

**District of Columbia**  
**Office of the State Superintendent of Education**  
**Office of Dispute Resolution**  
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OSSE  
Office of Dispute Resolution  
October 24, 2022

**Confidential**

<b>Parent on behalf of Student<sup>1</sup></b>	)	<b>Case No. 2021-0149</b>
	)	
<b>Petitioner,</b>	)	<b>Hearing Dates: February 28, 2022</b>
	)	<b>March 1-2, 2022</b>
	)	<b>June 13, 2022</b>
	)	<b>October 3-4, 2022</b>
	)	
	)	<b>Conducted by Video Conference</b>
<b>v.</b>	)	
	)	<b>Date Issued: October 24, 2022</b>
<b>District of Columbia Public Schools</b>	)	
	)	<b>Terry Michael Banks,</b>
<b>Respondent.</b>	)	<b>Hearing Officer</b>

**HEARING OFFICER DETERMINATION**

**INTRODUCTION**

Petitioners are the parents of an X-old student (“Student”) attending School A. Petitioners filed a Due Process Complaint Notice (“*Complaint*”) on September 20, 2021, alleging that the District of Columbia Public Schools (“DCPS”) denied Student a free appropriate public education (“FAPE”) by failing to provide Individual Education Programs (“IEP”) and placements and by failing to implement Student’s IEP. On October 8, 2021 DCPS filed *District of Columbia Public School’s 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 implementing regulations, 34 C.F.R. Sect. 300 *et seq.*, Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-E, Chapter 30.

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

## PROCEDURAL HISTORY

On September 20, 2021, Petitioners filed the *Complaint* alleging that DCPS denied Student a FAPE by (1) failing to provide Student an appropriate IEP on September 20, 2019, (2) failing to provide an appropriate IEP on May 19, 2020, and (3) failing to implement the aforementioned IEPs. On October 8 2021, DCPS filed its *Response*, denying that it had denied Student a FAPE in any way, asserting that (1) after Student transferred into the DCPS system on August 28, 2019, DCPS developed an appropriate educational plan no later than September 3, 2019, (2) with the participation of Petitioners, it developed an appropriate IEP on May 19, 2020, (3) but for the shut-down caused by the COVID-19 pandemic, DCPS was capable of implementing Student's IEP during the 2019-20 school year utilizing distance learning plans, (4) Petitioners withdrew from DCPS on August 20, 2020, and (5) with the participation of Petitioners, it developed an appropriate IEP for Student on or about August 20, 2021.

The parties participated in resolution meetings on September 30, 2021 that did not result in a settlement. A prehearing conference was conducted by video conference on November 8, 2021, and the Prehearing Order was issued that day. An Amended Prehearing Order was issued on November 23, 2021 to address changes requested by Petitioners' counsel.

The due process hearing was conducted on February 28, March 1-2, and June 13, 2022 by video conference. The hearing was closed to the public at Petitioners' request. Petitioners filed disclosures on February 18, 2022 containing a witness list of four witnesses and documents P-1 through P-123. Respondent filed objections to Petitioner's exhibits on February 24, 2022. Respondents object to proposed expert testimony from Witness A and Witness B on the basis of their qualifications. Respondent also object to the following exhibits: P1-P4, P14, P17, P22, P27, P29, P37, P42-P44, P47, P50-P51, P53, P56, P62-P65, P67-P69, P73, P75-P89, P93-P117, and P119-P122. At the hearing, DCPS withdrew its objections following exhibits: P83-P86, and Petitioners withdrew Exhibits P78-P81. Respondent's disclosures, also filed on February 18, 2022, contained a witness list of twelve witnesses and documents R1 through R-23. Petitioners did not file objections to DCPS' disclosures.

Petitioners filed supplemental disclosures on June 3, 2022 containing documents P124-P128. Petitioners filed additional supplemental disclosures on June 6, 2022 containing document P129. Respondent filed supplemental disclosures on June 6, 2022 containing documents R24-31. On June 8, 2022, Petitioners' filed objections to DCPS' supplemental exhibits R24-R29 on grounds of relevance. I sustained the objection to proposed exhibits R25-R29, and overruled the objection to R24. Petitioners' Exhibits P1-P2, P4-P13, P15-P16, P18-P21, P23-P26, P29-P43, P45-P49, P52-P86, P90-P92, P96-P99, P102-P104, P107, P110, P113, P115, P117-P120, P122, and P124-P129 were offered and admitted into evidence. Respondent's exhibits R1-R24 and R30-R31 were offered and admitted into evidence.

Petitioners presented as witnesses in chronological order: Witness A, Witness B, Witness A, Petitioner/Father ("Father"), and Petitioner/Mother ("Mother"). Witness A and Witness B were accepted as experts in Special Education. Respondent presented as witnesses in chronological order: Witness C, Witness D, Witness E, and Witness F. Witness C was accepted as an expert in General Education Inclusion and Reading Instruction, Witness D was accepted as an expert in Special education, Witness E was admitted as an expert in Special Education Programming and Placement, and Witness F was accepted as an expert in Social Work and Placement.

On June 14, 2022, on the fourth day of scheduled hearings, before going on the record, Petitioner's counsel requested a postponement of the hearing to file a recusal motion against the Hearing Officer for comments skeptical of an aspect Mother's testimony during the previous day of hearings. The request was granted and on June 15, 2022, Petitioner filed a *Motion for Recusal of Assigned Hearing Officer*. On June 24, 2022, I issued an order denying the recusal motion.

Testimony resumed on October 3, 2022. At the conclusion of testimony on October 4, 2022, counsel for the parties provided oral closing arguments. The Hearing Officer authorized counsel to file relevant caselaw on or before October 7, 2022. On October 7, 2022, Petitioner filed *Caselaw for Consideration*.

## ISSUES

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

1. Whether DCPS denied Student a FAPE on September 20, 2019 by failing to provide an appropriate IEP and placement due to an insufficient amount of specialized instruction,<sup>2</sup> insufficient behavioral support services ("BSS"), inappropriate goals, provided goals that could not be properly executed and/ or accomplished in the time allotted, inappropriate reading, writing, and mathematics interventions, an inappropriate least restrictive environment ("LRE"), and inappropriate modifications and accommodations. DCPS prescribed specialized instruction based on what School B could provide instead of Student's individual needs. The Petitioners assert that they requested the following classroom accommodations to be added to Student's IEP: small group setting, fidgets, weighted blankets, clarification as necessary, differentiation of assignments, alternate seating accommodations, movement breaks, one-on-one writing support, frequent checking, and assignment modifications.
2. Whether DCPS denied Student a FAPE on May 19, 2020 by failing to provide an appropriate IEP and placement due to an insufficient amount of specialized instruction, inappropriate goals, provided goals that could not be properly executed and/ or accomplished in the time allotted, inappropriate reading, writing, and mathematics interventions, an inappropriate LRE, and inappropriate modifications and accommodations. DCPS prescribed specialized instruction based on what [REDACTED] could provide instead of Student's individual needs. Petitioners assert that they requested the following classroom accommodations to be added to Student's IEP: small group setting, fidgets, weighted blankets, clarification as necessary,

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<sup>2</sup> At the prehearing conference, Respondent's counsel inquired as to how much specialized instruction Petitioners believe Student should have received. Petitioners' counsel declined to specify an amount, but denied that Petitioners ever requested a private school placement. By email on November 15, 2021, Petitioners' counsel opined that Student "at least required the amount [s/he] last received" at School C. There s/he had an Individual Learning Plan that included the Wilson Reading System for three hours and 45 minutes per week, pull-out for Reading for 80 – 100 minutes per week, pull-out for Math for one hour and forty minutes per week, one-on-one writing support for 30 minutes per week, and extended year services.

differentiation of assignments, alternate seating accommodations, movement breaks, one-on-one writing support, frequent checking, and assignment modifications.<sup>3</sup>

3. Whether DCPS denied Student a FAPE by failing to implement his/her IEPs from September 20, 2019 to May 19, 2020 by failing to provide all of the required specialized instruction, related services, other classroom aids and services, and accommodations and modifications required by the IEPs, and failing to provide Wilson Reading at Student's individualized level.
4. Whether DCPS denied Student a FAPE on August 20, 2021 by failing to provide an appropriate IEP and placement due to failing to reflect updated educational records, failing to afford Petitioners a meaningful opportunity to participate in the IEP meeting, an insufficient amount of specialized instruction, inappropriate goals, provided goals that could not be properly executed and/ or accomplished in the time allotted, inappropriate reading, writing, and mathematics interventions, an inappropriate LRE, and inappropriate modifications and accommodations.<sup>4</sup> DCPS prescribed specialized instruction based on what School B could provide instead of on Student's individual needs. Petitioners assert that they requested the following classroom accommodations to be added to Student's IEP: small group setting, fidgets, weighted blankets, alternate seating accommodations, movement breaks, single point of contact for task organization.
5. Whether School A is a proper placement for Student and whether Petitioners are entitled to reimbursement for expenses related to Student's enrollment at School A.

## FINDINGS OF FACT

1. Student is X years old<sup>5</sup> and entered School A in September 2020 in grade A.<sup>6</sup>
2. In August 2016, when Petitioners lived in Brussels, Belgium, they enrolled Student at School C.<sup>7</sup> On or about June 21, 2018, when Student was in grade E, School C developed an Individual Learning Plan ("ILP") for him/her. The ILP reported on an Occupational Therapy Assessment of Student conducted by Maximum Potential in June 2017. Student was found to have low muscle tone of his/her trunk and shoulder girdles, mildly delayed fine motor skills, mildly delayed bilateral coordination skills, and mildly delayed gross motor skills. Her/his sensory processing difficulties included mild difficulties with vestibular and tactile sensory systems, and

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<sup>3</sup> By email on November 15, 2021, Petitioners' counsel asserted that the parents requested full-time specialized instruction in all of Student's classes, citing paragraphs 25, 99, 104, 117, and 122 of the *Complaint*.

