

**District of Columbia**  
**Office of the State Superintendent of Education**  
Office of Dispute Resolution  
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<b>Parent, on behalf of Student,<sup>1</sup></b>	)	
<b>Petitioner,</b>	)	
	)	<b>Hearing Dates: 8/19/20; 9/21/20;</b>
	)	<b>9/29/20; 9/30/20; 10/1/20</b>
<b>v.</b>	)	<b>Hearing Officer: Michael S. Lazan</b>
	)	<b>Case No. 2020-0121</b>
<b>District of Columbia Public Schools,</b>	)	
<b>Respondent.</b>	)	

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**HEARING OFFICER DETERMINATION**

**I. Introduction**

This is a case involving an X-year-old student who is currently eligible for services as a student with Multiple Disabilities (the “Student”). A due process complaint (“Complaint”) was received by District of Columbia Public Schools (“DCPS” or “Respondent”) pursuant to the Individuals with Disabilities Education Act (“IDEA”) on June 19, 2020. The Complaint was filed by the Student’s parent (“Parent” or “Petitioner”). This Hearing Officer was appointed to this case on June 22, 2020. On June 30, 2020, Respondent filed a response. The resolution period expired on July 19, 2020.

**II. Subject Matter Jurisdiction**

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the IDEA, 20 U.S.C. 1400 et seq., its implementing regulations, 34 C.F.R.

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

Sect. 300 et seq., Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-E, Chapter 30.

### **III. Procedural History**

A prehearing conference was held on July 16, 2020. Attorney A, Esq., counsel for Petitioner, appeared. Attorney B, Esq., counsel for Respondent, appeared. A prehearing order was issued on July 21, 2020. Petitioner sent an email requesting revision to the prehearing order on July 24, 2020. The order was then revised, without objection, on August 3, 2020. The order summarizes the rules to be applied in the hearing and identifies the issues in the case.

On July 22, 2020, Respondent moved to dismiss claims relating to the Student's Individualized Education Programs ("IEPs") from June, 2015, December, 2016, and November, 2017, on statute-of-limitations grounds. This Hearing Officer initially denied the motion by order dated August 17, 2020, because issues of fact precluded any determination on such grounds. The parties then presented testimony and witnesses on August 19, 2020, on the issues relating to the statute of limitations. This Hearing Officer then granted the motion to dismiss by order dated September 4, 2020.

On September 2, 2020, Petitioner moved to extend the Hearing Officer Determination ("HOD") due date for the case from September 2, 2020, to October 23, 2020. Respondent consented to this motion, which was reasonable. The motion was granted by interim order dated September 2, 2020.

The matter was then heard on September 21, 2020, September 29, 2020, September 30, 2020, and October 1, 2020, through the Microsoft Teams video conferencing platform, on consent. Petitioner was again represented by Attorney A, Esq.

Respondent was again represented by Attorney B, Esq. This was a closed proceeding. During the proceeding, Petitioner moved into evidence exhibits P-1 through P-31, excepting exhibit P-13. Objections were made to P-10–12, P-15, P-17, P-18, P-20, and P-21. These objections were overruled. Exhibits P-1 through P-31, except for exhibit P-13, were admitted. Respondent moved into evidence R-1–R-17, R-21–R-58, R-62, R-65–R-68, R-69–R-112, R-115, R-117, and R-120 without objection.

Petitioner presented as witnesses, in the following order: herself; Witness A (at the 8/19/20 hearing), a psychologist at School A; Witness A1, a social worker at School C; Witness B, an occupational therapist at School C; Witness C, a special education teacher at School B (expert in special education programming and placement); Witness D, an occupational therapist formerly at School B; Witness E, a psychologist at School C (expert in school psychology); Witness F, a special education teacher at School C; Witness G, a school psychologist at School B; Witness H, an advocate; Witness I, a speech-language pathologist at School C; Witness J, a social worker at School B; and Witness K, an Local Educational Agency (“LEA”) representative at School C.

Respondent presented as witnesses, in the following order: Witness L, a physical education teacher at School B; Witness E; and Witness M, an autism specialist (expert in special education with regard to appropriate curriculum, development, and programming implementation for students with disabilities). Petitioner then presented herself again for rebuttal. After the close of the hearing on October 1, 2020, the parties presented oral closing arguments.

#### IV. Issues

As identified in the Revised Prehearing Order and in the Complaint, the issue to be determined in this case is as follows:

**Did Respondent fail to offer the Student an appropriate IEP in or about June, 2015, December, 2016, November, 2017, November, 2018 and November, 2019? If so, did the Respondent act in contravention of 34 C.F.R. Sect. 300.320, *Endrew F. v. Douglas County School District*, 137 U.S. 988 (2017), *Hendrick Hudson Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982), and related authority? If so, did Respondent deny the Student a Free Appropriate Public Education (“FAPE”)?**

Petitioner contended that the IEPs did not contain: 1) sufficient speech and language therapy and/or occupational therapy; 2) any or sufficient recommendations for staff to employ research-based programming within general education, outside general education, and/or during related services; 3) any or sufficient recommendations to address the Student’s deficits in self-advocacy skills; 4) any or sufficient recommendations to address the Student’s functional academic skills; and 5) insufficient and inappropriate goals and objectives. Petitioner also contended that the IEPs did not include any or sufficient recommendations to address the Student's social skills and pragmatic language.

Claims relating to the June, 2015, December, 2016, and November, 2017, IEPs were dismissed by the interim order dated September 4, 2020.

As relief, Petitioner contends that the Student is entitled to compensatory education corresponding to the period from 2015 to the present, in the amount of six hours for every day missed, at a reasonable hourly rate. Petitioner also contends that the Student is entitled to a new program and a separate day placement with staff trained to work with students with autism. Petitioner seeks a placement with a low student-to-

teacher ratio, supports for the Student's executive functioning issues, an integrated communication program, and careful supervision.

## **V. Findings of Fact**

1. The Student is an X-year-old who is eligible for services as a student with Multiple Disabilities. The Student prefers to be by him/herself, and it can take the Student time to understand what a person is saying. The Student often engages in "scripting" during speech. Testimony of Petitioner. Petitioner has consistently been an active participant in the Student's education throughout his/her academic career. P-1.

2. The Student functions well below grade level in all academic areas and with respect to speech and language communication. P-29. The Student uses a functional grasp for handwriting and demonstrates good organizational skills with verbal prompts. The Student's written production is legible, though s/he requires verbal and visual cues to provide accurate spacing, sizing, and baseline orientation. R-56 at 248. The Student requires consistent, individualized instruction. P-29-5.

3. The Student has issues with memory. The Student can do a rote application of a math program one day, then "nothing" with the problem the next day. Consistency and repetition are important for the Student. Testimony of Witness M. The Student displays impulsive and active behaviors across all contexts, including excessive motor-stereotypy and vocal-stereotypy. The Student struggles to attend to academic tasks for extended periods of time without moderate individualized support and sensory breaks, but has made progress in working independently as long as sensory breaks are provided and behavioral systems are used. To follow directions, the Student requires concise simplified language, visuals, sensory breaks, and moderate to maximum levels of

prompting. To help with the Student's stereotypical behaviors, s/he is provided with competing items (e.g., sensory fidgets) and opportunities for heavy muscle work and movement. P-29-2. The Student also benefits from a multi-modal approach to instruction, graphic organizers to comprehend material, and comprehension checks while work is in progress. Additionally, the Student benefits from multiple-choice answers, a word bank, extended time, preferential seating, a token economy system, tangible reinforcers, and written/visual schedules. P-29-3. The Student is in the "middle" of the autism spectrum. Testimony of Witness E.

