because "[s/he] wasn't doing well" socially/emotionally.

Witness D testified that during the 2021-22 school year, Student was able to access the general education curriculum with the services and accommodations in his/her IEP at that time. When asked how s/he presented socially and emotionally, Witness D testified that Student was a hard worker and had friends with whom s/he connected appropriately. When asked if the School C recommended the transfer to School D, Witness D replied that "We thought [s/he] was making progress in grade level content in general education." School C's staff saw no evidence of the need for the "extensive level of monitoring" suggested by the School D staff. School C staff was unaware of any data warranting 32.5 hours of specialized instruction or the need for a self-contained class. Witness H testified that Student's IEP Progress Reports during the 2021-22 school

year at School C reflected progress with the level of support s/he was receiving. She opined that there was no data to support removing Student from general education and placing him/her in a full-time self-contained class. “To the contrary, [s/he] was reading and comprehending on grade level, not bored, and continuing to learn,” and continued to support her/him in math, but a Low Average math score on the WJ-IV did not justify a private placement; s/he could get adequate support in general education. A more restrictive placement would be justified if s/he was unable to make progress in general education, but s/he was making progress.

Witness J was Student’s case manager for the development of the January 2024 IEP. When asked if Student required a full-time self-contained classroom setting due to his/her weakness in math, Witness J testified that s/he did not: “[S/he] was on-task, focused. Comprehending. Nothing indicated s/he needed intensive support or a self-contained class.” Witness J testified that the IEP meeting was “extremely” collaborative and that there was agreement on all of the goals. She testified that there was no data in the areas of Math, Reading, or Written Expression to support the need for Student to be placed in a full-time self-contained classroom environment. The Reading and Written Expression PLOPs referenced an observation of Student conducted by Witness J on December 11, 2023. Witness J testified that nothing she observed suggested the need for Student to be segregated in a self-contained classroom. On cross-examination, Witness J conceded that the amount of specialized instruction prescribed in the January 2024 IEP did not provide support in all hours of Student’s core subjects, but she stated that Student did not need that level of support. She also conceded that the Cognitive PLOP included a report from School D that Student does not start assignments in a timely manner and that it was not a new problem, but stated that Student did not exhibit the problem at School C to the extent reported by School D. On redirect examination, when directed to the Cognitive PLOP, it indicated that in grade A at School C, the team observed “instances where [Student] would not ask for help or required a check-in,” Witness J reiterated that the behaviors were not at the level reported by School D.

As should be clear from this chronological recitation, when Petitioners withdrew Student from School C at the end of the 2021-22 school year, there was no indication that they were dissatisfied in any way with Student’s progress at School C. At the IEP team meeting on December 9, 2021, Mother agreed that Student might not be at the “deep end” at the next level based on his/her progress at School C and that Student “seems to have acclimated well after returning from home-instruction and all the other changes this year.” In fact, Mother conceded on cross-examination that the IEP Progress Reports during the 2021-22 school year at School C confirmed that Student was making academic progress. At that point she testified that Petitioners moved Student to School D because Student “was not doing well socially/emotionally.” This mid-course change of strategy is problematic for several reasons. First, there is simply nothing in the record to support that Student had social emotional problems at School C. Witness D, a special education teacher who taught Student briefly at the beginning of the 2021-22 school year and was School C’s LEA Representative, testified that Student was a hard worker and had friends with whom s/he connected appropriately. Second, Neither Petitioners’ team nor School C’s staff ever proposed goals to address social/emotional difficulties. Third, when the January 2024 IEP was developed, Mother and her advocate, Witness B, conceded that they agreed with all the goals in the IEP; that IEP included no social emotional goals. Fourth, none of Petitioners’ expert witnesses offered testimony that Student had social/emotional problems at School C.

Petitioners posited that the IEP was inappropriate because the service hours were inadequate to address the goals. However, Student was performing at grade level in Reading and Written Expression, and was only marginally below the Average range in Math Calculations and Math Problem Solving on the 2021 WJ-IV assessment. Student was making academic progress at School C with five hours per week of specialized instruction inside general education on the December 2021 IEP. Thus, it was reasonable to believe that s/he would continue on the trajectory predicted by Examiner A at the December 2021 IEP meeting, with the three additional hours prescribed in the January 2024 IEP, particularly with two of the hours provided outside general education in a more restrictive setting. Moreover, although DCPS agreed to add goals to address her/his executive functioning needs, these were added at the insistence of Witness B, who submitted proposed changes to DCPS' draft IEP. While the parties agreed to the goals proposed by Witness B, DCPS did not agree that Student required placement in a full-time self-contained classroom. Student's academic progress at School C convinced DCPS that the 60% increase in service hours was sufficient to meet Student's needs in his/her core subjects since her/his assessments and IEP Progress Reports demonstrated continued ability to meet grade level expectations.