<sup>4</sup> By email on November 15, 2021, Petitioners' counsel asserted that the parents made no specific request as to the amount of specialized instruction due to DCPS' failure to incorporate updated education records data in the IEP.

<sup>5</sup> Petitioner's Exhibits ("P:") 72 at page 2 (460). The exhibit number and exhibit page numbers are followed by the aggregate page number in the disclosure in parentheses, i.e., P72:2 (460).

<sup>6</sup> Testimony of Mother.

<sup>7</sup> P:1 (1). Although the ILP indicated applicability from October 13, 2017, it appears to have been developed on the date in the top left corner of each page, June 21, 2018, as there is a reference in the ILP to "Update June 2018." For consistency, I used the same methodology for assigning the date for P4.

moderate difficulties with auditory and proprioceptive sensory systems. The examiner recommended that Student receive occupational therapy (“OT”) on a weekly basis using a neurodevelopmental and sensory integration approach.<sup>8</sup> The ILP also reported the results of an Educational Psychological Assessment that was also completed in June 2017. Student’s cognitive scores were Average in Perceptual Reasoning and Processing Speed, Lower Average in Verbal Comprehension, and Borderline in Working Memory. In his/her functions, s/he was found to be in the Upper Average range in Reaction Times, Average in Visual Selective Attention Skills, and Weak in Sustained Attention Skills. In Executive Functions, s/he had deficits in Motor Inhibition Skills and Flexibility Skills. S/he was in the Average range in Visual Spatial Skills, was in the Upper Average range in Long-term Visual Memory Skills, and was Weak in Short-term auditory and Visual Memory Skills. The examiner recommended consultation with a pediatric neurologist and neuropsychological rehabilitation focused on motor and cognitive inhibition and flexibility.<sup>9</sup> The examiner reported that Student was a “full year behind” in his/her math and literacy skills.<sup>10</sup> The ILP prescribed 80 minutes per week of a small group environment in both math and literacy, and one session per week of OT, and 30 minutes per week of counseling.<sup>11</sup>

3. On August 23, 2018, Examiner A completed a Neuropsychological Evaluation of Student. Student’s teachers referred her/him for evaluation due to concerns over delays in reading and math despite receiving “maximum learning support” over the past year.<sup>12</sup> On the Achenbach Teacher’s Report Form, Student’s grade E classroom teacher’s ratings yielded highly significant elevations in Anxious Behavior (T=76), Social Problems (T=74), Attention Problems (T=75), Rule-Breaking Behavior (T=68), and Aggressive Behavior (T=90). With respect to executive functioning, on the BRIEF-2, Teacher Form, Student’s classroom teacher’s response yielded elevated scores in Self-Monitor (T=68), Shift (T=87), Emotional Control (T=87), Initiate (T=71), Working Memory (T=79), Plan/Organize (T=78), and Organization of Materials (T=90).<sup>13</sup> Student’s special education teacher’s scores were elevated in Anxious Behavior (T=69), Social Problems (T=67), Attention Problems (T=81), Rule Breaking Behavior (T=68), and Aggressive Behavior (T=82).<sup>14</sup> Student’s responses on the Child Depression Inventory were age-appropriate.<sup>15</sup>

On the WISC-V, Student was in the Average range in Verbal Comprehension (98), and Visual Spatial (92), and Low Average in Fluid Reasoning (82), Working Memory (88), and Processing Speed (86).<sup>16</sup> On the Woodcock-Johnson Tests of Achievement (“WJ-IV”), Student was two grade levels below his/her grade at the time in Broad Reading (69), one grade below in Broad Written Language (81), and Broad Mathematics (81). Student was also scored one grade below her/his grade on the Wechsler Individual Achievement Test (“WIAT-III”) in Early Reading Skills (84) and Alphabet Writing Fluency (87).<sup>17</sup>

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<sup>8</sup> *Id.* at 2 (2).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 2-3 (2, 3).

<sup>11</sup> *Id.* at 1 (1).

<sup>12</sup> P82:1 (518).

<sup>13</sup> *Id.* at 1-2 (518-19), T-scores on the BRIEF-2 from 60-64 are considered mildly elevated, from 65-69 are considered elevated, and above 70 are considered highly elevated. *Id.* at 2 (519).

<sup>14</sup> *Id.* at 20 (536).

<sup>15</sup> *Id.* at 11 (528).

<sup>16</sup> *Id.* at 20 (536).

<sup>17</sup> *Id.* at 22-23 (538-39).

Examiner A concluded that Student's difficulties in word decoding, reading fluency, and retrieval skills indicate the presence of a dyslexic-type learning disability, and requires "ongoing and intensive intervention in phonological awareness in order to become a more effective and fluent reader." Examiner A also found that the test results indicated weaknesses in Student's ability to sustain attention and to inhibit impulsive responses, which behavior was indicative of Attention Deficit Hyperactivity Disorder ("ADHD"). Student's weaknesses in executive functioning put him/her at risk for being overwhelmed by complicated multi-step tasks and s/he would benefit from having tasks broken down into discrete steps.<sup>18</sup> Examiner A diagnosed Student with ADHD, a Specific Learning Disorder ("SLD") in Reading, an SLD in Written Expression, an SLD in Mathematics, and an Unspecified Anxiety Disorder.<sup>19</sup>

Examiner A opined that Student's learning disorders require "specialized instruction in a setting that provides a high teacher-to-student ratio... [Student] requires intensive, one-on-one, intervention that provides explicit instruction in phonemic awareness and phonetic decoding and teaches [him/her] to apply this knowledge to reading and spelling (such as through program like PhonoGraphix or Orton-Gillingham). It is recommended that [Student's] tutorial reading work be at least two times per week."<sup>20</sup> Examiner A also recommended interventions in written expression and math, and consideration of medication to address inattention.<sup>21</sup>

4. On or about June 6, 2019, when Student was in grade C at School C, Student's updated ILP provided the 100 minutes per week of small group math and 80 minutes for reading, and added 225 minutes per week in for Wilson intervention and 40 minutes per week of one-on-one writing instruction. OT and counseling were not included as services, but extended year services ("ESY") were recommended.<sup>22</sup> The Present Level of Performance reported the results of Examiner A's evaluation.<sup>23</sup> Student's class size during the 2018-19 school year was 18.<sup>24</sup> The ILP reported that Student was one year below grade level in math, and Poor (14<sup>th</sup> percentile) on the Fundamental Literacy Ability Index.<sup>25</sup>

5. The family returned to the District in the summer of 2019 and enrolled Student in grade F at School B. On August 28, 2019, DCPS issued a Prior Written Notice ("PWN") indicating that Student met the criteria for eligibility for special education services based on information documentation from School B.<sup>26</sup> On or about August 28, 2019, DCPS issued a Comparable Services Consultation Letter in which it notified Petitioners that it intended to provide Student 160 minutes per week of specialized instruction inside general education in reading and math, and 45

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<sup>18</sup> *Id.* at 12-14 (529-31).

<sup>19</sup> *Id.* at 14 (531).

<sup>20</sup> *Id.* at 15 (532).

<sup>21</sup> *Id.* at 15-16 (532-33).

<sup>22</sup> P4:1 (12). It was reported that upon reassessment, Student's OT scores were age-appropriate and s/he "no longer requires OT support." *Id.* at 3 (14). Although the ILP indicated applicability from October 19, 2018, it appears to have been developed on the date in the top left corner of each page, June 6, 2019, as there is a reference in the ILP to testing that was done in May 2019 and an "OT Update 2019." For consistency, I used the same methodology for assigning the date for P1.

<sup>23</sup> *Id.* at 2-3 (13-14).

<sup>24</sup> Testimony of Mother.

<sup>25</sup> P4:2 (13).

<sup>26</sup> P6:1 (33).

minutes per day of reading outside general education.<sup>27</sup> On September 3, 2019, DCPS issued another PWN specifying Student's classification as Specific Learning Disability ("SLD").<sup>28</sup>

6. On September 6, 2019, Student was administered an i-Ready math assessment. Student's overall score of 399 placed his/her performance level at grade E, two grades below his/her grade level.<sup>29</sup>

7. On September 20, 2019, DCPS conducted an IEP Annual Review meeting.<sup>30</sup> In the Consideration of Special Factors, her/his behavior was reported to impede learning: [Student] can over react to events and dynamics in the classroom and needs to take movement and sensory breaks." The team reported that Student had no communications or assistive technology ("A/T") needs.<sup>31</sup> In Mathematics, the Present Levels of Academic Achievement and Functional Performance ("PLOP") reported Student's 2018 WJ-IV scores and the recent i-Ready score placing his/her performance level two grades below his/her current grade level. The baselines were: (1) s/he accurately solved 20 of 20 addition problems in 7.5 minutes, but has not yet "developed subtraction strategies that work for [him/her], and was unable to complete a 20-problem subtraction assessment," (2) s/he often requires support to interpret word problems, (3) s/he scored 40% on an assessment of which number was more or less than another, and (4) using a hundreds chart, s/he count forward by 2s, 5s, and 10s to 100. The goals were: (1) Student will be able to solve 20 addition problems and 20 subtraction problems (within 20) in 6 minutes with 90% accuracy, (2) after a single-step word problem is read aloud, s/he will be able to determine the correct operation needed to solve it by writing an equation and/or modeling the problem, (3) given any two or three digit number, Student will be able to identify what is ten more, ten less, one hundred more, or one hundred less with 90% accuracy, and (4) starting at any multiple of 10 within 1000, s/he will be able to count backward by 1s, 2s, 5s, 10s, or 100s with 90% accuracy.<sup>32</sup>

In Reading, the PLOP reported Student's WJ-IV scores, Fountas and Pinnell reading assessment scored from earlier in the month in which s/he was able to read **K level texts** independently. Wilson Assessment of Decoding and Encoding ("WADE")<sup>33</sup> scores from earlier in the month reveal a relative strength in the ability to memorize words, and a relative weakness in his/her ability to decode. The baselines were: (1) Student's WADE Real Words score was 30%, (2) his/her Nonsense Words score was 10%, (3) s/he has difficulty distinguishing between important events and unimportant details, and (4) s/he needs support to name character traits. The goals were: (1) when presented with a word list, Student will accurately read 14 out of 15 multisyllabic, closed-syllable real words with 80% accuracy, (2) when presented with a word list, Student will accurately read 13 out of 15 multisyllabic, closed-syllable nonsense words with 80% accuracy, (3) after reading a text at her/his independent level, Student will retell a story in sequence including character names, the setting, important events, the problem, and the solution or

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<sup>27</sup> Respondent's Exhibits ("R:") 4 at page 1 (56). The exhibit number and exhibit page numbers are followed by the aggregate page number in the disclosure in parentheses, i.e., R4:1 (56).