4. The Student has been educated in Respondent's Communication and Education Support ("CES") program during his/her academic career. The CES program has an Applied Behavior Analysis ("ABA") component that is research-based. Testimony of Witness E. Teachers in the CES classes are trained to work with students with autism as their primary disability, and every classroom has two assistants and six to eight students. In the CES program, teachers try to break down tasks and teach skills through "discrete trial" sessions. Testimony of Witness M. There are also lessons on social skills in the CES classroom. Testimony of Witness J.

5. A psychological assessment of the Student was conducted on September 20, 2013, with a corresponding report issued on October 15, 2013. The assessment consisted of record review, Parent interview, classroom observation, and administration of the Wechsler Intelligence Scale for Children-Fourth Edition ("WISC-IV"), Woodcock Johnson III-Tests of Achievement ("WJ-III"), Adaptive Behavioral Assessment System ("ABAS"), the House-Tree-Person test ("HTP"), and the Behavior Assessment System for Children-Second Edition, teacher and parent form ("BASC-2"). During the

observation, the Student had difficulty following directions and did not interact with the other children. The Student's full-scale IQ was measured at 54 on the WISC-IV, in the extremely low range. Only a few subtests of the WJ-III could be completed due to the Student's issues with understanding directions. The Student's scores were in the superior level in decoding, and in the average to above average range in reading comprehension. The Student's scores were at the 1st percentile in broad math cluster, and the Student could not be tested on writing. Behavioral testing through BASC-2 indicated issues with hyperactive behaviors, attentional behaviors, and learning problems. The testing also showed that the Student had issues with adaptive functioning. P-2.

6. An occupational therapy assessment of the Student was conducted on February 17, 2014. The corresponding report of February 20, 2014, found that the Student had issues with, among other things, visual motor skills, visual perceptual skills, handwriting, attending to task, and "stimming." The assessment indicated that the Student needed a multi-sensory approach and a small, structured classroom with sensory input prior to a non-preferred task. It also indicated that the Student preferred to learn through technology. P-3.

7. A speech-language assessment of the Student was conducted on February 20, 2014. The corresponding report of February 25, 2014, reflected testing on the Clinical Evaluation of Language Fundamentals-Fourth Edition ("CELF-4"), Expressive One-Word Picture Vocabulary Test-4 ("EOWPVT-4"), Receptive One-Word Picture Vocabulary Test-4 ("ROWPVT-4"), and teacher observations. The assessment found that the Student could produce five-plus-word phrases, follow one-step directions, and answer "wh" questions. But the Student did not like to speak in class and had issues

explaining ideas in logical order, engaging in turn taking, and maintaining eye contact.

On the EOWPVT-4, the Student scored at the 25th percentile, in the average range. On the ROWPVT, the Student scored at the 13th percentile, in the below average range. On the CELF-4, the Student's scores were very low, with a core language score at the 0.1 percentile. P-4.

8. A speech and language assessment of the Student was conducted on October 17, 2016, and October 20, 2016. The corresponding report on November 2, 2016, reflected testing on the Goldman-Fristoe Test of Articulation-3d Edition ("GTFA-3"), the Oral and Written Language Scales-Second Edition ("OWLS-II"), the Pragmatic Language Skills Inventory ("PLSI"), the ROWPVT-4, and the EOWPVT-4. The report indicated that the Student benefitted from direct therapy and improved in communication and in drawing inferences, though the Student continued to present with weaknesses in expressive, receptive, and pragmatic skills. The report indicated that the Student used compensatory strategies, such as repeating directions to him/herself, and that the Student responded well to structure, had difficulty maintaining a conversation, was unable to participate in group discussions, and had difficulty attending to activities. Testing on the GTFA-3 revealed scores at the 45th percentile. On the ROWPVT-4, the Student scored in the below average range with a standard score of 71, a decrease from his/her standard score of 83 in 2014. On the EOWPVT-4, the Student scored in the borderline average range with a standard score of 84. On the OWLS-II, the Student scored significantly below average. On the PLSI, the Student's pragmatic language skills were determined to be below average to poor. The report also indicated that the Student made gains in communication that the testing did not pick up. P-6.



9. An occupational therapy assessment of the Student was conducted on November 3, 2016. The corresponding report dated November 10, 2016, tested the Student on the Beery Visual Motor Integration Test (“Beery VMI”) and the Bruininks-Oseretsky Test of Motor Proficiency (“BOT-2”). On the Beery VMI, the Student scored at the .002 percentile in visual motor integration, though the Student scored at the 47th percentile in visual perception. On the BOT-2, the Student scored well below average in fine manual control and manual coordination. The evaluator recommended working on the Student’s visual motor skills, writing skills, and organizational skills. P-7.

10. In the 2015-2016 and 2016-2017 school years, the Student attended School A. Academically, the Student functioned at the below basic level in all areas, and exhibited severe issues with attention, distractibility, fatigue, and stereotypy. P-8-4.

11. In September, 2016, on the i-Ready mathematics assessment, the Student scored at the kindergarten level, though s/he could complete some first- and second-grade work. P-8-4-5. The Student was able to read numbers 1-999, and add and subtract two-digit numbers without regrouping over eighty percent of the time. The Student could also read seventy fourth-grade words in a minute, though s/he was reading at the beginning first-grade level. P-25. The Student could write one to three sentences with beginning capitalization, proper spacing, and end punctuation. P-8-4-5

12. A psychological assessment of the Student was conducted on October 21, 2016, November 1, 2016, November 7, 2016, and November 9, 2016. The corresponding report on November 11, 2016, discussed the Student’s scores on the Wechsler Intelligence Scale for Children-Fifth Edition (“WISC-V”), Woodcock-Johnson Tests of Achievement-Fourth Edition (“WJ-IV”), Conners 3rd Edition-Short Form, teacher and

parent scale (“Conners-3”), Behavior Rating Inventory of Executive Functioning (“BRIEF”), Vineland Adaptive Behavior Scales-Second Edition, teacher and parent scale (“Vineland-2”), and the Gilliam Autism Rating Scale-Third Edition (“GARS-3”), as well as a record review, classroom observations, and teacher, student, and Parent interviews. On the WISC-V, the Student’s IQ was measured at 59, in the extremely low range, with particular weakness in working memory and verbal comprehension. On the WJ-IV, the Student scored in the low average range in broad reading, at the 2.2 grade level, with a low score in passage comprehension, at the 1.7 grade level. The Student also scored at the K.2 level in broad math, in the very low range. In broad written language, the Student scored in the low average range, at the 2.8 grade level. On the Conners-3, the Student was deemed to be “very elevated” in attention and hyperactivity, defiance, and peer relations. On the BRIEF, the Student revealed significant issues in executive functioning. On the Vineland-2, the Student’s level of adaptive functioning was low. On the GARS, the Student scored 89, “very likely” to have autism. The evaluator indicated that emphasis should be placed on developing the Student’s math skills and functional literacy skills, and that training the Student on daily living skills and social skills should be considered. P-8.