As for any suggestion that full time services were necessary to address Student's executive functioning or attentional issues, the record does not support the need for anything more than was provided in the IEP. First, the only evidence whatsoever that Student had executive functioning deficits prior to the development of the IEP was the Observation Report prepared by Witness B of her observation of Student at School C on June 9, 2022, in which Witness B reported Student to be "intermittently attentive," with "attentional lapses," and "not engaged." I note that this observation was conducted, and the Observation Report was prepared, several months after Petitioners had already made the financial commitment to enroll Student at School D in the fall of 2022.¹³⁹ When Examiner A evaluated Student in November 2021, the assessments took place over a three-day period. Examiner A noted that Student was "occasionally" observed to be stare off, but s/he still was typically focused and on-task. During the "few days we took to complete the assessment" Student exhibited self-advocacy and determination. And as was documented above, Student's only academic weaknesses revealed on the WJ-IV were in Math Fluency, which was still in in the Low Average range, and Spelling, which was addressed in the IEP with assistive technology recommended by Witness C. When Examiner B observed Student at School D for the April 2023 Speech and Language Evaluation,

Student] did not appear to be distracted by the disruptive interactions and noises as [s/he] glanced up but continued to look at and read [her/his] book... [Student] was observed to follow the directions without repetition... It was noted that there were various auditory distractions within the classroom setting; including more than one verbal altercation between another student and the classroom teacher, yelling by one to two students in the classroom, the electric sharpening of pencils while the teacher gave verbal directions, and hallway noise that entered the classroom through the open classroom door. Despite these distractions, [Student] was observed to continue to attend to the academic task (reading [his/her] book,

¹³⁹ From the numerous cases I have adjudicated with Attorney A's firm involving unilateral placements at School D, I am aware that School D requires a deposit in the spring once a child is accepted for the upcoming school year.

following verbal directions the first time given), with one exception. [Student] interacted appropriately with both the teacher and [his/her] peers.

As described in paragraphs 30 and 31 above, Witness J observed Student on two days in the fall of 2024 and generally found him/her to be attentive and responsive in the six classes Witness J observed. When Witness E, DCPS' expert witness in school social work, observed Student on March 17, 2025, Student maintained his/her attention in a lesson on Scientific Notation and during a video on "Powers of 10." Finally, in Witness C's 2020 evaluation, neither of the teachers who submitted rating scales on the Conners-3, the BASC-3, or the BRIEF-2 had T-scores in the Clinical range in any subtest related to attention or executive functioning. Thus, there is simply no data in the record to support a finding that Student had significant attentional or executive functioning deficits that justified the need for placement in a full-time self-contained classroom either when s/he was at School C or at School D.

Witness B conceded on cross-examination that she has testified in "hundreds" of cases in which she has supported unilateral placements at School D. In many of the numerous cases in which she has testified before this hearing officer, the allegation has been the same: the student's executive functioning needs are so severe that the child cannot make progress unless s/he receives special education services throughout the school day, usually at School D. In each such case, the petitioners have been represented by Attorney A's firm.

This case is remarkably similar to one brought by DCPS against parents represented by Attorney A's firm to substantiate the appropriateness of its IEP for a student who had been unilaterally placed at School D.¹⁴⁰ On the student's most recent evaluation, s/he was Average on all Reading Subtests. S/he was Low Average in Broad Written Language, but Average in Sentence Writing Fluency. S/he was Low Average in Broad Math and Calculation, but Average in Math Facts Fluency and Applied Problems. On the Conners, the student had elevated ratings from the mother and two teachers in Hyperactivity/Impulsivity and an elevated rating from a teacher in inattention. Because Student was generally performing at grade level, I suggested that the 15 hours of specialized instruction prescribed in the IEP was probably unnecessary to meet the student's needs: "Student's academic performance at the time of the April/May 2021 IEPs, at grade level in all three core subjects according to School A's February 2021 IEP, would not, by itself, warrant 15 hours per week of specialized instruction, if any at all."¹⁴¹ As for executive functioning, School D reported that the student often needed redirection, typically with non-preferred tasks, but s/he responded well to redirection and returned to his/her assigned tasks. On the BRIEF-2, his/her scores ranged from Normal on the Emotion Regulation Index, to Mildly Elevated in the Global Executive Composite, to Potentially Clinically Elevated on the Cognitive Regulation Index. Student often needed redirection, typically with non-preferred tasks, but s/he responded well to redirection and returned to his/her assigned tasks. I concluded from this and other evidence in the record that "These relatively benign findings on the Conners and the BRIEF-2 suggest that Student's attentional and executive functioning deficits do not have as significant effect on his/her classroom performance as was suggested by Respondents' witnesses."¹⁴² On appeal, Judge Timothy J. Kelly upheld my

¹⁴⁰ Hearing Officer Determination, Case No .2021-0200 (ODR May 9, 2022).

¹⁴¹ *Id.* at 23-24.

¹⁴² *Id.* at 23.

finding that the parents' witnesses arguments that the student could only make progress in a small class environment were speculative.