<sup>28</sup> P8:1 (37).

<sup>29</sup> P9:1 (39).

<sup>30</sup> P10:1 (41).

<sup>31</sup> *Id.* at 2 (42).

<sup>32</sup> *Id.* at 3-4 (43-44).

<sup>33</sup> "The WADE is a criterion-referenced assessment that can be used for pre and posttesting purposes, as well as a placement and pacing guide. The WADE measures sound production of graphemes in isolation, fluent decoding and encoding (spelling) of phonetically regular words and high frequency irregular words." P120:2 (765)

resolution, and (4) Student will be able to identify how and why a character changed throughout a text with 90% accuracy.<sup>34</sup>

In Written Expression, the PLOP reported that Student's strengths were his/her creativity, understanding of grammar and conventions, and ability to produce meaningful sentences. S/he requires support to organize and plan ideas for writing and has not learned spelling rules for multi-syllabic word and long vowels. The baselines were: (1) her/his WADE Real Words score was 16%, (2) her/his WADE Sight Words score was 15%, (3) s/he requires support to organize and execute her/his ideas for writing, and (4) s/he requires support to revise her/his writing. The goals were: (1) given a list of words the follow learned syllable and spelling rules, Student will encode these words with 90% accuracy, (2) given a list of learned high frequency/sight words, s/he will encode these words with 90% accuracy, (3) using a graphic organizer, Student will plan a plan and create an organized draft, and (4) s/he will elaborate on her/his writing by adding three details in each scene or section.<sup>35</sup> In Emotional, Social and Behavioral ("Behavior"), the PLOP related the diagnoses from the 2018 neuropsychological evaluation, and confirmed the evaluation's findings that Student struggles with attention, impulse control, and emotional regulation. In classroom observations, Student is slow to initiate tasks and takes longer to complete tasks than her/his peers. In a less structured class, s/he demonstrated impulsivity and difficulty regulating her/his body and movements. The baseline was: Student experiences anxiety and anger that lead to acting out once per week, according to School C. The goal was: s/he will use CBT strategies to reduce symptoms of anxiety and anger and return to the task at hand 80% of the time.<sup>36</sup>

The IEP team prescribed 7 hours of specialized instruction per week including 80 minutes of reading, 80 minutes of math, and 80 minutes of written expression in general education, and 120 minutes of reading and 60 minutes of math outside general education. The team also prescribed 60 minutes per week of behavior support services outside general education and Other Classroom Aids and Services: visual schedule, advance notice of transitions, access to computer for voice to text/keyboarding, chunking information/assignments, checklists, movement breaks, and a visual timer.<sup>37</sup> Classroom accommodations included clarification/repetition of directions, Read Aloud, preferential seating, small group testing, extended time, and frequent breaks.<sup>38</sup>

8. Mother noted that the Wilson reading program proposed in the September 2019 IEP was not equivalent to the 225 minutes per week recommended by School C as necessary. School C provided 100 minutes/week of math in small group, while DCPS provided 140 minutes with 60 outside general education, School C provided 40 minutes/week of one-on-one writing support, while DCPS offered 80 minutes inside general education.<sup>39</sup> Mother testified that she did not request a full-time special education program, but wanted Student in a small group environment.

9. Witness A opined that Student required full-time math support in light of his/her social/emotional and ADHD inspired behaviors. In Reading, Witness A testified that the IEP should have replicated the 225 minutes per week that Student received at School C. She also opined that 60 minutes per week was insufficient to address all of Student's behavioral needs. The goals

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<sup>34</sup> P10:5-6 (45-46).

<sup>35</sup> *Id.* at 7-8 (47-48).

<sup>36</sup> *Id.* at 8-9 (48-49).

<sup>37</sup> *Id.* at 10 (50).

<sup>38</sup> *Id.* at 12 (52).

<sup>39</sup> P11:3 (56).



were inappropriate as well; there were no goals for phonological awareness or reading fluency, no goal for math measurement, and no goal to address Student's executive functioning deficits. Witness A faulted DCPS for not providing classroom aids and services: audiobooks, colored strips, oral reports instead on written, and daily check-ins. Witness A testified that Mother wanted Student's services to be provided outside general education throughout the day. On cross-examination, Witness A conceded that Student did not make much progress at School C, and that DCPS increased the amount of support in math from School C. Witness A conceded that Student progressed from level K to level O in reading (approximately 1.5 grade levels) in eight months during the 2019-20 school year at School B.

10. Witness D, School B's Special Education Coordinator, testified that School B differed with Mother over the appropriate amount of pull-out services on the September 2019 IEP. Witness D testified that School B prescribes no more pull-out services (outside general education) than necessary to maximize exposure to general education peers. It prescribes pull-out for services that cannot be provided in a general education environment, such as the Wilson intervention. Mother, on the other hand, wanted considerably more instruction done outside general education. Witness D testified that School B's approach led to Student making progress. Witness D testified that there were no objections to any of the goals or accommodations in the May 2019 IEP. Witness D testified that School B provided less Wilson intervention in pull-out sessions than Mother wanted to prevent Student missing out on other academic offerings such as Social Studies. Witness C agreed with Student's April 2019 IEP, testifying that the services prescribed were appropriate. She testified that she would have expected Student to continue to make the progress s/he was making before virtual learning began.

11. On November 15, 2019, DCPS issued Student's report card for the first term of the 2019-20 school year. Student's grades were as follows: Basic in Reading and Math, and Proficient in Writing & Language, Speaking and Listening, Social Studies, Science, Music, Art, and Health & Physical Education. In the twelve graded behavioral categories, s/he performed appropriately and Independently in three, with Limited Prompting in four, and with Frequent Prompting in five categories, including Follows Directions, Works Well with others/cooperates, Uses time wisely, Participates in class discussions, and Practices self-control.<sup>40</sup>

12. Mother testified that she was skeptical of Student's grades because she did not believe Student was capable of work that even approached grade level performance. She believed Student should have received Below Basic in Math and Basic in Writing & Language.

13. Mother testified that there were two "turning points" for her during the fall of 2019. The first turning point came in a meeting in the fall when Student's science teacher expressed concern about Student's ability to absorb the information. When asked, the teacher was unaware of Student's learning disability. The second turning point came in November 2019 when Student complained to Mother that Mother was not providing her/him the help s/he needed; Student complained that other students get more help than s/he gets. Mother quoted Student asking her "Isn't it your job to get the help I need?"

14. On December 6, 2019, Student had a behavioral "meltdown" on a Metro platform

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<sup>40</sup> P13:1 (63).

during a field trip to a museum. Student calmed down by the time the class reached the museum and caused no further disturbance during the field trip.<sup>41</sup> That day, Student complained to Mother that his/her old school was better because s/he had more help, better hot lunch, and a quiet corner to relax and read until s/he was more in control. S/he did not believe her/his teacher, Teacher A, would let him/her go to the support suite when s/he was upset.<sup>42</sup>

15. Mother testified that in January 2020, School B began providing Student 60-90 minutes of specialized instruction in math outside general education that was not reflected in the IEP. She also advised School B in January 2020 that Petitioners were looking at “all of our options” regarding Student’s placement for the following school year. Petitioners made application to three private schools including School A. School A accepted Student in February 2020. Petitioner’s first payment to School A was a deposit made on April 10, 2020, in the amount of \$2500. They paid \$20.00 on April 20, 2020 for an “Insurance Fee.” From June 22, 2020 through March 2021, they made monthly payments of \$3,492.16. On April 5, 2021, Petitioners made another \$20.00 insurance payment. From April 20, 2021 through January 2022, they made monthly payments of \$3,484.20.<sup>43</sup>

16. On January 24, 2020, Student was administered a mid-year i-Ready math assessment. Student’s overall score of 433 placed his/her performance level at grade C, one grade below his/her grade level. S/he scored at grade level in Numbers and Operations, one grade below in Algebra and Algebraic Thinking and in Measurement and Data, and two grades below in Geometry.<sup>44</sup>

17. On February 7, 2020, DCPS issued Student’s report card for the second term of the 2019-20 school year. Student’s grades were as follows: Basic in Reading and Math, and Proficient in Writing & Language, Speaking and Listening, Social Studies, Science, Music, Art, and Health & Physical Education. In the twelve graded behavioral categories, s/he performed appropriately and Independently in four, with Limited Prompting in three, and with Frequent Prompting in five categories, including Follows Directions, Completes work on time, Uses time wisely, Participates in class discussions, and Practices self-control.<sup>45</sup>

18. Mother testified that she believed the grades to have been inflated in Math, Speaking & Listening, and Writing & Language.