13. During the 2016-2017 school year at School A, the Student made academic progress but was functioning well below grade level. Observations reflected that the Student did work in class, including with the classroom aide, and responded appropriately to prompts. The Student benefitted from strategies like reteaching, individual or small group instruction, and praise, and exhibited skills in writing creative stories, reading fluency, and concrete math concepts. However, the Student also was

inattentive in class to the point when s/he would fall asleep. The Student needed a high level of support for all new concepts. P-8-8.

14. During the summer of 2017, the Student's math and reading levels decreased because of the break in education. Petitioner spoke to the Student's teacher at School A about this issue. Testimony of Petitioner; P-29-5. The Student recaptured most of these skills by the date of the IEP meeting in November, 2017. R-52 at 191.

15. The Student continued at School A for the 2017-2018 school year. IEP progress reports during this school year indicated that the Student mastered two goals, a mathematics goal and a writing goal. The Student was deemed to be close to mastery of another math goal on division expressions by the end of the school year. Progress was reported on goals relating to sorting fiction and nonfiction books and writing a summary of text. The Student was also deemed to be close to mastery of spelling rules for verbs with "inflectional" endings. Progress was also reported in communication/speech and language and activities of daily living. By the fourth reporting period, the Student had progressed on all but two occupational therapy goals (which were not introduced). R-49.

16. An IEP meeting was conducted for the Student on November 28, 2017. By this time, it was reported that the Student could do multiplication  $\times 1$  and  $\times 100$ , was inconsistent with money, and functioned at the kindergarten level in reading, though the Student could answer comprehension questions on a second-grade level and answer third-grade comprehension questions. At the time, the Student could not discriminate between fiction and nonfiction, could write his/her address and phone number, and was working on three-step directions. R-30. The resulting IEP contained goals in reading; mathematics; written expression; adaptive/daily living skills; communication/speech and

language; emotional, social, and behavioral development; and motor skills/physical development. The IEP recommended that the Student receive 21.25 hours per week of specialized instruction outside general education, with four hours per month of speech-language pathology, two hours per month of occupational therapy, thirty minutes per month of behavior support services consultation, and thirty minutes per month of occupational therapy consultation services. The IEP also required accommodations such as an electronic tablet, apps for the electronic tablet, a dynamic seating device, learning software, fidgets, and a dedicated aide for 27.5 hours per week. The IEP also recommended preferential seating and a location with minimal distractions. R-52.

17. In August, 2018, the Student again scored at the kindergarten level on the i-Ready measure in mathematics. P-29-4.

18. The Student moved to School B for the 2018-2019 school year. The CES program at School B was a new program for students at the higher end of the autism spectrum. Testimony of Witness M; Testimony of Witness G. The Student spent a great deal of time with his/her aide, who would accompany the Student outside the CES classroom. For the most part, the Student needed prompting to engage. The classroom included instruction through educational programs including the Edmark, Lexia, and Unique programs. Testimony of Witness D. The Student sometimes went to the bathroom when s/he was presented with a task that s/he did not want to complete. Testimony of Witness G. A social worker would push into class and help the Student directly, though this was not required by the IEP. Testimony of Witness J. The Student's occupational therapist, Witness D, worked on the Student's attentional issues, executive functioning skills, typing issues, keyboarding issues, and sensory issues. Witness D used

a typing program from typingclub.com, worked on the Student's stereotypy, and provided the Student with sensory interventions. Testimony of Witness D; R-52.

19. Beginning in approximately October, 2018, the Student began picking his/her face and playing with his/her shirt when s/he was anxious. Testimony of Petitioner. By November, 2018, the Student showed improvement in comprehension and expression of complex ideas and required fewer cues to understand nonliteral language and idiomatic expressions. R-56 at 242.

20. The Student's first progress report at School B (using goals from School A) indicated progress on all academic goals, with two goals mastered. The adaptive/daily living skills goal was not introduced. The communication/speech and language goal had just been introduced. For occupational therapy goals, there was progress on one goal, no progress on another goal, and one goal had just been introduced. P-13.

21. An IEP meeting was held for the Student on November 27, 2018. At the meeting were both of the Student's parents, the Student's special education teacher (Witness C), an LEA representative (Witness K), the Student's social worker (Witness J), the Student's occupational therapist (Witness D), the Student's speech therapist, and Witness M. R-56 at 233. Petitioner asked about the Student's physical education services and requested an adaptive physical therapy assessment. The Student's mathematics skills were again determined to be at the kindergarten level, per the i-Ready assessment from the start of the school year. The Student's reading was considered to be at the first-grade level through the Reading Inventory ("RI") measure, though the Student was considered to function at the second-grade level in reading on the "K5" assessment. R-7 at 012. Respondent's team recommended two hours of speech-language pathology

per month because the Student was requiring less cueing, because it did not seem beneficial for him/her to continue working on the same challenges, and because pulling him/her out was deemed detrimental. The Parent objected and the team agreed to provide the Student with three hours of speech-language pathology per month. R-8 at 016.

22. The Student's November 27, 2018, IEP included goals in mathematics; reading; written expression; adaptive/daily living skills; communication/speech and language; emotional, social, and behavioral development; and motor skills/physical development. The IEP again recommended that the Student receive 21.25 hours per week of specialized instruction outside general education, with 180 minutes per month of speech-language pathology, sixty minutes per month of direct occupational therapy, thirty minutes per month of occupational therapy consultation services, and thirty minutes per month of behavior support consultation services. The IEP again recommended use of such interventions as an electronic tablet, learning software, and sensory equipment, as well as a dedicated aide for 27.5 hours per week. The IEP again recommended preferential seating and a location with minimal distractions. This IEP contained the same language relating to consideration of special factors as the prior IEP, and repeated two goals: a math goal relating to division expressions, and a reading goal relating to writing a three-to-five-sentence summary of text. R-54.

23. A Board Certified Behavior Analyst ("BCBA") was assigned to the CES classrooms at School B in the middle of the 2018-2019 school year to provide support with ABA services. Testimony of Witness G.

24. The Student told his/her father about an incident at School B in January, 2019. The incident involved another student touching him/her. Police were called to the

school and a police report was issued. Petitioner then asked for a safety transfer, which was granted by the end of February, 2019, “out of an abundance of caution.” Testimony of Petitioner; Testimony of Witness G.

25. In a log from January, 2019, the Student was observed to be stimming approximately eighty percent of the time. Testimony of Witness C. Observations conducted by Witness C and School B staff in January, 2019, revealed that the Student was stimming and needed multiple prompts to be redirected. The observation also indicated that the Student showed a change in his/her ability to focus, and forgot some mastered skills, such as adding two-digit numbers. P-26-2. By February 8, 2019, the Student was constantly picking at his/her skin, stimming all week long, and having trouble focusing on his/her assignments. P-28-1.