... [t]he hearing officer considering the IEP for the 2021–22 school year, likewise, found that H.R.'s "perform[ance] on grade level for two years and his ... recent evaluations do not support the contention that he needs intensive intervention in an academic cocoon to succeed..." True, Plaintiffs proffered experts and other evidence supporting the contrary view that H.R. needs all-day specialized instruction in a small group setting. But Judge Meriweather appropriately found that "[a]ll of this testimony is based on conjecture based on the unsupported assumption that because H.R. had progressed in smaller class sizes, he could not progress in larger ones," and much of the expert testimony "is conclusory and not based on concrete evidence, like an evaluation or testing..." In fact, she reasoned, Plaintiffs "failed to identify evaluations or studies providing concrete evidence that H.R. required full-time special education to progress ... as opposed to the proposed fifteen hours..." To be sure, one of Plaintiffs' experts had conducted a psychological evaluation of H.R. in 2021, but Judge Meriweather correctly noted that her testimony that H.R. needed full-time specialized care because he "has such complicated learning needs" and "is succeeding [at the Lab School] because of the features of that environment, that it's [a] small group, everything is intensely structured," was based on conjecture about how he would do outside that specific setting... And much of the "witnesses' rationales for full-time special education were already addressed in the IEPs," which account for 15 hours of specialized instruction outside of general education and executive functions supports...¹⁴³

In *S.J-D. v. District of Columbia*, Judge Dabney Friedrich cited *H.R.* favorably for its finding that "testimony based on the unsupported assumption that because [a student] had progressed in smaller class sizes, he could not progress in larger ones" was "based on conjecture" and "insufficient."¹⁴⁴ There, the same firm offered similar testimony in support of a unilateral placement at School D. I found that the student was capable of performing grade level work and concluded that their educational advocate's testimony, that a general education setting was not appropriate, was "pure conjecture" and "speculative" as to how the student would perform in a general education environment.¹⁴⁵ Judge Friedrich upheld these findings:

But the mere fact that S.J-D. required "an adult ... checking in" with her in a special education environment does not mean that such check-ins would be ineffective in a general education environment... Mounce provided no basis to conclude that DCPS could not effectively provide the kind of supports that allowed S.J-D. to succeed at the Lab School. In fact, S.J-D.'s IEPs specifically provided for direct adult supervision through frequent check-ins, checks for understanding, and

¹⁴³ *H.R. v. District of Columbia*, Civil Action No. 21-1856, 2024 WL 3580663 at 6-7 (D.D.C. July 10, 2024), citations omitted.

¹⁴⁴ Civil Action No. 24-00707, 2025 WL 2694806 at 7 (D.D.C. Sep. 22, 2025).

¹⁴⁵ *Id.* at 6.

repetitions of directions by her teachers... Given credible testimony that “S.J-D. would benefit from interaction with non-disabled peers...” the hearing officer properly determined that Mounce's testimony failed to establish that S.J-D. required full-time specialized instruction in light of IDEA's least restrictive environment requirement.¹⁴⁶

Judge Friedrich also cited *A.D. v. District of Columbia*,¹⁴⁷ another case involving a unilateral placement arranged by the same firm, making the same arguments, for a unilateral placement at School D. The student in that case was roughly average as compared to his/her same-aged peers. On the WJ-IV, Student scored lowest in Math with scores in the Low range for Calculation and Math Facts Fluency, Low Average in Broad Math and Spelling, and Average in all 11 other categories.¹⁴⁸ As in the instant case, the parents objected to no other aspect of the IEP other than the lack of full-time service hours. I concluded that the record did not support the need for placement in a private day school: “Clearly, Student’s academic deficits would not support a full-time IEP; despite his/her SLD, Student is capable of average range achievement scores and above average grades. Thus, Student’s social/emotional, anxiety, inattentiveness, and other psychological disabilities must be so significant as to warrant a full-time specialized instruction program. In my view, the record does not support this level of restriction. Nothing in Witness D’s Psychological Evaluation suggests that Student’s stress, anxiety, and inattentiveness are so severe that s/he cannot progress without a full-time program.”¹⁴⁹ The then Chief Judge, Beryl A. Howell, sustained the analysis and conclusion reached in that case, which is identical to the analysis conducted in this case:

Contrary to plaintiffs' assertions, the challenged HOD's framing of the central issue as whether A.D. “must be educated in a small class environment completely separated from general education peers” demonstrates keen attention to both the administrative record and IDEA's maxim that disabled children be educated in the least restrictive environment along with non-disabled peers...

As the District correctly points out, the challenged HOD framed the issue in these terms since “the only objection Plaintiffs had with [the 2019] IEP” was whether “A.D. could be educated in a program that included classes, lunch, and break time with non-disabled peers...” The 2019 IEP provided A.D. with twenty hours per week of specialized instruction outside general education devoted to her core curriculum but envisioned that A.D. would participate in electives and other school activities in a general education setting... A.D.'s parents, however, disagreed with this aspect of the IEP and insisted that A.D. be provided full-time special instruction outside general education... The “lack of full-time services outside of general education” was the “only significant objection” raised by plaintiffs about the 2019 IEP... and the parties otherwise agreed about A.D.'s levels of academic performance, educational goals, classroom aids and accommodations, as well as the

¹⁴⁶ *Id.* at 7.