19. On April 8, 2020, Mother complained that the math assignments during distance learning were too hard for Student and took an inordinate amount of time to complete. Mother complained that writing assignments “are not differentiated or broken out in any way, and without the support for writing that is outlined in [his/her] IEP. Mother asserted that Student was receiving only 30 minutes per day of support instead of the 420 minutes per week prescribed in the IEP. Mother testified that after her complaints, support was increased to 2.5 hours per week. Mother requested writing intervention consistent with the IEP, small group math intervention, and

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<sup>41</sup> P16:9 (83).

<sup>42</sup> P16:11 (85).

<sup>43</sup> P115:1 (735).

<sup>44</sup> P85:4 (543).

<sup>45</sup> P23:1 (133).

differentiated assignments.<sup>46</sup> On April 9, Witness D responded; she agreed to modified assignments, and that Wilson intervention would be provided by videos rather than live instruction.<sup>47</sup>

20. On April 13, 2020, Student was given a reading assessment. S/he scored 99% in accuracy in Level N and Level O, 3 out of 3 in fluency in Level N and 2 out of 3 in Level O, and 9 out of 10 (Excellent) in comprehension in Level N and 7 out of 10 (Satisfactory) in Level O.<sup>48</sup>

21. On April 20, 2020, Mother asserted that Student stated that “[s/he] is lost in GenEd and only his/her pull out classes are for him/her to learn; in essence, [REDACTED] turned off in GenEd.” Mother asserted that Student “is best and happiest learner when in small groups outside of the GenEd classroom.”<sup>49</sup>

22. In anticipation of Student’s annual IEP meeting, Mother provided DCPS a six page “Parental Input for [Student’s] IEP Meeting – April 20, 2020.”<sup>50</sup> Mother asserted that Student’s self-esteem and self-advocacy had sharply declined at School B due to the lack of “consistent small group and 1:1 instruction using evidence-based interventions, and socio-emotional support...” that Student received at School C.<sup>51</sup> Mother conceded that Student had progressed using the Wilson Reading Program, and his/her sight word recognition and spelling had improved, but “[s/he] is significantly below grade level.”<sup>52</sup> Mother also asserted that Student remained significantly below grade level in math.<sup>53</sup> Mother concluded by reiterating her request that Student receive more 1:1 or small group instruction, along with a number of additional recommendations.<sup>54</sup>

23. On May 9, 2020, DCPS issued Student’s IEP Progress Report for the third reporting period, ending on April 8, 2020.<sup>55</sup> In Mathematics, Teacher B, Student’s special education teacher, reported that Student was progressing on addition/subtraction goal, had mastered the single-step word problem goal, had mastered the more/less goal, and was progressing on the counting backward goal. In Reading, Student was reported to be progressing on the two multisyllabic word list goals, and had mastered the story retelling goal and the character analysis goal. In Written Expression, Student was reported to have mastered the two encoding goals, was progressing on the organized draft goal, and was progressing on the adding details goal. In Behavior, Student was reported by Social Worker A to be progressing on the goal to reduce symptoms of anxiety and anger.

24. On May 14, 2020, DCPS issued Student’s third term Report Card. His/her grades were as follows: Advanced in Art, Proficient in Reading, Writing & Language, Speaking and

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<sup>46</sup> P27:1-2 (177-78).

<sup>47</sup> P28:1-20 (179-80).

<sup>48</sup> P31:1 (185). Witness C, Student’s general education teacher at School B, testified that Level K is the level expected at the beginning of grade C, M is the level at the beginning of grade F (3). N, O, P are successive levels in grade F with Level P being the end of year expected level.

<sup>49</sup> P34:1 (213).

<sup>50</sup> P35:1 (215).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 2.

<sup>53</sup> *Id.* at 3.

<sup>54</sup> *Id.* at 5-6 (219-20).

<sup>55</sup> P38:1 (238).

Listening, Social Studies, Science, Music, and Health & Physical Education, and Basic in Math. In the twelve graded behavioral categories, Student performed Independently in five categories, With Limited Prompting in three categories, and With Frequent Prompting in four categories.<sup>56</sup>

In math this advisory, [Student] worked on 3-digit addition and subtraction using the standard algorithm. [S/he] is developing word problem skills and successfully uses manipulatives to understand basic fractions. In reading, [Student] read traditional literature stories including fairy tales, folktales, and fables, noticing the characters' impact on the plot and using details to figure out the moral of the story. In writing, [Student] wrote a narrative story that included the features of a fairy tale and used show-not-tell details to develop characters, setting, a problem, and solution.<sup>57</sup>

25. On May 19, 2020, Petitioner sent DCPS comments on a draft IEP that DCPS sent to her on May 14, 2020.<sup>58</sup> As for the goals prescribed in the IEP, Petitioner and [REDACTED] suggested alternative language, but did not object to any of the proposed goals, and did not propose any additional goals. The comments were prepared by Petitioner and Witness A.<sup>59</sup> Mother testified that by May 2020, she had concluded that Student required a placement of a small group environment outside general education throughout the school day.

26. On May 19, 2020, DCPS conducted a IEP Annual Review meeting.<sup>60</sup> Petitioner was represented at the meeting by her educational advocate, Witness A. The Consideration of Special Factors was unchanged from the previous IEP. In Mathematics, the PLOP reported the results of a January 2020 i-Ready assessment in which her/his Overall score of 433 placed her/him at the grade C performance level, one grade below Student's grade level at the time. Her/his weakness was in Geometry (two grades below grade level), while her/his strength was in Numbers and Operations (at grade level). The Overall score reflected one year of growth since her/his assessment in September. The goals were: (1) given a list of 20 3-digit numbers, Student will round 10 to the nearest 10 and 10 to the nearest 100, (2) given 5 three-digit numbers, s/he will use benchmarks of 10 to mentally add or subtract a single-digit number, (3) when given at least five addition and/or subtraction problems within 10,000, Student will select a strategy to solve the problems (e.g., partial sums, standard algorithm), (4) given a checklist, s/he will solve two-step word problems involving any of the four operations by drawing pictures and/or writing equations to determine the final solution, and (5) when given a multiplication equation with 1- and 2- digit numbers, Student will determine the product by using a visual strategy.<sup>61</sup>

In Reading, the PLOP reported that Student "has grown significantly as a reader this year." S/he had progressed from independent reading level K (early grade C) to level O (mid-year grade F). Student was reported to have completed the first two steps of the Wilson Reading System, had mastered decoding real words with up to six sounds, and can decode similar nonsense words. In September 2019, s/he read a K level text with 97% accuracy; in April 2020, s/he read a level O text with 99% accuracy and with expression. S/he comprehends grade level texts." [S/he] no longer

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<sup>56</sup> P40:1 (246).

<sup>57</sup> *Id.*

<sup>58</sup> Petitioner's disclosure table of contents: P42.

<sup>59</sup> P42:24-27 (273-76).

<sup>60</sup> P45:2 (285).

<sup>61</sup> *Id.* at 5-7 (288-90).

leans on pictures to retell stories, as s/he] did during the first advisory.” The baselines were: (1) s/he accurately read 15/15 single syllable real words from Wilson Substep 2.5 with digraphs, short vowels, welded sounds, and 2 and 3-letter blends, (2) s/he accurately read 14/15 single-syllable nonsense words from Wilson Substep 2.5, (3) in an April 2020 assessment, Student read a level O text with 98% accuracy, a fluency score of 2 out of 3, and a satisfactory comprehension score of 7 out of 10, and (4) while s/he read a grade level text, ■ requires support to infer and synthesize the main idea or moral of a text. The goals were: (1) given a list of 15 two and three-syllable real words and up to two distinct syllable types, s/he will accurately read 14 out of 15, (2) given a list of 15 two and three-syllable nonsense words and up to two distinct syllable types, s/he will accurately read 13 out of 15, (3) given a Level S text, Student will read it with 98% accuracy, a fluency score of 3 out of 3, and a satisfactory comprehension score of 7 out of 10, and (4) given a grade-level text and a graphic organizer, s/he will infer the central message and give three supporting details.<sup>62</sup>

In Written Expression, Student was reported to be a strong oral storyteller, but requires support and prompting to brainstorm, plan, and organize his/her ideas, draft, elaborate, and edit for conventions. In an April 10<sup>th</sup> assessment, s/he spelled 14 out of 15 single-syllable words from Wilson Step 2, and on April, s/he spelled 19 out of 21 sight words from Wilson Steps 1 and 2 accurately. Student has difficulty starting writing tasks. On two occasions in May 2020, it took her/him six and then ten minutes to initiate tasks. The goals were: (1) given a list of two and three-syllable real words with up to two distinct syllable types, s/he will accurately spell 80%, (2) when given a persuasive or expository writing prompt, Student will use a graphic organizer or paragraph template to compose an essay, (3) after brainstorming an idea for a narrative, Student will use a checklist and/or graphic organizer to draft 3 paragraphs that include at least two characters, 4 examples of dialogue, 3 transition phrases, and 3 sensory details, (4) given a draft text with 5 capitalization errors and 5 punctuation errors, Student will edit the draft to apply grade-level English conventions, and (5) given a writing assignment, Student will initiate his/her work by beginning to produce letters on his/her paper within three minute of the assignment being presented.<sup>63</sup>

In Behavior, the PLOP reported that Student is cheerful, energetic, and engaging, and makes friends easily, but has difficulty maintaining close friendships, and conflicts occur triggered by his/her anxiety, moods, or impulsive behavior. In class, s/he “has difficulties with attention, impulse control, self-regulation, and executive functioning and [s/he] sometimes misses important steps of multi-step instructions or pieces of instruction and is not always sure what to do. [S/he] has difficulty getting started on work and sustaining attention through to the end of the task or period.” Student was administered the Strengths and Difficulties Questionnaire (“SDQ”) at the beginning of the school year (“BOY”) and in the middle of the school year. His/her score for overall stress decreased from very high to slightly raised, emotional distress was unchanged at close to average, behavioral difficulties decreased from very high to high, hyperactivity and concentration difficulties decreased from very high to close to average, difficulties getting along with other children decreased from very high to slightly raised, kind and helpful behavior increased from very low to slightly low, and impact of any difficulties on the child’s life remained very high. The baselines were: (1) s/he experiences anxious thoughts that lead to behaviors that allow him/her to avoid the trigger of anxiety, but end up being a barrier to his/her ability to resolve the issue or

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<sup>62</sup> *Id.* at 8-11 (291-94).