26. The Student transferred to School C in or about March, 2019. R-34. School C provides each student with an ABA binder and uses a token economy system. ABA is provided to students in a “natural” environment, by providing reinforcers to the students in class. Testimony of Witness M. The Student adjusted well to School C and was extremely motivated to complete his/her work. R-112 at 622. When the Student began at School C, the skin-picking decreased a little, though by May 8, 2019, the Student was stimming more frequently. R-112 at 611; Testimony of Petitioner.

27. The Student continued at School C for the 2019-2020 school year. The school staff was particularly concerned with the Student’s skin-picking. ABA techniques were used to address the Student’s picking behaviors with “replacement behaviors.” Testimony of Witness A. As of September 27, 2019, the Student had made improvements in eye contact and picking at him/herself. P-23-6. Nevertheless, the

Student continued to engage in stimming, had issues with everyday routines, and would sometimes not advocate for him/herself. P-23-7.

28. The Student's occupational therapy direct services during the 2019-2020 school year at School C consisted of work on handwriting, typing, organizing materials, activity tolerance, and other issues. Testimony of Witness B. The Student's occupational therapy consultation services consisted of working with team members and staff to help the Student attend to tasks and generalize skills. The Student was provided with interventions including use of "theraputty" and fidgets. Testimony of Witness B.

29. At School C, the speech-language pathologist, Witness I, and the occupational therapist, Witness B, would deliver services to the Student together. The Student was calmer in speech-language pathology when the occupational therapist was in the room. Testimony of Witness I.

30. By October 7, 2019, the Student had improved eye contact with prompting. The Student was able to copy notes from the board in class, compose his/her own ideas in writing, and add, subtract, and multiply one-digit problems with the teacher. R-96 at 516-517.

31. A speech and language assessment of the Student was conducted on October 31, 2020, November 13, 2020, and November 19, 2020. The corresponding report dated November 23, 2020, reported the Student's scores on the Peabody Picture Vocabulary Test-4A ("PPVT-4A"), Expressive Vocabulary Test-Second Edition A ("EVT-2A"), and the CELF-5. On all the tests, the Student scored in the below average range in receptive and expressive language. The evaluator indicated that the Student's vocabulary and pragmatic skills were decreasing but that his/her language skills were



increasing. The evaluator, Witness I, noted that the Student successfully composed simple sentences containing nouns, pronouns, verbs, adjectives, and adverbs, but had difficulty with complex and compound sentences containing conjunctions. P-24.

Witness I concluded that the Student could do more than what the test showed because of difficulties getting the Student to focus during the test. Testimony of Witness I.

32. Another occupational therapy assessment of the Student was conducted on November 13, 2019, November 15, 2019, and November 20, 2019. The corresponding report dated November 21, 2020, included testing on the BOT-2 and the Beery VMI, as well as interviews with a teacher and the Student. The report indicated that the Student continued to have difficulty with self-regulation and would pick at his/her face. It also concluded that the Student needed repetition, prompts, and ongoing supervision, but was a hard worker who had adjusted to classroom expectations. It also noted that the Student did not like mathematics, liked reading, and did not know his/her correct grade. On the Beery VMI, the Student scored in the very low range for visual motor skills, and in the below average range or low range in other areas. The Student also scored below average in fine manual control on the BOT-2. The evaluator remarked that the Student showed improvement from past testing on the BOT-2 but not on the Beery VMI. P-22. The report indicated that the Student improved from 2016 testing in visual motor and gross motor subtests, and made progress in organizational skills, typing skills, handwriting, and fine motor skills. However, the Student still needed to generalize skills and his/her handwriting was inconsistent. The Student also had issues with activity tolerance and self-regulation. Testimony of Witness B.

33. Psychological testing of the Student was conducted on or about November 20, 2019. The evaluator administered the WJ-IV. Testing indicated that the Student was at the 3.2 grade level equivalent in broad reading, though at the 1.7 grade level equivalent in passage comprehension. In broad mathematics, the Student scored at the 1.2 grade level equivalent, in the very low range. In broad written language, the Student scored at the 3.9 grade level equivalent. P-23-10-11.

34. An IEP meeting was held for the Student on November 25, 2019. At the meeting were both of the Student's parents, Teacher A (by phone), Witness E, and Witness K. The team reviewed the Student's eligibility criteria, discussed the Student's data and work samples, and briefly went over the results of the academic testing. Petitioner expressed concerns regarding the Student's progress and social language skills. Testimony of Witness E. At about this time, Petitioner indicated to School C staff that the Student did not need direct behavioral support services. Testimony of Witness A. The IEP again recommended 21.25 hours of specialized instruction per week outside general education, and reduced the Student's speech and language services to 120 minutes per month. The Student's occupational therapy services were reduced to sixty minutes per month. Consultation services were unchanged. The IEP again recommended use of an electronic tablet, dynamic seating device, learning software, sensory strategies, and a dedicated aide for 27.5 hours per week. The IEP also again recommended preferential seating and a location with minimal distractions. P-29. This November, 2019, IEP included goals in mathematics; reading; written expression; adaptive/daily living skills; communication/speech and language; emotional, social, and behavioral development; and motor skills/physical development. The IEP contained the same

language as the prior IEP in regard to “consideration of special factors” and in the “Areas of Concern” section relating to mathematics, reading, writing, and daily living activities. The IEP also contained one similar mathematics goal to the prior IEP, and the same goal in written expression. P-29-6.

35. The Student’s IEP was amended on February 26, 2020. The amendments changed the Student’s speech-language pathology mandate to 180 minutes per month of speech-language pathology and added a goal for emotional, social, and behavioral development. R-41; R-109; Testimony of Witness K.

36. During the 2018-2019 and 2019-2020 school years at School C, the Student’s teacher, Teacher A, was seriously ill. As a result, the Student was taught by a substitute (“Substitute Teacher”), for a significant portion of both years. Testimony of Petitioner. Substitute Teacher is a retired veteran teacher who was in weekly or daily contact with Teacher A. Testimony of Witness M.

37. Teacher A was the Student’s case manager at School C, but once it became apparent that Teacher A was too ill to return, Witness F took the lead and became the Student’s case manager. To assess the Student’s progress, Witness F checked in with the Student’s aide and Substitute Teacher, both of whom indicated that they did not have any concerns and that the Student could access much of his/her education, which was challenging and appropriate. Testimony of Witness F; R-54. The Student was “flourishing” in the CES classroom at School C because the classroom was very small, the teacher was able to give him/her attention, an aide attended to the Student’s needs, and there was a BCBA that assisted the teacher. Testimony of Witness J.

38. During the 2019-2020 school year, Witness A observed the Student approximately weekly, when she was in the Student's classroom for another student. Witness A observed that the Student was able to follow classroom routines, follow verbal directions, and understand quantitative concepts. The Student's paraprofessional would redirect the Student when s/he was having issues. Testimony of Witness A.