¹⁴⁷ Civil Action No. 20-2765, 2022 WL 683570 (D.D.C. Mar. 8, 2022), omitting previously referenced citation from *H.R.*

¹⁴⁸ Hearing Officer Determination, Case No. 2020-0100 at 18 (ODR Sep. 8, 2020).

¹⁴⁹ *Id.* at 19.

amount of behavioral support, occupational therapy, and consultation services provided in the 2019 IEP... Rather than demonstrating any failure to resolve the main inquiry, as plaintiffs protest, the challenged HOD's more tailored framing of the issue instead reflects an understanding of the flashpoint animating the parties' dispute over the 2019 IEP: whether A.D. could be partially educated with non-disabled peers (as DCPS concluded) or whether she required a full-time placement in specialized instruction (as her parents requested).

In any event, the challenged HOD contains a full assessment of the adequacy of the 2019 IEP and ample evidence supports the conclusion reached that the IEP satisfied IDEA's requirements. Contra Pls.' Opp'n at 2 (arguing that the hearing officer "completely missed what he was supposed to do in the administrative due process hearing"). As a threshold matter, the hearing officer examined A.D.'s recent academic performance, noting it "is roughly average as compared to ... her same-aged peers," and found that, because she is capable of average range achievement scores and above average grades, her "academic deficits would not support a full-time IEP..." The hearing officer next considered A.D.'s "social/emotional[] anxiety, inattentiveness, and other psychological disabilities..." He specifically noted that A.D. "suffers from anxiety, stress, inattentiveness," and that she "struggles with developing relationships with peers..." The hearing officer acknowledged evidence that, when overwhelmed, A.D. "may withdraw, avoid academic tasks, and on occasion ... leave the classroom..." Despite these challenges, the hearing officer also recounted that A.D. "interacts eagerly and well with adults;" "is not reported to pose disciplinary problems;" "does not disturb other children;" "is not aggressive;" "participates in group and individual activities;" and "does not routinely act out." Considered altogether, the hearing officer concluded that no aspect of A.D.'s psychological profile suggests she "cannot progress without a full-time program."

Based on the foregoing assessment of the record evidence, the hearing officer determined that A.D. could continue achieving "steady academic progress" with the "significant amount of small-class and individual support" consisting of twenty hours per week of specialized instructions plus additional resources outlined in the 2019 IEP, and that plaintiffs' proposed placement of A.D. in a full-time special education program would violate IDEA's "central tenet" that disabled students be educated in the least restrictive environment along with non-disabled peers... These considerations amply support the hearing officer's finding that the 2019 IEP offered A.D. "an appropriate program and placement" under IDEA... Plaintiffs' argument that the hearing officer "completely failed to address whether the proposed DCPS IEP provided A.D. the free appropriate education to which she is entitled..." therefore ignores the comprehensive discussion provided in the challenged HOD of this very issue.¹⁵⁰

¹⁵⁰ 2022 WL 683570 at 8-9, citations omitted. See also, *Report and Recommendation in L.N. V. District of Columbia*, Civil Action No. 24-109, 2025 WL 2159183 at 8 (D.D.C. July 30, 2025)(student performing in the average range did not require placement outside general education).

In her 2020 evaluation of Student, Witness C was satisfied with Student level of services at that time, 2.5 hours per week of specialized instruction inside general education, and she recommended that Student have access to assistive technology to support her/him in reading and writing. The January 2024 IEP provided eight hours per week of specialized instruction, including two hours outside general education, and provided the assistive technology recommended by Witness C. During the December 2021 IEP team meeting, Mother conceded that Student had made demonstrable progress in a general education class of 20 students with the support of five hours of specialized instruction inside general education. Examiner A predicted confidently that Student was on a trajectory that would lead to a reduction in services. Weeks later, Petitioners completed the admissions process for Student at School D for the 2022-23 school year.

For the January 2024 IEP, School D reported that in Reading and Mathematics, Student's recent MAP scores were slightly below his/her norm grade level peers. Petitioners and their representatives agreed with all of the IEP PLOPs and goals. The IEP team increased the level of Student's specialized instruction by 60%: from five hours inside general education to six hours inside and two hours outside general education. There is no evidence in the record to support a finding that Student had attentional or executive functioning deficits that warranted a placement in a full-time self-contained classroom or anything more than the goals and Other Classroom Aids and Services with which Petitioners and their representatives agreed.¹⁵¹ There is also no evidence in the record to support a finding that Student required a class size of any particular finite size to make academic progress. In fact, the record supports a finding that at School C, Student demonstrated the ability to access the general education curriculum in a class of 20 students without discernable effects from inattention or executive function deficits. Finally, there was no testimony presented by Petitioners that the size of building in which School E is housed would have impaired Student's ability to access the general education environment. I conclude that DCPS has met its burden of proving that the IEP it developed on January 24, 2024 was reasonably calculated to enable Student to make academic progress consistent with her/his unique circumstances.¹⁵²

Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and placement on January 24 and November 12, 2024 for the 2024-25 school year. Specifically, Petitioners assert that the IEP did not provide a sufficient amount of self-contained special education services and that the proposed placement and/or location of services at School E was too large of a setting for her/him, including class sizes and school size. Petitioners also assert that they provided DCPS an independent neuropsychological evaluation on April 8, 2024 that DCPS failed to review and to incorporate into an appropriate IEP by the beginning of the 2024-25 school year.