<sup>63</sup> *Id.* at 12-16 (295-99).



complete a task, and (2) due to negative feelings about him/herself and anxiety about his/her academic abilities, Student does not always advocate for him/herself, and (3) s/he does not always know how to ask for tools and accommodations. The goals were: (1) Student will use CBT strategies to reduce symptoms of anxiety and regulate her/his behavior in social and academic settings, (2) s/he will show self-empowerment by demonstrating self-advocacy skills and asking his/her teacher for accommodation or accessing and using tools s/he needs to help him/her succeed at the academic task at hand, and (3) s/he will use tools and accommodations provided to her/him to support executive functioning tasks (*i.e.*, checklists, printed multi-step instructions, timers, visual schedules, transition warnings).<sup>64</sup>

The IEP team prescribed 9.5 (up from 7) hours of specialized instruction per week including 90 minutes of reading (up from 80), 90 minutes of math (up from 80), and 90 minutes of written expression (up from 80) in general education, and 120 minutes of reading (flat) and 150 minutes of math (up from 60), and 30 minutes of written expression (new) outside general education. The team also prescribed 120 minutes per week of behavior support services (up from 60) outside general education. Other Classroom Aids and Services included, but was not limited to, the following: Executive Functioning - visual schedule, advance notice of transitions, access to computer for voice to text/keyboarding, chunking information/assignments, checklists, movement breaks, graphic organizers, multi-step instruction given orally and in writing, frequent breaks, and fidget tools; Working Memory – breaking down long term assignments into smaller pieces, repetition and clarification of instructions and directions; General Academic – differentiated homework and assignments, concrete representation of abstract concepts, manipulatives, pre-teaching of content area vocabulary, word processor with spellcheck and text capabilities.<sup>65</sup> Classroom accommodations included clarification/repetition of directions, Read Aloud, preferential seating, small group testing, extended time, and frequent breaks.<sup>66</sup>

27. After the IEP meeting, Mother conceded that DCPS generally adopted the proposals suggested by her and Witness A: “While the IEP included many of the supports we asked for, it was eerie as it was lifted from my parental input and [Witness A] input verbatim.”<sup>67</sup> Witness A testified that the Other Classroom Aids and Services were appropriate. Despite Student’s progress in reading, she opined that the amount of specialized instruction was insufficient, because Student still had gaps in phonological awareness, fluency, and his/her rate of progress in School C was greater. Witness A opined that Student required full-time services (1) to help restore her/his self-esteem, (2) because s/he is behind his/her peers, (3) because s/he does better in small groups, and (4) to minimize work avoidance. Witness A asserted that Student was not progressing was confirmed by DCPS indicating that none of his/her May 2020 goals had been introduced (School closed 10 days after the IEP was developed).

28. Witness C was Student’s general education teacher in grade F at School B during the 2019-20 school year. Witness C testified that Student made significant progress in Reading prior to the initiation of virtual learning in April 2020; Student advanced from reading level K to reading level O from the beginning of the school year until April 20, 2020, about 1.5 years of growth, and was writing with grade level proficiency with support. Student was still performing

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<sup>64</sup> *Id.* at 16-18 (299-301).

<sup>65</sup> *Id.* at 20 (303).

<sup>66</sup> *Id.* at 22 (305).

<sup>67</sup> P44:1 (283).

below grade level in math, but in Numbers and Operations, s/he improved by two grade levels in one school year. During distance learning, Student had a daily small group meeting with his/her special education teacher, but was often distracted and disengaged. Witness C agreed with the services provided in the May 2020 IEP because of the growth Student made during the 2019-20 school year with similar support in the general education setting.

29. Witness D testified that Student made progress in math: although his/her overall i-Ready score was one grade below grade level, s/he was at grade level in Numbers and Operations, and his/her lowest score was in geometry, to which s/he had not yet been exposed. The ten-minute increases in service hours reflected longer class periods. She characterized Student's writing as "great," along with the evidence of improvements in reading and math previously discussed during the hearing.<sup>68</sup> Witness D opined that Student did not require the level of services requested by Petitioners – all instruction outside general education – as Student was making "significant" progress with his/her current level of services.

30. Witness D conceded in testimony that certain services were not provided during virtual learning; there was no general education group instruction or inclusion services. Student received 120 minutes per week of Wilson intervention and 90 minutes per week of writing support. Student also had access to Wilson video instruction.

31. On August 18, 2020, Petitioners notified DCPS that they intended to place Student unilaterally at School A for the 2020-21 school year and to seek reimbursement from DCPS for the costs of that placement.<sup>69</sup> Witness D acknowledged receipt of the notification on August 19, 2020.<sup>70</sup>

32. Mother testified that Petitioner noted an immediate improvement in Student's performance on his/her first day at School A:

I had a transformed learner. In all of the just darkest moments of virtual learning and sort of all of the other social, emotional, and school resistance issues that we had earlier in the 2019-2020 school year had just, it was like almost a spontaneous. You know, they just disappeared [her/his] first day in in virtual learning. We were literally three adults downstairs going, what's going on, waiting for sort of the shoe to drop to get a text from the teachers saying [s/he's] not doing what [s/he's] or whatever. And we really never got that. [Student] just engaged immediately because [School A's] distance learning was synchronous, right. [REDACTED] had teachers on with [REDACTED]. In small groups of four or five doing their lessons right and that just continued.

33. On June 4, 2021, Attorney A, by email, requested that DCPS make Student an offer of FAPE for the 2021-22 school year and noted that DCPS had not funded Student's 2020-21 placement at School A as requested. Attorney A also denied a request by Witness D that Petitioners withdraw Student from DCPS.<sup>71</sup> On August 10, 2021, DCPS proposed an IEP meeting date on

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<sup>68</sup> As the LEA Representative, Witness D was present throughout the hearing.

<sup>69</sup> P49:2 (327).

<sup>70</sup> *Id.* at 1 (326).

<sup>71</sup> P53:1 (334).

August 20, 2021,<sup>72</sup> and requested Student's academic records from School A.<sup>73</sup> Attorney A replied to the meeting invitation on August 11, 2021, indicating that Petitioner and Witness A would attend the meeting, and requesting a draft IEP at least five business days before the meeting.<sup>74</sup> On August 12, 2021, Attorney A expressed concerns that "with 8 days before the meeting you don't even have the data from [School A] and we are just finding out about this." Attorney A threatened to withhold Petitioners' attendance at the meeting, for DCPS' failure to afford meaningful participation, if "we don't have the statutory allowable time to review a draft IEP before the meeting."<sup>75</sup> On August 12, 2021, DCPS received an auto-reply from School A to its request for Student's academic records: "Thank you for your email. [School A] is closed during the week of August 9, and I am on vacation the week of August 16. I look forward to replying to your email upon my return the week of August 23."<sup>76</sup> On August 13, 2021, DCPS forwarded a draft IEP for the 2021-22 school year for Student to Attorney A.<sup>77</sup> On August 16, 2021, Attorney A, by email, stated that the proposed IEP was inherently inappropriate because it was not based on data from School A for the 2020-21 school year.<sup>78</sup> On August 17, 2021, Attorney A indicated that Petitioners would participate in the IEP meeting on the 20<sup>th</sup>, but "If the plan is to try and create a whole new IEP at the table, that is not appropriate."<sup>79</sup> On August 19, 2021, DCPS forwarded Petitioners an updated draft IEP.<sup>80</sup> Attorney A objected to the delivery of the draft IEP the day before the IEP meeting, but stated that Petitioners would participate in the meeting.<sup>81</sup>

34. On August 11, 2021, Attorney A notified DCPS that Petitioners intended to place Student unilaterally at School A for the 2021-22 school year and expected DCPS to fund the placement.<sup>82</sup> On August 23, 2021, DCPS replied, asserting that Petitioners had chosen to decline the offer of FAPE made by DCPS, and it would not fund Student's placement at School A.<sup>83</sup>

35. On August 20, 2021, as Student was entering grade D), DCPS conducted an IEP Annual Review meeting.<sup>84</sup> The Consideration of Special Factors was unchanged from the previous IEP. In Mathematics, the PLOP reported that Student's April 29, 2021 Measures of Academic ("MAP") scores (192-206) were "below mean."<sup>85</sup> The goals were: (1) given multi-step problems involving whole numbers, Student will solve the problems with 80% accuracy, and (2) given a checklist, s/he will solve word problems involving any of the four operations by drawing pictures and/or writing equations to determine the final solution 80% accuracy.<sup>86</sup> In Reading, the PLOP reported that Student's April 29, 2021 MAP assessment scores (177-222) were below mean. However, the Spring 2020 MAP Norm for math for Student's grade in the spring of 2021 was 204.83.<sup>87</sup>

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<sup>72</sup> P57:1 (340).