## VI. Conclusions of Law

The burden of persuasion in District of Columbia special education cases was changed in 2014. The District of Columbia code now states that "(w)here there is a dispute about the appropriateness of the child's individual educational program or placement, 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 establishes "a *prima facie* case." D.C. Code Sect. 38-2571.03(6)(A)(i). The burden of persuasion for the issues in this case is therefore on Respondent if Petitioners presents a *prima facie* case.

**Did Respondent fail to offer the Student an appropriate IEP in or about November, 2018, and November, 2019? If so, did the Respondent act in contravention of 34 C.F.R. Sect. 300.320, Andrew F. v. Douglas County School District, 137 U.S. 988 (2017), Hendrick Hudson Bd. of Educ. v. Rowley, 458 U.S. 176 (1982), and related authority? If so, did Respondent deny the Student a FAPE?**

Petitioner contended that the IEPs<sup>2</sup> did not contain sufficient speech and language therapy and/or occupational therapy, any or sufficient recommendations for staff to

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<sup>2</sup> During closing argument, Petitioner asked this Hearing Officer to reconsider the earlier decision on the applicability of the two-year statute of limitations to IEP claims relating to the Student's first few months at School B. However, Petitioner did not submit any direct authority in support of the proposition that a claim based on an IEP's design can be brought two years after the IEP was created, even if the IEP's end date does fall within the two-year period. As found in R.S. v. Highland Park Indep. Sch. Dist., 951 F.3d 319

employ research-based programming within general education, outside general education, and/or during related services, any or sufficient recommendations to address the Student's deficits in self-advocacy skills, any or sufficient recommendations to address the Student's functional academic skills, and insufficient and inappropriate goals and objectives. Petitioner also contended that the IEPs did not include any or sufficient recommendations to address the Student's social skills and pragmatic language.

School districts must develop a comprehensive plan, known as an IEP, for meeting the special educational needs of each disabled student. 20 U.S.C. Sect. 1414(d)(2)(A). In Hendrick Hudson Bd. of Educ. V. Rowley, 458 U.S. 176 (1982), the Court explained that an IEP must be formulated in accordance with the terms of the IDEA and "should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." Id. At 204. The IDEA also requires that children with disabilities be placed in the "least restrictive environment" so that they can be educated in an integrated setting with children who are not disabled to the maximum extent appropriate, that is, one that provides a program that "most closely approximates" the education a disabled child would receive if s/he had no disability. Leggett v. Dist. of Columbia, 793 F.3d 59, 74 (D.C. Cir. 2015); 20 U.S.C. Sect. 1412(a)(5)(A).

In 2017, the Supreme Court addressed a split amongst the circuit courts regarding what the IDEA means when it requires school districts to provide an "appropriate" level of education to children with disabilities. Andrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-I, 137 S. Ct. 988 (2017). In Andrew F., the Court held that an IEP must

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(5th Cir. 2020), claims relating to IEP design accrue when a parent knew or should have known that the action resulted in a deficient IEP, i.e., when the district adopts, changes, or refuses to change the IEP.

be “reasonably calculated to enable a child to make progress appropriate *in light of the child's circumstances.*” Id. at 1001 (emphasis added). Courts interpreting Endrew F. therefore have upheld IEPs for severely disabled children even where the IEPs are not necessarily designed to allow the student to make substantial progress. See, e.g., R.S. v. Highland Park Indep. Sch. Dist., 951 F.3d 319 (5th Cir. 2020) (court found that there was both progress and regression in the student’s performance).

**A. November 27, 2018, IEP**

1. Speech and Occupational Therapy.

This IEP recommended that the Student receive 180 minutes of speech-language pathology per month, which was a reduction from the November 28, 2017, IEP’s mandate for 240 minutes per month. It also required 120 minutes per month of occupational therapy direct services, and thirty minutes per month of occupational therapy consultation services, which is equivalent to the recommendations in the November 28, 2017, IEP.

Petitioner contended that the Student's speech services were reduced by School B staff without an appropriate rationale or background data. Petitioner also contended that there is language in the IEP to the effect that the Student regressed in speech and language during the 2017-2018 school year.

However, Petitioner did not present an expert witness in support of her position that the Student needed more speech-language pathology services than this IEP recommended. Petitioner instead relied on the language in the IEP, which did indicate that the Student presented with a decreased ability to comprehend verbally-presented information of length and complexity. However, this IEP language did not refer to the

Student's recent progress, and instead characterized the Student generally. This language, in fact, was in the prior year's IEP. Indeed, the November 27, 2018, IEP indicated that the Student had shown improvement in comprehension and expression of complex ideas, and required fewer cues for understanding nonliteral language and idiomatic expressions. The Prior Written Notice created after the IEP indicated that the Student was working on increasing his/her understanding of figurative language and non-literal language, and responding to questions appropriately. The Prior Written Notice indicated that the team recommended two hours of speech per month because the Student required less cueing, it did not seem beneficial for him/her to continue working on the same challenges, and pulling him/her out was a detriment. The only witness who testified with expertise on this issue was Witness I, who suggested that the Student did not need a mandate of four hours per month of speech-language pathology, noting that it was difficult for the Student to remain attentive during the sessions. Moreover, evidence in the record indicates that the entire CES program at DCPS is based on addressing a student's communication needs through the delivery of ABA-based instruction. The program is called the Communication and Education Support program for a reason. Moreover, the witnesses from School B testified to the effect that they agreed with the Student's IEP, including with respect to speech-language pathology. Accordingly, Petitioner did not present a *prima facie* case on this issue or, alternatively, Respondent showed that its recommendations for the Student were appropriate.

In regard to occupational therapy, the IEP recommended 120 minutes per month of services outside general education with thirty minutes per month of occupational therapy consultation services. This is essentially the same mandate as in the November

28, 2017, IEP. Petitioner did not present testimony in support of the claims that the November 27, 2018, IEP should have included more occupational therapy. Instead, Petitioner presented Witness D, the occupational therapist at School B. Witness D serviced the Student at School B, but supported Respondent on this issue, testifying to the effect that the Student's IEP was appropriate. Witness D discussed many interventions used for the Student in occupational therapy, including the use of sensory tools to reduce the Student's stimming and nail biting. Witness D also described working with the Student on handwriting, typing, and executive functioning to the effect that the Student's occupational therapy issues were being competently managed. The motor skills/physical development "Areas of Concern" section in the IEP is consistent with this testimony. This section of the IEP indicated that the Student was cooperative, completed assignments, demonstrated good organizational skills, and that his/her written production was legible. The IEP progress reports in the record from both the 2017-2018 and 2018-2019 school years indicate that the Student made progress in some occupational therapy goals. There is no testimony or evidence in the record to support the contention that the Student needed more occupational therapy services in this IEP. Accordingly, Petitioner did not meet the burden to present a *prima facie* case on this issue or, alternatively, Respondent showed that its recommendations for the Student were appropriate.