¹⁵¹ See *Z.B. v. District of Columbia*, 888 F.3d 515, 527 (D.C. Cir. 2018)(executive functioning deficits can be addressed in the IEP other than through executive function goals).

¹⁵² See also, *Report and Recommendation in L.N. v. District of Columbia*, Civil Action No. 24-109, 2025 WL 2159183 at 8 (July 30, 2025)(the IEP's measured amount of specialized instruction support within general education—especially given L.N.'s demonstrated track record of progress under that framework in years past—was far more in keeping with the IDEA's least-restrictive-environment mandate than Plaintiffs' preference, which would have placed L.N. entirely outside the general education environment in a setting the IDEA strives to avoid “to the maximum extent appropriate”).

Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and placement on November 12, 2024 for the 2025-26 school year. Specifically, Petitioners assert that the IEP did not provide a sufficient amount of self-contained special education services and that the proposed placement and/or location of services at School E was too large of a setting for her/him, including class sizes and school size.

As Judge Howell noted on three separate occasions in *A.D.*,¹⁵³ IDEA includes a rebuttable presumption that children with disabilities will be educated with children who are not disabled:

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.¹⁵⁴

In the previous section, I concluded that the record supported findings that Student was capable of accessing the general education curriculum and that DCPS' January 2024 IEP, providing six hours of specialized instruction inside general education and two hours outside general occasion, was appropriate for Student. Thus, Student's least restrictive environment was determined to be a general education classroom with inclusion services (special education teacher providing individualized instruction in the general education classroom) along with pull-out specialized instruction (a small group of students with disabilities receiving specialized instruction from a special education teacher in a separate room or one-on-one instruction from a special education teacher in a separate room). Unless there is a material change in Student's circumstances, I need not engage in the same extended analysis that I conducted for the January 2024 IEP to determine the appropriateness of the November 2024 IEP.¹⁵⁵

In April 2024, Petitioners provided DCPS Witness C's second Neuropsychological Evaluation of Student that she conducted in January 2024. As expected, her/his cognitive scores were similar to those on the 2020 evaluation: Average to High Average (Full Scale IQ -107 vs. 111) with Processing Speed in the Low Average range (86 vs. 89). However, after three semesters at School D, Student's performance in Math and Written Expression was lower than it was on Examiner A's 2021 administration of the WJ-IV. Student's Reading scores remained in the Average range, but his/her standard score in Reading Comprehension dropped from 102 to 90 and her/his Broad Reading dropped from 95 to 90. In Mathematics, Broad Mathematics dropped 11 points from Low Average (84) to Low (73), as well as Mathematics (87 to 78), and Math Calculation (83 to 71). In Written Expression, Student dropped from Average (94) to Low Average (88), as well as Written Language (101 to 86), while Writing Samples remained solidly in the Average range (110 to 105).¹⁵⁶

¹⁵³ 2022 WL 683570 at 1, 7, and 8.

¹⁵⁴ 20 U.S.C. §1412(a)(5)(A), emphasis added.

¹⁵⁵ *K.S. v. District of Columbia*, 962 F.Supp.2d 216, 227 (D.D.C. 2013)(by doubling down on the argument that proved unsuccessful as to the 2010-11 IEP, an argument that the court rejected, and by failing to demonstrate any material change in the student's needs for the 2011-12 school year, the parents failed to carry their burden on this point).

¹⁵⁶ P12:17 (179) and P3:8-9 (50-51).

In terms of executive functioning, Witness C stated that “[her/his] teachers reported challenges in areas of task initiation, completing multi-step tasks, and some task performance monitoring skills in the classroom setting.”¹⁵⁷ However, on the BRIEF-2, both teachers provided T-scores in the Clinical Range only in Working Memory. Teacher 2 rated Student in the Clinical range in Initiate, but neither of the teachers nor Mother rated her/him in the Clinical range in Plan/Organize, Task-Monitor, Organization of Materials, or Global Executive Composite (54, 64, and 67, respectively).¹⁵⁸ The teachers did not complete rating scales on the BASC-3, and Mother’s T-score in Attention Problems (66) was not in the Clinical range.¹⁵⁹ Thus, Witness C’s characterization of the teachers’ reports of Student’s challenges in executive functioning is not supported by the teachers’ actual rating scales. Moreover, as noted earlier, Witness C diagnosed Student with ADHD, Predominantly Inattentive Presentation on the 2020 evaluation despite the fact that in the school environment, the only two raters did not provide T-scores in the Clinical range in either Conners-3 subtest related to ADHD, and there were no Clinical range scores from either teacher related to attention on the BASC-3.