<sup>73</sup> P59:1 (348).

<sup>74</sup> P57:2 (341).

<sup>75</sup> P62:7 (361).

<sup>76</sup> *Id.* at 15 (369).

<sup>77</sup> P63:1 (382).

<sup>78</sup> P65:9 (409).

<sup>79</sup> *Id.* at 13 (415).

<sup>80</sup> P66:1 (428).

<sup>81</sup> P67:1 (444).

<sup>82</sup> P61:2 (353).

<sup>83</sup> P76:2 (484).

<sup>84</sup> P72:2 (460).

<sup>85</sup> The Spring 2020 MAP Norm for math for Student's grade in the spring of 2021 was 210.08.

<sup>86</sup> P72: 4-5 (462-3).

<sup>87</sup> P122:6 (818).



The goals were: (1) after reading a skill level text, Student will describe what happens first, the problems, and the resolution, (2) using a graphic organizer, Student will determine a theme or moral of a grade level text with an average accuracy rate of 80%, and (3) Student will be able to identify initial, medial, and final phonemes in high-frequency grade appropriate words in various structured activities with 90% accuracy.<sup>88</sup>

In Written Expression, the PLOP reported spring 2021 WIST scores in which Student was Below Average in reading regular and irregular words and in Spelling, and Average in Sound-Symbol Knowledge. The goals were: (1) after brainstorming an idea for a narrative, Student will use a checklist and/or graphic organizer to draft five paragraphs that together include at least two characters, three examples of dialogue, three transition phrases, and three sensory details, (2) s/he will write and edit a five-sentence paragraph that addresses a given subject in the general curriculum with each paragraph including a topic sentence, at least three details, and a conclusion, and (3) given typical grade level written assignments, Student will spell eight out of 10 words correctly.<sup>89</sup>

In Behavior, the PLOP included no current information. The goals were: (1) Student will use CBT strategies to reduce symptoms of anxiety and regulate her/his behavior in social and academic settings, (2) s/he will show self-empowerment by demonstrating self-advocacy skills and asking his/her teacher for accommodation or accessing and using tools s/he needs to help him/her succeed at the academic task at hand, and (3) s/he will use tools and accommodations provided to her/him to support executive functioning tasks (*i.e.*, checklists, printed multi-step instructions, timers, visual schedules, transition warnings).<sup>90</sup> (unchanged)

The IEP team prescribed 9.0 (down from 9.5) hours of specialized instruction per week including 90 minutes of reading, 90 minutes of math, and 90 minutes of written expression in general education, and 120 minutes of reading and 120 minutes of math (down from 150), and 30 minutes of written expression outside general education. The team also prescribed 120 minutes per week of behavior support services outside general education. Other Classroom Aids and Services included, but was not limited to, the following: Executive Functioning - visual schedule, advance notice of transitions, access to computer for voice to text/keyboarding, chunking information/assignments, checklists, movement breaks, graphic organizers, multi-step instruction given orally and in writing, frequent breaks, and fidget tools; Working Memory – breaking down long term assignments into smaller pieces, repetition and clarification of instructions and directions; General Academic – differentiated homework and assignments, concrete representation of abstract concepts, manipulatives, pre-teaching of content area vocabulary, word processor with spellcheck and text capabilities, and reteaching and small group instruction in general education classroom.<sup>91</sup> Classroom accommodations included clarification/repetition of directions, Read Aloud, preferential seating, small group testing, extended time, and frequent breaks.<sup>92</sup>

36. Mother testified that she asked for the same amount of service hours that Student received at School C: 225 minutes per week for Wilson intervention and 100 minutes per week of math) She conceded on cross-examination that she did not articulate disagreement with any of the

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<sup>88</sup> P72: 5-7 (463-5).

<sup>89</sup> *Id.* at 7-10 (465-8).

<sup>90</sup> *Id.* at 10-12 (468-70).

<sup>91</sup> *Id.* at 13 (471).

<sup>92</sup> *Id.* at 15 (473).

goals during the IEP meeting, could not recall objecting to any goal or PLOP, and agreed with the Classroom Aids and Services. Mother also conceded on cross-examination that she asked for all of Student's classes to be outside general education.<sup>93</sup>

37. Witness A opined that the August 2021 IEP was inappropriate because it lacked updated data from School A regarding the 2020-21 school year, no one familiar with Student was involved in the development of the IEP, goals were carried over from the previous IEP, and the amount of specialized instruction was insufficient. She also conceded on cross-examination that Student's fall 2021 assessment reflected no growth over the previous school year in math. Witness E, a specialist on DCPS' Central IEP team, opined that the August 2021 IEP was appropriate because Student made progress in a general education environment when s/he was at School B. She also opined that School A was not an appropriate placement for Student, as ■■■ improved at a more rapid rate at School B, in general education, than s/he did at School A. Witness F is a licensed social worker on DCPS' Central IEP team who attended the August 2021 IEP team meeting. She testified that Mother reported that Student was not exhibiting overt behaviors that cause concern. Witness F saw no reason to change the level of services until updated data was received. Witness F opined that Student's behavior does not warrant a full-time special education environment.

38. On August 23, 2021, Petitioner's counsel notified DCPS that Petitioners would maintain Student's unilateral placement at ■■■ due to the following deficiencies in the August 20, 2021 IEP: (1) the PLOPS were inadequate because DCPS failed to request current records from School A early enough to incorporate them into the IEP, (2) there was no justification for reducing support in math, (3) the baselines were generally inappropriate: not tied to goals, vague, not measurable, (4) the new goals were generally vague, not measurable or comprehensive, (5) the reading section was not comprehensive or based on Student's current needs, (6) the written expression goals were repeated from the previous IEP, were not comprehensive, and not based on Student's needs, (7) the Behavior section did not reflect current data, (8) "The IEP hours are insufficient (and reduced from the last IEP, which is also insufficient), and (9) Student requires placement in a separate day school.<sup>94</sup>

39. On August 23, 2021, DCPS acknowledged receipt of Petitioners' notice of unilateral placement. DCPS asserted that it had made FAPE available and would not agree to fund Student's placement at School A.<sup>95</sup>

40. School A administered a Leveled Reading Assessment to Student in the fall and winter of the 2021-22 school year. On September 21, 2021, using a text at the level of end of grade A (from which Student just passed), Student's comprehension was 75%, and was not yet deemed independent at that level. However, using a text at the level of beginning of grade D, Student's current grade, ■■■ scored 100% in comprehension and was deemed independent.<sup>96</sup> On a Comprehensive Mathematical Abilities Test ("CMAT") administered in the fall of 2021, Student scored in the Very Poor range in General Math (65), and Basic Calculations (60), and in the Below

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<sup>93</sup> See P68:4 (448), Witness A's meeting notes, in which she confirms that Petitioners requests placement in a separate special education day school.

<sup>94</sup> P73:1 (475).

<sup>95</sup> P76:2 (484).

<sup>96</sup> P107:3 (630).

Average range in Mathematical Reasoning (82).<sup>97</sup> On January 26, 2022, using a text at the level of the end of grade D, Student's reading comprehension was 50%, and was not yet deemed independent.<sup>98</sup>

41. The Wilson Reading System provides reading intervention for students in grades 2 through 12 who struggle with read and spell. The intervention model is conducted in a small group by a remedial reading teacher or a regular classroom teacher. The intensive model is designed for students who have been diagnosed with a language learning disability with tutoring or small group instruction by a Wilson certified instructor. The minimum recommended time for the program is 45-60 minutes, four days per week.<sup>99</sup>

42. Witness A was retained by Petitioners in January 2020 due to concerns over Student's loss of self-esteem and for advice as to whether Student was in an appropriate educational program. Witness A opined that Student's inattentiveness and hyperactivity can be misinterpreted as rudeness. Student needs to work on time management and transitioning, and needs his/her days to be structured. Witness A opined that being in a larger classroom would impede Student's learning. Witness A concluded that Student required a small group environment due, in part, to a classroom observation;<sup>100</sup> as soon as a teacher left Student, s/he would stop working. Thus, Witness A advised Petitioners that Student required a full-time special education program.<sup>101</sup> Witness A developed a Compensatory Education Plan for Student in which Witness A proposed that DCPS be ordered to fund Student's enrollment in School A's summer program as compensation for its denials of FAPE. Witness E based expectations of anticipated growth on the progress Student made at School A during the 2020-21 school year.<sup>102</sup>

43. Witness B was the Interim Head of School A's Intermediate Division, grades D and G. She testified that during the 2021-22 school year, Student was in a homeroom class of thirteen, with two teachers. For reading and math, the class splits into two groups of 6-7 each. Tuition for the 10-month program is \$53,000, not including related services. In reading, School A uses the Orton-Gillingham intervention method; in writing, it uses the Writing Revolution. In math, Student can do basic calculations, but it remains a "significant area of need," and has difficulty working independently. S/he is "on par" with her/his School A peers in reading. In writing, s/he "can get [his/her] ideas out," and has very good handwriting. Student is distractible and needs redirection to stay on track. His/her emotional regulation becomes an issue when s/he is redirected, but s/he has improved in this area. Student has made friends; s/he is kind and empathetic. Witness B opined that Student requires the levels of support s/he is currently receiving in math, reading and writing.

44. Father testified that Student was unhappy at School B; s/he often stated that ■ did not want to go to school. Student was afraid of Witness C, his/her general education teacher; Student was reluctant to ask Witness C permission to go to the bathroom. Father was particularly concerned about Student's participation during virtual learning. Student had difficulty finding

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<sup>97</sup> *Id.* at 6 (633).

<sup>98</sup> P113:3 (679).

<sup>99</sup> P120:1, 8-9 (764, 771-72).