2. Research-based Programming and Instruction

Petitioner also argued that the IEP was infirm because it did not provide for research-based programming. IEPs must include "a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable." 20 U.S.C. Sect. 1414(d)(1)(A)(i)(IV). A District of



Columbia federal court discussed this issue at length in a 2016 decision. Damarcus S. v. District of Columbia, 190 F. Supp. 3d 35, 51–52 (D.D.C. 2016). The parent in Damarcus S. sought a general statement in the student’s IEP to the effect that research-based instruction should be used by the school staff. However, like the Parent here, the parent in Damarcus S. did not *specifically* explain how the lack of this language caused the Student any harm. The court found that the parents should have identified a program that should have been used by the school district and noted that, even if an IEP does not explicitly state that a student will receive “research-based instruction,” it does not follow that the student will not actually receive that type of instruction. Here, in fact, the record suggests that the Student did receive a considerable amount of instruction based on educational methodologies at School B, since the CES classroom provides instruction through the ABA methodology. Moreover, as in Damarcus S., Witness D testified that the CES classrooms at School B used the Edmark program. Witness D also testified that the CES classrooms at School B used the Lexia and Unique programs. Again, Petitioner did not call any witness or submit any document to support her view that the IEP needed to include language requiring research-based programming or instruction. Accordingly, Petitioner did not present a *prima facie* case on this issue or, alternatively, Respondent showed that its recommendations for the Student were appropriate.

### 3. Self-Advocacy Skills

Petitioner contended that the Student was not offered services relating to his/her issues with self-advocacy skills, underscoring that the Student had come home with bruises on at least one occasion. However, Petitioner did not submit any document in support of the contention that the Student’s bruises were a function of his/her lack of self-

advocacy skills. Moreover, Petitioner did not call any witness, expert or otherwise, in support of this contention that the Student needed self-advocacy help in November, 2018, and there is nothing in the record to suggest that Petitioner raised this issue at the IEP meeting. Moreover, Petitioner did not present any caselaw finding a FAPE denial because a student's IEP did not contain services relating to self-advocacy. Indeed, during argument, Petitioner did not clearly describe what services the Student was failing to advocate for.<sup>3</sup> Accordingly, Petitioner did not present a *prima facie* case on this issue or, alternatively, Respondent showed that its recommendations for the Student were appropriate.

4. Functional Academics

Petitioner also contended that the IEP did not address the Student's needs regarding functional academics. However, Petitioner did not present a witness to support her position on this issue, and the record indicates that the Student was working on basic mathematics, reading, and writing skills during his/her time at School B. To the extent that Petitioner contended that the Student did not receive enough services to address deficits in adaptive/daily living skills, the IEP contained an "Areas of Concern" section relating to adaptive/daily living skills. Witness C, who worked on the Student's daily living skills at School B, testified and did not indicate that the Student needed any additional services in this area. Finally, again, Petitioner did not describe the nature of the services that should have been added to the Student's IEP in this area. Accordingly,

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<sup>3</sup> Witness B did testify that the Student had issues with self-advocacy, but this was at School C, not School B. A goal relating to self-advocacy was accordingly placed on the Student's IEP through an amendment on February 26, 2020.

Petitioner did not meet the burden to present a *prima facie* case on this issue or, alternatively, Respondent showed that its recommendations for the Student were appropriate.

5. Goals and Objectives

Petitioner's main concern on this issue was that goals in the November 27, 2018, IEP were repeated from the November 28, 2017, IEP. This issue was also addressed in Damarcus S., where the court found that "the wholesale repetition" of goals and objectives "indicates an ongoing failure to respond to [a student's] difficulties." 190 F. Supp. 3d at 52-53. But courts have also said that some goals may be repeated in IEPs if the student did not achieve the goal but made progress on the goal. Jefferson Cty. Bd. of Educ. v. Amanda S., 418 F. Supp. 3d 911, 918-19 (N.D. Ala. 2019) ("the IEP was crafted to allow Student's teachers and the Board to aid with satisfactory progress, even if some goals were repetitious"); Bohn v. Cedar Rapids Cmty. Sch. Dist., No. 15 CV 106 EJM, 2016 WL 6828207, at \*9 (N.D. Iowa Nov. 18, 2016) ("The IDEA does not require that an IEP be substantially revised every year" and simply requires that the IEP be reviewed periodically and revised to address lack of expected progress, new information about the child or the child's anticipated needs, or other matters).

The Student's 2018 IEP did repeat the math goal relating to completing "division expressions" with one prompt, which had been mastered by May 22, 2018, according to the progress report from School A. However, Witness C at School B felt differently, commenting in her progress report of October 26, 2018, that the Student would forget the concept and required modeling to show mastery. There is no testimony from any other witness to contradict Witness C's position on this issue. Similarly, one of the Student's

reading goals on the November 27, 2018, IEP was repeated from the November 28, 2017, IEP. This goal related to writing a three-to-five-sentence summary of text with one prompt. But this goal had not been mastered at School B, and Witness C indicated that the Student could only write a three-to-five-sentence summary with more than five prompts as of the date of the IEP. Witness C testified that she wanted the Student to master the goals from his/her prior school before working on new goals, which is, to this Hearing Officer, a reasonable proposition. As a result, the goal was repeated on the November 27, 2018, IEP.<sup>4</sup>

This testimony is consistent with the credible testimony of Witness M, who noted that the Student, who has severe memory issues and forgets lessons previously learned, needs to be taught the same thing over and over to achieve mastery. Petitioner did not call any witness to rebut the contentions of Witness M, or even to testify that the goals were deficient or inappropriate in the November 27, 2018, IEP.

Petitioner also contended that the goals in the IEP were not measurable, but most of the goals in this IEP were in effect self-measurable. For instance, a goal relating to the Student's pronunciation of ten words commonly introduced in basal reading tests at the fifth- and sixth-grade level would be considered mastered when the Student could

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<sup>4</sup>Similarly, the Student's adaptive/daily living skills goal, relating to geography, and the Student's communication/speech and language goals were repeated. But the adaptive/daily living skills goal was not mastered at School A and had not yet been introduced at School B. As noted in the IEP progress report from the first reporting period of the 2018-2019 school year, the goal was to be introduced in the next reporting period. The communication/speech and language goals were also repeated, but they had not been mastered at School A, and two of the goals had just been introduced at School B. (A third communication/speech and language goal also had not been introduced at School B.) Finally, the emotional, social, and behavioral goal relating to social communication skills was also repeated. However, the Student had not mastered this goal. Indeed, the IEP progress report for the first reporting period of the 2018-2019 school year indicated that the Student was having difficulty maintaining this skill when medication was no longer effective.

correctly pronounce eight such words at five-second intervals. Similarly, the goal relating to writing compound sentences specified that, to meet the goal, the Student had to attain eighty-percent accuracy in three consecutive assessments. There is no testimony or evidence in the record to suggest that these goals were not measurable, or that a trained special education teacher or service provider would have difficulty managing these goals. Petitioner also underscored the difficulty of measuring the emotional, social, and behavioral development goal relating to increasing communication skills, but a special education teacher should be able to test the Student's ability to properly orient his/her body to the speaker and engage in eye contact during conversation in five observable opportunities.

Petitioner also contended, generally, that the goals were not appropriate because the IEP did not clearly indicate the Student's actual levels of functioning. However, there is no requirement that goals contain "baselines." Instead, the IDEA regulations simply state that an IEP must include "(a) statement of measurable annual goals, including academic and functional goals" that are written to "(m)et 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" and "(m)et each of the child's other educational needs that result from the child's disability." 34 C.F.R. Sect. 300.320. Accordingly, Petitioner did not present a *prima facie* case on this issue or, alternatively, Respondent showed that its recommendations for the Student were appropriate.