Whereas Witness C was satisfied in 2020 with Student’s services being limited to 2.5 hours inside general education, in her 2024 evaluation, Witness C opined that Student “needs to continue attending [School D] which offers specialized education and individualized evidence-based structured literacy interventions for students with language-based learning disabilities and ADHD.” In addition to support in Reading, Writing, and Math, Witness C recommended that Student have access to A/T text to speech, audiobooks, a computer (with Grammarly/word prediction, and a calculator) and support in executive functioning, as well as a list of classroom accommodations. On cross-examination, Witness C conceded that she had never observed Student in any school setting. Witness C conceded that she did not talk to any of Student’s teachers at School C. She also conceded that Student’s 2021 scores on Examiner A’s WJ-IV reflected improvement over scores in Witness C’s 2020 evaluation, specifically her/his Reading Comprehension score of 102. She conceded that she has never observed instruction at School D, was unaware of the educational program School D uses for Student, that small classes do not equate to specialized instruction, was unaware if School D serves students with SLD or ADHD, that some of the progress Student made was at School C, that Student’s scores on the MAP assessment were largely in the average range, that when she recommended sharing her recommendations with the “learning support team at [School D]”¹⁶⁰ she did not know who that included, and that she was unaware if Student had a written education plan at School D. However, she reiterated that it was important for Student to have an individualized education plan. When Respondent’s attorney asserted that Witness C was recommending “what’s best” for Student rather than “what’s legally required,” Witness C replied, “I understand.” On redirect examination, Witness C testified that Student’s MAP scores indicate academic improvement. When I asked Witness C for the objective data that Student required a self-contained classroom environment, she offered none. She conceded that Student made academic progress at School C, but stated that in a “self-contained classroom there are lower executive demands. [S/he] was not having the same level of dysregulation.” Witness C then conceded that her recommendation was based on Student’s

¹⁵⁷ P12: 7 (169).

¹⁵⁸ *Id.* at 22 (184).

¹⁵⁹ *Id.* at 23 (185).

¹⁶⁰ P12:12 (174).

emotional improvement. Upon follow-up cross-examination, Witness C conceded that she had no information about Student's emotional status at School C.

Witness C's recommendation that Student remain at School D was, charitably, unpersuasive for several reasons: (1) I was troubled by the clinical diagnosis of ADHD despite the lack of T-scores in a crucially important domain for a child, the school environment, (2) Witness C's evaluation completely ignored Student's history at School C. She did not discuss Student's grades or progress reports or seek to interview any of his/her teachers at School C. So how could she possibly form an opinion as to whether Student could access the curriculum in a general education environment? (3) she ignored the fact that Student's Reading Comprehension improved at School C, (4) she ignored the fact that Student's achievement scores on the WJ-IV in Math, Reading, and Written Expression dropped from the time Witness A evaluated her/him at School C to the time three semesters after Student enrolled at School D, (5) she recommended that Student remain at School C despite the lack of objective data that Student made more improvement at School D than s/he had at School C, (6) she recommended that Student remain at School D believing that Student was entitled to specialized instruction but was not aware that School D had not developed an individualized education plan for Student. and (7) she testified that she recommended School D for Student based on Student's emotional improvement. Witness C conceded that she had no information as to Student's emotional well-being at School C. Moreover, Student's social/emotional development was not an issue in this case.

I concur with Petitioners that DCPS took too long to review Witness C's evaluation. It received the evaluation in April 2024 but did not review it until August 2024. However, IDEA regulations impose no deadline for the review of an independent evaluation. Petitioners assert that DCPS' failure timely to develop an IEP by the beginning of the 2024-25 school year constituted a denial of FAPE. Although the development of a timely annual IEP is crucial to the delivery of appropriate and needed services to children with disabilities, the D.C. Circuit has held that even the failure to develop a timely annual IEP is a procedural violation. It becomes a substantive violation only if the student suffers a loss of educational opportunity.¹⁶¹ First, Student's January 2024 IEP was still in effect, so DCPS did provide an IEP by the beginning of the 2024-25 school year. Second, there was no loss of educational opportunity here. The parties were in constant contact throughout 2024. At no time did either party express a concern about the need for an IEP to be updated before the beginning of the 2024-25 school year. Petitioners withdrew Student from DCPS in 2022 and have made it clear that they have no genuine interest in an IEP from DCPS or placement in a DCPS school. They believe that School D is the best school option for their child and are quite comfortable with the fact that School D will not implement DCPS' IEP or one of its own for Student. Once the parties agreed to meet and update the IEP in November 2024, DCPS increased the services for Student to address her/his lower scores on the WJ-IV. Petitioners promptly rejected it as both parties anticipated.