<sup>100</sup> *See* P37:1 (230).

<sup>101</sup> Testimony of Witness A.

<sup>102</sup> P117:3-4 (743-44).

his/her assignments online and often could not do the assigned homework. S/he was not engaged and preferred to listen to music. Once Student transferred to School A, even during virtual learning, s/he was engaged. When in-person classes resumed, Student was eager to go to school. S/he made five friends that s/he sees outside of school, unlike School B, where s/he had no friends. Student is happier and calmer at School A, and s/he does his/her homework without asking for help.

45. Mother testified that Student had difficulty getting along with his/her peers at School B at the end of grade H and throughout grades E and C. Student had low motor inhibition; s/he could not keep her/his body under control or sit still. When Student was frustrated, s/he would irritate his/her classmates by getting in their personal space. At School C, Student evinced impulsivity every day as well as defiance anytime there was homework or a project to complete. The class size at School C was 18 with two teachers.

### 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.<sup>103</sup>

The issues in this case involve the appropriateness of Student's IEP and placement. As to these issues, Respondent bears the burden of persuasion.<sup>104</sup>

**Whether DCPS denied Student a FAPE on September 20, 2019 by failing to provide an appropriate IEP and placement due to an insufficient amount of specialized instruction,<sup>105</sup> insufficient behavioral support services ("BSS"), inappropriate goals, provided goals that could not be properly executed and/or accomplished in the time allotted, inappropriate reading, writing, and**

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<sup>103</sup> D.C. Code Sect. 38-2571.03(6)(A)(i).

<sup>104</sup> *Schaffer v. Weast*, 546 U.S. 49 (2005).

<sup>105</sup> At the prehearing conference, Respondent's counsel inquired as to how much specialized instruction Petitioners believe Student should have received. Petitioners' counsel declined to specify an amount, but denied that Petitioners ever requested a private school placement. By email on November 15, 2021, Petitioners' counsel opined that Student "at least required the amount [redacted] last received" at School C. There s/he had an Individual Learning Plan that included the Wilson Reading System for three hours and 45 minutes per week, pull-out for Reading for 80 – 100 minutes per week, pull-out for Math for one hour and forty minutes per week, one-on-one writing support for 30 minutes per week, and extended year services.



mathematics interventions, an inappropriate least restrictive environment (“LRE”), and inappropriate modifications and accommodations. DCPS prescribed specialized instruction based on what School B could provide instead of Student’s individual needs. The Petitioners assert that they requested the following classroom accommodations to be added to Student’s IEP: small group setting, fidgets, weighted blankets, clarification as necessary, differentiation of assignments, alternate seating accommodations, movement breaks, one-on-one writing support, frequent checking, and assignment modifications.

Whether DCPS denied Student a FAPE on May 19, 2020 by failing to provide an appropriate IEP and placement due to an insufficient amount of specialized instruction, inappropriate goals, provided goals that could not be properly executed and/ or accomplished in the time allotted, inappropriate reading, writing, and mathematics interventions, an inappropriate LRE, and inappropriate modifications and accommodations. DCPS prescribed specialized instruction based on what [REDACTED] could provide instead of Student’s individual needs. Petitioners assert that they requested the following classroom accommodations to be added to Student’s IEP: small group setting, fidgets, weighted blankets, clarification as necessary, differentiation of assignments, alternate seating accommodations, movement breaks, one-on-one writing support, frequent checking, and assignment modifications.

Whether DCPS denied Student a FAPE on August 20, 2021 by failing to provide an appropriate IEP and placement due to failing to reflect updated educational records, failing to afford Petitioners a meaningful opportunity to participate in the IEP meeting, an insufficient amount of specialized instruction, inappropriate goals, provided goals that could not be properly executed and/ or accomplished in the time allotted, inappropriate reading, writing, and mathematics interventions, an inappropriate LRE, and inappropriate modifications and accommodations.<sup>106</sup> DCPS prescribed specialized instruction based on what School B could provide instead of on Student’s individual needs. Petitioners assert that they requested the following classroom accommodations to be added to Student’s IEP: small group setting, fidgets, weighted blankets, alternate seating accommodations, movement breaks, single point of contact for task organization.

The Supreme Court’s first opportunity to interpret the predecessor to IDEA, The Education of the Handicapped Act (“EHA”), came in *Board of Education of the Hendrick Hudson Central School District v. Rowley*.<sup>107</sup> The Court noted that the EHA did not require that states “maximize the potential of handicapped children ‘commensurate with the opportunity provided to other children.’”<sup>108</sup> Rather, the Court ruled that “Implicit in the congressional purpose of providing access to a ‘free appropriate public education’ is the requirement that the education to which access

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<sup>106</sup> By email on November 15, 2021, Petitioners’ counsel asserted that the parents made no specific request as to the amount of specialized instruction due to DCPS’ failure to incorporate updated education records data in the IEP.

<sup>107</sup> 458 U.S. 176, 187 (1982).

<sup>108</sup> *Id.* at 189-90, 200

is provided be sufficient to confer some educational benefit upon the handicapped child...<sup>109</sup> 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.”<sup>110</sup>

More recently, the Court considered the case of an autistic child under IDEA who, unlike the student in *Rowley* was not in a general education setting.<sup>111</sup> The Tenth Circuit had denied relief, interpreting *Rowley* “to mean that a child’s IEP is adequate as long as it is calculated to confer an ‘educational benefit [that is] merely... more than *de minimis*.”<sup>112</sup> The Court rejected the Tenth Circuit’s interpretation of the state’s obligation under IDEA. Even if it is not reasonable to expect a child to achieve grade level performance,

... [h]is educational program must be appropriately ambitious in light of [his/her] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives... It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom, but is satisfied with barely more than *de minimis* progress for those who cannot.<sup>113</sup>

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

When all is said and done, a student offered an educational program providing ‘merely more than *de minimis*’ progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to ‘sitting idly... awaiting the time when they were old enough to drop out...’ The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”<sup>114</sup>

### ***The September 20, 2019 IEP***

The most recent comprehensive psychological evaluation of Student before s/he enrolled in School B was the Neuropsychological Evaluation conducted by Examiner A in 2018. That evaluation found Student to be two grades below grade level in Broad Reading, and one grade below in Broad Mathematics and Broad Written Language. Examiner A diagnosed Student with

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<sup>109</sup> *Id.* at 200.

<sup>110</sup> *Id.* at 203-04.

<sup>111</sup> *Endrew F. ex rel. Joseph F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (2017).

<sup>112</sup> *Id.* at 997.

<sup>113</sup> *Id.* at 1000-01 (citations omitted).

<sup>114</sup> 137 S.Ct. at 1000-01.

ADHD, SLDs in Reading, Math, and Written Expression, and an Unspecified Anxiety Disorder. Examiner A recommended specialized instruction in a setting that provides a high teacher-to-student ratio using a researched based reading intervention program *at least two times per week*.

School C developed an ILP on or about June 6, 2019 that prescribed 225 minutes per week for Wilson intervention, 180 minutes per week for small group math and reading, 40 minutes per week of one-on-one writing instruction, and ESY but no counseling, for a total of 7.4 hours of specialized instruction in a small group environment. Testing at the time of Student's enrollment in School B in August 2019 rated him/her two grades below grade level in math, suggesting that he made no progress during his/her last year at School C, as s/he was reported to be one grade below grade level by Examiner A in August 2018. In Reading, Student was found to be reading at the K level, the level expected at the beginning of the previous grade.

On or about August 28, 2019, DCPS issued a Comparable Services Consultation Letter in which it notified Petitioners that it intended to provide Student 160 minutes per week of specialized instruction inside general education in reading and math, and 45 minutes per day of reading outside general education, a total of 6.4 hours of specialized instruction with 3.75 hours in a small group environment. However, when School B developed Student's IEP three weeks later, the IEP provided 240 minutes inside general education in reading, writing, and math, 120 minutes of reading and 60 minutes of math outside general education, for a total of seven hours of specialized instruction, with three hours in a small group environment outside general education. Although School C provided no counseling, Student's IEP provided one hour per month of BSS.

Mother asserted that she expected, and DCPS was obligated to provide, services comparable to the services Student received in School A. However, an LEA is only obligated to provide comparable services to students transferring from an LEA in the same jurisdiction.<sup>115</sup> Witness D, the Special Education Coordinator at School B, testified that School B's policy is to limit pull-out services to those that cannot be performed in the general education environment. In Student's case, that included BSS and Wilson intervention. Witness D testified that School B decided to reduce the amount of Wilson intervention to avoid Student missing other academic offerings such as Social Studies. Petitioners disagreed with this approach due to their strongly held belief that Student performs better in a small group environment. In addition, his/her anxiety, distractibility, hyperactivity, and impulsivity impair his/her ability to access the curriculum in a large group environment. They were supported by testimony from Witness A, who opined that the IEP should have replicated the 225 minutes per week of Wilson intervention that Student received in School C, and one hour per month of BSS was insufficient to address all of Student's behavioral needs.

Student's report card for the first term of the 2019-20 school year reflected Proficient grades in all subjects except reading and math, in which s/he earned Basic grades. Mother believed the grades to be inflated, testifying that she did not believe Student was capable of grades of Basic in Math or Proficient in Writing & Language. However, on an i-Ready assessment in January 2020, Student's overall score was one grade below [REDACTED] current grade, reflecting one grade level of growth since the testing in August 2019 that found her/him to be two grades below grade level. In Numbers and Operations, *s/he scored at grade level*. Student's February 7, 2020 report card reflected Basic grades in Reading and Math, and Proficient grades in all other courses. Student's

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<sup>115</sup> 34 C.F.R. § 300.323(e).

behavior grades and teacher comments did not indicate that his/her behavior had a significant effect on his/her learning or that s/he had adverse impact on the ability of her/his peers to learn. In April 2020, Student scored at 99% in accuracy and satisfactory in comprehension at the level O, reflecting more than one grade level increase in proficiency since the beginning of the school year, when s/he was at level K.