6. Social Skills and Pragmatic Language

Petitioner contended that the IEP should have contained more services relating to social skills and pragmatic language skills. The record contains references to the

Student's difficulties with respect to these areas. But the record also makes clear that these skills are worked on in the CES classroom, which focuses on improving a student's communication skills. Witness J testified that the CES classroom includes lessons on social skills, and Witness M suggested that the ABA services provided in the CES program are designed to address these and other issues. Witness J, the social worker at School B, also pointed out that the IEP required a full-time paraprofessional for the Student, giving the Student additional opportunities to engage. Petitioner contended that the Student needed direct behavior support services to address these issues, but the record suggests that Petitioner may not have even wanted direct services at the time. Witness B from School C indicated that Petitioner did not want the Student to have direct behavior support services at School C. Certainly, there is no reference in the record to Petitioner asking for such services at the IEP meeting. Accordingly, Petitioner did not meet the burden to present a *prima facie* case on this issue or, alternatively, Respondent showed that its recommendations for the Student were appropriate.

In sum, this Hearing Officer finds that Petitioner's claims relating to the November 27, 2018, IEP are without merit and must be dismissed.<sup>5</sup>

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<sup>5</sup>Parents are prohibited from "rais[ing] issues at the due process hearing that were not raised in the due process complaint," unless the school district agrees otherwise. 34 C.F.R. Sect. 300.511(d). Nevertheless, Petitioner's closing argument included many allegations that went beyond the allegations contained in the Complaint and memorialized in the detailed revised prehearing order reissued on August 3, 2020, including claims relating to evaluations, IEP implementation, "consistency" of the CES program, appropriateness of the IEP progress reports, and the "Areas of Concern" sections in the IEPs. Petitioner clearly understood the importance of including these issues in the prehearing order. Indeed, Petitioner asked for a revision to the order so that claims relating to social skills and pragmatic language were addressed in this HOD.

**B. November 25, 2019, IEP**

1. Speech and Occupational Therapy

This IEP, written at School C, recommended that the Student receive 120 minutes of speech-language pathology per month, a reduction from the November 27, 2018, IEP's mandate for 180 minutes per month. The mandate was increased back to 180 minutes per month through an amendment on February 26, 2020. The November 25, 2019, IEP also required sixty minutes per month of occupational therapy direct services, a reduction from 120 minutes in the November 27, 2018, IEP. The IEP also offered thirty minutes per month of occupational therapy consultation services.

Petitioner contended that the Student's recent speech-language assessment indicated that his/her levels were decreasing. While the assessment indicated that the Student did regress in some areas with respect to pragmatic language and vocabulary, it also indicated that the Student's language skills were increasing overall. The evaluator, Witness I, noted that the Student successfully composed simple sentences containing nouns, pronouns, verbs, adjectives, and adverbs, but had difficulty with complex and compound sentences containing conjunctions. Witness I also concluded that the Student could do more than what the test showed because of difficulties getting the Student to focus during the test and did not testify in support of the contention that the offer to provide 120 minutes of speech-language pathology per month denied the Student a FAPE.

Petitioner also pointed to language in the IEP to the effect that the Student "presents with a decreased ability to comprehend verbally presented information of increased length and complexity...." But this language merely summarized the Student's

overall deficits and cannot be construed as a report on the Student's then-current issues and needs in communication/speech and language. Again, Petitioner did not call an expert witness to testify that the Student needed more speech-language pathology services than this IEP recommended. And again, evidence in the record indicates that the entire CES program at DCPS is based on addressing a student's communication needs, including through the delivery of ABA instruction.

It is noted that School C was particularly conscientious in delivering this service. Even though not required by the IEP, Witness I would deliver the services together with Witness B because she felt that the Student would attend better that way. There is nothing in the IEP or the IEP progress reports to suggest that the Student was materially affected by the IEP's change in the speech-language pathology mandate. Accordingly, Petitioner did not present a *prima facie* case on this issue or, alternatively, Respondent showed that its recommendations for the Student were appropriate.

Petitioner also contended that the reduction of occupational therapy services was inappropriate. Petitioner again pointed to the IEP progress reports, but the progress report for the first reporting period of the 2019-2020 school year indicated that the Student was able to maintain an organized desk area and was improving his/her legibility given cues to self-edit. The Student's recent occupational therapy assessment also showed improvement from past testing on the BOT-2 and in visual motor and gross motor subtests, and indicated that the Student had also made progress in organizational skills, typing skills, handwriting, and fine motor skills. While there were declines in some scores, including the Beery VMI, Witness M explained that test scores were not always the best tool to determine the Student's level of progress. Again, the only witness



who testified on this issue was Witness B from School C, who testified that the Student knew more skills than the tests showed, and who supported the IEP. Accordingly, Petitioner did not present a *prima facie* case on this issue or, alternatively, Respondent showed that its recommendations for the Student were appropriate.

2. Research-based Programming

Petitioner pointed to various test scores in support of the claim on this issue, which the same issue raised in connection to the November 27, 2018, IEP. Petitioner pointed to a variety of test scores which showed that the Student made inconsistent progress, or no progress at all, in reading, mathematics, and writing. Yet the most recent psychological testing of the Student revealed that his/her scores increased in broad reading, broad mathematics, and broad written expression from 2016 testing. Petitioner also did not acknowledge the point made by Witness M and other witnesses: that test scores are not the best way to determine the Student's progress. Petitioner also pointed to School C IEP progress reports in support of her position. However, the IEP progress reports for the fourth reporting period of the 2018-2019 school year and the first reporting period of the 2019-2020 school year both indicated that the Student made progress on all academic goals. Additionally, as discussed, there is no requirement for school districts to place general language relating to research-based strategies in IEPs, especially where, as here, research-based strategies are already being used. Accordingly, Petitioner did not present a *prima facie* case on this issue or, alternatively, Respondent showed that its recommendations for the Student were appropriate.

3. Self-advocacy

During closing argument and during testimony, Petitioner underscored the importance of an incident that occurred in January, 2019, at School B, again suggesting that the Student needed self-advocacy skills to address peer issues at school. But there is nothing in the record to indicate that self-advocacy would have addressed this incident, which resulted in the Student's transfer to School C. But there is no credible evidence that Petitioner requested such services at the November 25, 2019 IEP meeting, and Petitioner did not call any witness in support of her position on self-advocacy (which was the subject of an IEP amendment on February 26, 2020) or clearly explain why the Student needed services in this area. Again, there is un rebutted testimony in the record that Petitioner expressly declined direct behavioral support services, which could have addressed the Student's self-advocacy needs. Accordingly, Petitioner did not present a *prima facie* case on this issue or, alternatively, Respondent showed that its recommendations for the Student were appropriate.