For the November 2024 IEP, Witness A, Witness B, and Mother repeated the same arguments about Student's need for a placement in a full-time self-contained classroom that I

¹⁶¹ *Leggett v. District of Columbia*, 793 F.3d 59, 67 (D.C. Cir. 2015) (“DCPS has the standard correct: a procedural violation, such as a school district's failure to provide an IEP by the beginning of the school year, will constitute a denial of a free appropriate public education only if it ‘result[s] in loss of educational opportunity’ for the student.”), citing *Lesesne ex rel. B.F. v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006).

found meritless with respect to the January 2024 IEP. Witness A, from School D, opined that the IEP was inappropriate because it “doesn’t match the program [s/he’s] receiving.” In other words, the IEP was inappropriate because it did not prescribe the service hours that would support a placement at School D. Witness A conceded that there is no empirical data to show that Student cannot make progress in a larger class or that the progress s/he has made is due to him/her being in small classes. While Student’s achievement scores on Witness C’ WJ-IV clearly regressed after s/he enrolled at School D, on the MAP, as of the fall of 2024, Student was performing above the Norm Grade Mean Level in Reading and was in the 46th percentile in Math, which is within the average band for percentiles (25th percentile to the 75th percentile). In light of Student’s regression in assessment scores, the IEP team increased the specialized instruction on Student’s IEP to 11 hours per week, a 38% increase, including a tripling of the instruction outside general education from two hours to six hours. The IEP team also prescribed Classroom Aids and Services that addressed Student’s needs in inattention and executive functioning and included, but was not limited to, the A/T and all of the classroom accommodations recommended by Witness C in her 2024 evaluation.

While Student’s poorer performance on the 2024 WJ-IV was unexplained, it cannot be attributed to an inability to access curriculum in a general education environment, to which s/he has not been exposed since June 2022. Witness G and Witness J attributed the lower performance to a lower quality of instruction at School D. As documented in Appendix 2, since Student left School C in 2022, in Student’s 26 courses at School D, s/he has had a certified special education teacher in only five of those courses and in eleven courses, the teachers have earned no state certification of any kind, in violation of District regulations.¹⁶²

Nevertheless, there is no reason to believe that Student’s circumstances have changed to such a degree that s/he can no longer access a general education curriculum. Therefore, I conclude that DCPS has met its burden of proving that the IEP it developed on November 12, 2024, that increased Student’s specialized instruction by 38% and tripled his/her instruction outside general education, was reasonably calculated to enable him/her to make academic progress consistent with her/his unique circumstances.

¹⁶² “Effective no later than school year 2011-12, each member of the teaching staff shall hold a teaching certification from the state or district in which the school is located, to the same level as required for teaching staff in public schools of that state or district.” 5-A DCMR § 2823.2.

Whether DCPS denied Student a FAPE by failing to allow an observation of School E by Petitioners' designee. Petitioners' requests began in December 2024 and extended into January 2025.

Whether DCPS denied Student a FAPE by failing to provide Petitioners a meaningful opportunity to participate in the determination of Student's placement for the 2025-26 school year. Petitioners assert that the failure to allow their designee to observe the program at School E deprived them of a meaningful opportunity to participate in the decision-making. Petitioners also assert that after an abbreviated observation by Mother on April 9, 2025, they sent a list of questions that Mother did not have an opportunity to ask Witness G, Director of Specialized Instruction at School E. Petitioners never received a reply to their questions.

On December 17, 2024, Witness B, Petitioners' educational consultant, requested an observation of "the program that DCPS has proposed for [Student] at [School E]. Witness G, Director of Specialized Instruction at School E, replied later that day that she was "not familiar with this situation or student. Please provide more information regarding your ask, as this is not a student attending [School E] and our team is not scheduled to host an open house until January 11, 2025." On December 18, 2024 Witness B informed Witness G that Student was enrolled at School D, but DCPS had proposed that s/he attend School E. On January 16, 2025, Mother thanked Witness G for information she had sent regarding School E's open house and informed Witness G that "I am seeking to observe, alongside my special education expert, to assess the appropriateness of the proposed program for my [child] at [School E]. Please let me know if a visit during the school day to observe [his/her] proposed program will be possible." Mother sent a follow-up request on January 23, 2025.

The District of Columbia's Special Education Student Rights Act of 2014 ("Act") authorizes parents and their designees to observe their children's current or proposed classroom settings:

Upon request, an LEA shall provide timely access, either together or separately, to the following for observing a child's current or proposed special educational program: (i) The parent of a child with a disability; or (ii) A designee appointed by the parent of a child with a disability who has professional expertise in the area of special education being observed or is necessary to facilitate an observation for a parent with a disability or to provide language translation assistance to a parent; *provided that the designee is neither representing the parent's child in litigation related to the provision of free and appropriate public education for that child nor has a financial interest in the outcome of such litigation.*¹⁶³

The Complaint herein was filed on July 22, 2025 after identical claims were filed on February 12, 2025 and withdrawn in Case No. 2025-0030. In the prior proceeding, Petitioners filed *Parents' Motion to Permit Observation* ("Motion") on March 17, 2025. The *Motion* made the same

¹⁶³ D.C. Code §38-2571.03(5)(A) (2015) (emphasis supplied).

assertions concerning the requests for an observation that are raised herein. On March 28, 2025, I issued an *Order on Motion to Permit Observation* in which I denied the request to allow an observation by Witness B because I considered Witness B to be acting in a representative capacity for Petitioners and, thereby, precluded by the provision in the Act that disallows an observation by a designee representing the parent's child in pending IDEA litigation. However, I ordered DCPS to "honor the request that one or both Petitioners be permitted to observe Student's proposed program at School E for up to two class periods, at the earliest possible date." As is discussed above in paragraph 38, Mother eventually observed School E on April 9 and 10, 2025.