Petitioners assert that Student is incapable of accessing the general education environment due to his/her learning disorders, ADHD, and anxiety. However, in a general education class of 25, with seven hours of specialized instruction, including three hours outside general education, Student was able to make over one year's growth in math and reading in much less than a full school year despite the imposition of virtual learning in March 2019. Student was also reported to be performing at grade level in written expression with support.

School B's policy of limiting pull-out services is faithful to the original intent of special education legislation. In fact, mainstreaming was *the* primary motivation for IDEA's predecessor, the EHA, and the statute requires mainstreaming in the absence of proof that the child cannot make satisfactory progress in the general education environment:

*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.*<sup>116</sup>

I conclude that DCPS has met its burden of proving that the IEP it developed on September 20, 2019 was reasonably calculated to enable Student to make progress appropriate in light of his/her circumstances.

### ***The May 19, 2020 IEP***

In the previous section, I concluded that DCPS met its burden of proving that its initial IEP for Student, which provided seven hours of specialized instruction per week, with three hours outside general education, was reasonably calculated to lead to academic growth based on the data showing that Student made significant academic gains in reading and math during the 2019-20 school year. S/he was capable of reading at grade level. His/her overall math skills had grown by over one grade level in less than a year, and s/he was at grade level on the Numbers and Operations subtest.

Despite this improvement, Petitioners insist that Student is incapable of academic growth unless s/he is in a small class environment throughout the school day. Father testified that Student was unhappy at School B and had difficulty making friends. On numerous occasions, [REDACTED] expressed reluctance to go to school, and said s/he preferred School C. Father also expressed frustration with his inability to give Student adequate assistance, guidance, or control during virtual learning. During April and May 2020, when virtual learning was in effect due to the COVID-19

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<sup>116</sup> 20 U.S.C. §1412(a)(5)(A), emphasis added.



pandemic, Petitioners had difficulty managing Student at home during school hours. Student was not motivated to give consistent attention to the virtual platform, resulting in a large volume of email correspondence between Petitioners and the School B staff. Petitioners and Witness A also argued that Student's ADHD and anxiety were significant factors in his/her inability to access the general education curriculum. However, other than the incident on the Metro platform in December 2019, there were no reports of serious behavioral issues from August 2019 until virtual learning began in late March 2020. While Student was distractible and inattentive during in-person instruction, s/he did not exhibit harmful or physically aggressive behaviors; the School B staff believed that s/he was consistently responsive to redirection.

I do not discount the difficulty Petitioners had in managing Student's distractibility at home from mid-March through May of 2020 during virtual learning. However, the IEP was drafted in anticipation of in-person classes. As previously discussed, prior to virtual learning, Student made significant academic growth in a large general education program with four hours per week of inclusion support, three hours of small group instruction outside general education, and 15 minutes per week of BSS. Mother's assertion on April 20, 2020 that Student is "lost" in general education and that s/he can only learn in small groups outside general education is simply refuted by the record. DCPS' Progress Report on May 9, 2020 revealed progress and mastery of goals in math, reading, and written expression. Student's May 14, 2020 report card indicated Proficient grades in all subjects except Advanced in Art and Basic in Math. Despite the assertions in the Issues Presented, the testimony revealed that there was little disagreement between the parties as to wording of PLOPs and goals. The main issue was Petitioners' insistence that Student required specialized instruction outside of general education in all of his/her courses.

The PLOPs in the May 19, 2020 IEP reported the results of the recent assessments that revealed the improvement during the in-person portion of the school year in reading and math. Student was also administered SDQ's at the beginning and in the middle of the school year. His/her scores reflect decreases in overall stress, behavioral difficulties, hyperactivity, and concentration difficulties. The IEP team increased Student's specialized instruction from seven hours to 9.5 hours per week with an increase to five hours outside general education. The IEP team also increased Student's BSS by one hour per month. After the IEP meeting Mother remarked that "many of the supports we asked for, it was eerie as if it was lifted from my parental input and [Witness A] input verbatim." Witness A conceded that the Other Classroom Aids and Services, designed to address Student's behavioral deficits, were appropriate. Although Witness A asserted that Student was not progressing was confirmed by DCPS indicating that none of his/her May 2020 goals had been introduced, this argument is specious as DCPS ended the school year 10 days after the IEP was developed due to the pandemic.

I conclude that due to evidence that Student was able successfully to access the general education curriculum and make academic progress with a total of seven hours of specialized instruction and one hour of BSS per month, DCPS has met its burden of proving that its May 19, 2020 IEP, which increased services from the April 2019 IEP, was reasonably calculated to enable Student to make progress appropriate in light of his/her circumstances.

### ***The August 20, 2021 IEP***

In the previous sections, I found that Student was able to make demonstrable and measurable academic growth in the general education environment with as little as three hours of

specialized instruction outside general education and four hours inside general education. The primary factual difference with the August 20, 2022 IEP from the previous IEPs is that DCPS did not even begin to collect data for the August 20, 2021 IEP until ten days before the meeting. Because the staff at School A was on summer break, DCPS was unable to secure any documentation until shortly before the hearing, and too late to provide Petitioners' a draft IEP with ample time to review it.

While the failure to provide an appropriate IEP is a substantive violation of IEP, the failure to provide Petitioners a draft of the IEP with ample time to review it prior to the IEP meeting is a procedural violation. A procedural violation of the IDEA entitles a plaintiff to relief only if it "(i) impeded the child's right to a [FAPE], (ii) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of [FAPE] to the parents' child; or (iii) caused the deprivation of educational benefits."

In this case, the parties' positions were well entrenched by August 2021; Petitioners would accept nothing less than a full-time private school placement, while DCPS continued to maintain that Student is capable of progressing in a general education environment with moderate support. The August 20, 2021 IEP prescribed nine hours of specialized instruction including four hours outside general education, and two hours of BSS. Having found that Student was able successfully to access general education curriculum and make academic improvement with a total of seven hours of specialized instruction and one hour of BSS per month, DCPS has met its burden of proving that its August 20, 2021 IEP, was reasonably calculated to enable Student to make progress appropriate in light of his/her circumstances. Since the August 20, 2021 offered Student a FAPE, DCPS' procedural violation does not entitle Petitioners to relief.

**Whether DCPS denied Student a FAPE by failing to implement her/his IEPs from September 20, 2019 to May 19, 2020 by failing to provide all of the required specialized instruction, related services, other classroom aids and services, and accommodations and modifications required by the IEPs, and failing to provide Wilson Reading at Student's individualized level.**

Petitioners' only persuasive evidence of a failure to implement the September 2019 IEP was testimony that DCPS failed to provide all of the specialized instruction and related services during virtual learning, from mid-March 2020 until the end of the school year on May 29, 2020. DCPS conceded that there were no inclusion services during virtual learning, but Student had access to his/her special education teacher 30 minutes per day, or 2.5 hours per week instead of the three hours per week prescribed in the IEP. However, Student was also provided Wilson Reading videos that could be accessed at Student's convenience throughout the day. As for the Wilson Reading intervention, because it was instituted by School C did not compel DCPS to implement it in the same manner. As previously discussed, School B concluded that Student's circumstances were such that s/he did not require the level of intensity of the Wilson Program that School C provided or that was recommended in Wilson's literature. Moreover, the IEP did not specifically require implementation of the Wilson Program.

While DCPS provided testimony as to what it provided Student during virtual learning, it offered no explanation why it could not have provided more, if not all, of the specialized instruction prescribed in the September 2019 IEP. Therefore, I conclude that Petitioners have met their burden

of proving that DCPS failed to implement Student's September 20, 2019 IEP.

**Whether School A is a proper placement for Student and whether Petitioners are entitled to reimbursement for expenses related to Student's enrollment at School A.**

In light of my findings as to the appropriateness of Student's IEPs, I need not reach the issue as to whether School A is an appropriate placement for Student. S/he has clearly made progress there and is likely to continue to do so. I am particularly sympathetic to the parents' concern that School B has larger classes than School A, that Student was unhappy at School B, and s/he did not make friends there. I do not doubt that the smaller facility footprint, enrollment, and class sizes at School A are more desirable to Student and Petitioners than the circumstances at School B. However, IDEA does not require a local education agency to maximize the services to disabled students,<sup>117</sup> but to provide those services that are reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

**RELIEF**

For relief, Petitioners request, *inter alia*, an order (1) requiring Respondent to reimburse Petitioners for all expenses related to Student's enrollment at ■■■ for the 2020-21 and 2021-22 school years and continuing until a decision is issued or until FAPE is offered consistent with this decision, (2) requiring DCPS to place and fund Student at ■■■ for the remainder of the 2021-22 school year and until a FAPE is offered consistent with this decision, (3) requiring DCPS to reimburse Petitioners for all expenses related to private evaluations, assessments, services, and supports provided to make up for those not being provided by DCPS, and (4) compensatory education services, i.e., funding for a summer program at School A.

**ORDER**

Upon consideration of the *Complaint*, DCPS' *Response*, the exhibits from the parties' disclosures that were admitted into evidence, the testimony presented during the hearing, the closing arguments of counsel for the parties, and *Petitioners' Caselaw for Consideration*, it is hereby

**ORDERED**, that DCPS shall fund Student's participation in School A's 2023 summer program.

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<sup>117</sup> *Rowley*, 458 U.S. at 188-89.

## 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: October 24, 2022

Copies to: Attorney A, Esquire  
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