4. Functional Academic Skills

Petitioner again contended that the IEP did not address the Student's needs regarding functional academics. However, Petitioner did not describe which functional academics needed to be addressed, did not present a witness to support her position on this issue, and did not present documentation to suggest that the Student needed more instruction in this area. Additionally, the record suggests that these services were delivered by Teacher A and Substitute Teacher as part of the CES program curriculum, since Teacher A and Substitute Teacher addressed the adaptive/daily living skills goal on the Student's IEP progress reports (through the intervention of Witness F). Accordingly,

Petitioner did not present a *prima facie* case on this issue or, alternatively, Respondent showed that its recommendations for the Student were appropriate.

5. Goals and Objectives

Petitioner's main contention was that goals were repeated in the November 25, 2019, IEP. However, most of the goals in this IEP were in fact new. The communication/speech and language goal and the emotional, social, and behavioral development goal were newly created. Both mathematics goals were different<sup>6</sup>, and all three reading goals were different, even though one of the goals, relating to geography, was included in the November 27, 2018, IEP as an adaptive/daily living skills goal. Petitioner pointed out that this goal had been mastered during the 2018-2019 school year, which is true. But the goal was written broadly, suggesting that a determination of mastery could be subjective. Teacher A, in progress report notes for the first reporting period of the 2019-2020 school year, indicated that the Student benefitted from teacher support on this goal and was making progress, but had still not mastered the goal. While the IEP and IEP progress reports could have been written more carefully in this regard, to this Hearing Officer this procedural irregularity does not rise to the level of FAPE denial.

Petitioner also pointed out that the written expression goal (relating to writing compound sentences) and the motor skills/physical development goals were also repeated from the prior IEP. But the written expression goal was only introduced in the middle of

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<sup>6</sup>The mathematics goal relating to division expressions was the not the same as the similar goal in the November 27, 2018, IEP because it changed the quantity of division expressions to be drawn. Moreover, the Student had not mastered the November 27, 2018, IEP goal relating to division expressions as of the November 25, 2019, IEP, according to the most recent IEP progress report. While this goal was deemed to have been mastered as of May 22, 2018, by School A, both School B and School C staff felt that the Student needed more work in this area.

the 2018-2019 school year and had not been mastered by the Student at the time of the November 25, 2019, IEP. The motor skills/physical development goal also had not been mastered when the November 25, 2019, IEP was written. This differs from the facts in Damarcus S., where the court found that there was “wholesale” repetition of the goals without any meaningful deliberation. Here, I find that the repetition of the Student’s goals was a function of the Student’s low cognitive ability and memory issues, which required frequent repetition of instruction.

Petitioner also contended that the adaptive/daily living skills goal was not measurable, and indeed this goal, relating to the Student’s communication needs, could have been drafted in a more specific manner. The goal stated only that the Student “will communicate his/her needs and interest (sic) inside the classroom and outside of the classroom.” Petitioner also argued that the emotional, social, and behavioral goal relating to the Student’s picking behavior was difficult to measure. However, there is no testimony or evidence in the record to suggest that a special education teacher would have a problem measuring such goals, since Petitioner failed to call an expert witness to support her position on this issue. Additionally, it seems to this Hearing Officer that a competent special education teacher could easily figure out a way measure a goal relating to communication skills, perhaps with a verbal prompt. Accordingly, Petitioner did not present a *prima facie* case on this issue or, alternatively, Respondent showed that its recommendations for the Student were appropriate.

6. Social Skills and Pragmatic Language

Petitioner argued that the Student’s pragmatic language skills were decreasing at this time, pointing to the language in the “Areas of Concern” section of the IEP relating

to communication/speech and language. But the IEP team responded to this concern and added a new goal relating to the use of pragmatic language in verbally asking for clarification with minimal assistance. Petitioner suggested that the Student should have received direct behavioral support services, but Witness J indicated that Petitioner did not want the Student to receive direct behavioral support services at that time. Moreover, as noted, the CES classroom is designed to address the Student's communication needs through ABA, including in regard to social skills and pragmatic language skills. The record reflects that the school took ABA seriously. As indicated by Witness M, the school provides each student with an ABA binder and takes data for every student, and Witness B testified that ABA was a main focus in the classroom and that Teacher A would discuss the Student's issues in meetings. Finally, the IEP stated that the Student was at least offered a social skills class at School C, apparently led by Witness B. P-29-25. Accordingly, Petitioner did not present a *prima facie* case on this issue or, alternatively, Respondent showed that its recommendations for the Student were appropriate.

Parenthetically, Petitioner argued that this IEP contained the same language as the prior IEP in regard to the "Areas of Concern" sections for reading, mathematics, written expression, adaptive/daily living skills, and emotional, social, and behavioral development, which is accurate. Certainly, Respondent should have updated the descriptions of the Student's present levels of performance in this IEP. Petitioner was therefore correct that the IEP contained procedural defects. However, this claim was not mentioned in the Complaint, at the prehearing conference, or in the prehearing order, which was revised at Petitioner's request. Furthermore, Petitioner did not show how this

defect practically impacted the Student. Instead, the record suggests that the repeated language did not impact the Student, since the teachers and staff at School C had been instructing the Student since April, 2019, and understood the Student's levels of performance. Moreover, caselaw in this jurisdiction does not favor this kind of claim. J.B. by & through Belt v. D.C., 325 F. Supp. 3d 1, 6 (D.D.C. 2018) (parents contended that an IEP cannot be tailored appropriately to the needs of an individual student without adequately documenting the student's current achievement levels, but did not show that any purported inattention to J.B.'s present performance led to J.B.'s halting academic progress).

### **C. Conclusion**

Petitioner's claims were largely based on the contention that the Student did not make enough progress during his/her time at School B and School C during the 2018-2019 and 2019-2020 school years. Petitioner failed to acknowledge, however, that the IDEA does not require that such a student must make the same kind of progress as a typically developing student. As Judge Christopher Cooper stated in Belt, "limited academic progress does not *ipso facto* signal a violation of the IDEA any more so than does the existence of substantially similar IEPs year over year." 325 F.3d at 9; see also Jackson v. D.C., No. CV 19-197 TJK/DAR, 2020 WL 3318034, at \*14 (D.D.C. June 2, 2020), report and recommendation adopted, No. CV 19-197 (TJK/DAR), 2020 WL 3298538 (D.D.C. June 18, 2020). Judge Cooper stated further, in regard to Andrew F.:

Now what Andrew F. did not do. It did *not* hold that any time a child makes limited, or even zero, progress, that a school system has necessarily failed to provide a FAPE and violated the IDEA. Andrew F. may have held that a school system cannot satisfy its statutory obligation *merely* by

pointing to something beyond *de minimis* progress; but it did not say that the presence of only *de minimis* progress (or even less than that) equates to an IDEA violation.

Belt, 325 F. Supp. 3d at 9.

Accordingly, Petitioner's claims must be denied, and the Complaint must be dismissed with prejudice.

### **VII. Order**

As a result of the foregoing, this case is hereby dismissed with prejudice.

Dated: October 23, 2020

Michael Lazan  
Impartial Hearing Officer

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

### **VIII. Notice of Appeal Rights**

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

Dated: October 23, 2020

Michael Lazan  
Impartial Hearing Officer