The issue for resolution in this proceeding is DCPS' failure to honor the request for Witness B to observe School E that was made before Petitioners initiated litigation against DCPS. There is no exception in the Act that would allow DCPS to disallow a parent's representative to serve as a designee in an observation if the parties are not engaged in litigation. Therefore, DCPS committed a procedural violation when it failed to honor Petitioners' requests in December 2024 and January 2025 to allow Witness B to observe the special education program at School E.

The failure timely to honor a request for an observation under the Act is a procedural violation. A hearing officer's determination of whether a child was denied 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.¹⁶⁴ In other words, an IDEA claim is viable only if procedural violations affected the child's substantive rights.¹⁶⁵

When DCPS assigned Student to School E, it assigned her/him to his/her neighborhood school. The courts have held that DCPS has the unilateral right to make site selection determinations. As Judge Kathleen Kollar-Kotelly stated in *Z.B. ex rel. Sanchez v. District of Columbia*,¹⁶⁶ "The IDEA requires that a student's parents be part of the team that creates the student's IEP and determines the student's educational placement. See 20 U.S.C. § 1414(d)(1)(A)-(B). However, the IDEA does not " 'explicitly require parental participation in site selection.' " In fact, Judge Kollar-Kotelly held that the failure to allow the parent to participate in site selection does not "establish a procedural violation which would result in a denial of FAPE..."¹⁶⁷

Petitioners made the decision to leave DCPS and place Student in School D in the spring of 2022. At the hearing, Mother testified that her belief in School D as the optimal placement for Student is unwavering. As I stated during Petitioners' counsels' closing argument, it is quite apparent that in December 2024, when they requested the observation, Petitioners had no genuine interest in School E.

¹⁶⁴ 34 C.F.R. 300.513(a).

¹⁶⁵ *Leggett v. District of Columbia*, 793 F.3d 59, 67 (D.C. Cir. 2015); *Brown v. District 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).

¹⁶⁶ *Z.B. ex rel. Sanchez v. District of Columbia*, 382 F.Supp.3d 32 (D.D.C. 2019), *aff'd sub nom Sanchez v. District of Columbia*, 815 F.App'x 559 (D.C. Cir. 2020); *cert. denied, Z.B. v. District of Columbia*, 141 S. Ct. 375, 208 L.Ed.2d 97 (2020).

¹⁶⁷ *Id.* at 47, citing *James v. District of Columbia*, 949 F.Supp.2d 134, 138 (D.D.C. 2013)(quoting *White ex rel. White v. Ascension Parish School Board*, 343 F.3d 373, 379 (5th Cir. 2003).

Taken together, these two Issues Presented suggest that Petitioners were denied a FAPE because the denial of the request for an observation by their designee denied them a meaningful opportunity to participate in the decision-making process as to the placement at School E. However, DCPS issued a PWN on November 18, 2024, six days after the development of the IEP, indicating that “The local school can implement this IEP.”¹⁶⁸ Thus, not only was the decision as to Student’s location of service made a month before Witness B made the request for an observation, Petitioners were not entitled to participate in the determination of the location of services. For the 2025-26 school year, while the request was timely, Petitioners were not entitled to participate in the determination of the location of services. Therefore, I conclude that Petitioners have failed to meet their burden of proving a denial of FAPE.

Whether School D is a proper and appropriate placement for Student.

In light of my determinations that DCPS provided Student appropriate IEPs in January and November 2024, I need not address the propriety or appropriateness of School D as a placement for Student.¹⁶⁹

RELIEF

For relief, Petitioner requests (1) an order requiring DCPS be order to reimburse Petitioners for the costs incurred for Student’s placement at School D for the 2023-24 school year after January 18, 2024, including tuition, related services, and transportation, (2) an order requiring DCPS to reimburse Petitioners for the costs incurred for Student’s placement at School D for the 2024-25 school year, and (3) an order requiring DCPS to place and fund Student at School D for the 2025-26 school year.

ORDER

Upon consideration of the *Complaint*, the *Response*, the *Second Amended Prehearing Order*, the exhibits that were admitted into evidence, the testimony presented during the hearing, and the closing arguments of counsel for the parties, it is hereby

ORDERED, that the *Complaint* is **DISMISSED** with prejudice.

¹⁶⁸ P29:48 (492).

¹⁶⁹ *R.B. v. District of Columbia*, Civil Action No. 18-662, 2019 WL 4750410 at 7 (D.D.C Sept. 30, 2019), citing *Leggett, supra*, 793 F.3d at 66-67 and *Florence County School District Four v. Carter*, 510 U.S. 7, 15-16 (1993). See also, *School Committee of Town of Burlington v. Department of Education of Massachusetts*, 471 U.S. 359, 369 (1985).

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: November 3, 2025

Copies to: Attorney A, Esquire
Attorney B, Esquire
Attorney C, Esquire
OSSE Office of Dispute Resolution