

District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution
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OSSE
Office of Dispute Resolution
October 02, 2023

Confidential

Parent on behalf of Student ¹)	Case No. 2023-0116
)	
Petitioner)	Hearing Dates: September 19-20, 2023
)	
v.)	Conducted by Video Conference
)	Date Issued: October 2, 2023
District of Columbia Public Schools)	
)	Terry Michael Banks,
Respondent)	Hearing Officer

HEARING OFFICER DETERMINATION

INTRODUCTION

Petitioner is the mother of an X-year-old student (“Student”) attending School A. On June 22, 2023, Petitioner filed a Due Process Complaint Notice (“*Complaint*”) alleging that the District of Columbia Public Schools (“DCPS”) denied the student a free appropriate public education (“FAPE”) by failing to update Student’s prior Individualized Education Program (“IEP”) and failing to provide an appropriate new IEP. On July 3, 2023, DCPS filed *District of Columbia Public Schools’ Response to Parent’s Administrative Due Process Complaint* (“*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.

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

PROCEDURAL HISTORY

On June 22, 2023, Petitioner filed the *Complaint* alleging that DCPS denied Student a FAPE by (1) failing to update Student's IEP, upon Petitioner's request on February 8, 2023, after Student threatened to harm [REDACTED] on February 3, 2023, and (2) failing to provide an appropriate IEP on June 6, 2023 for the 2023-2024 school year. Specifically, Petitioner asserted that the IEP did not provide sufficient specialized instruction outside general education, a dedicated aide, or adaptive living goals. On July 3, 2023, DCPS filed its *Response*, in which it refuted allegations in the *Complaint*, denying that it had denied Student a FAPE in any way. DCPS asserted that due to Student's mental condition, s/he was deemed unable to return to school after the February 8, 2023 incident. DCPS offered Student home-based services as soon as Student's treatment provider filed the necessary verification on or about March 20, 2023. Student's psychiatrist informed DCPS that Student was capable of returning to school on April 26, 2023, but Petitioner declined to return Student to school. As for the June 6, 2023 IEP, Student's classification was changed from Multiple Disabilities (Specific Learning Disability and Other Health Impairment) to Autism. DCPS asserted that the level of services and classroom aids and services prescribed in the IEP were appropriate.

The parties participated in a resolution meeting on July 13, 2023 that did not result in a settlement. A prehearing conference was conducted on July 14, 2023 by video conference, and the *Prehearing Order* was issued that day.

The due process hearing was conducted September 19-20, 2023 by video conference. The hearing was open to the public at Petitioner's request. Petitioner filed Five-day Disclosures on September 12, 2023 containing a witness list of eleven witnesses and documents P-1 through P-69. DCPS filed objections to Petitioners' disclosures on September 15, 2023. DCPS objected to expert testimony from Witness A, Witness B, and Witness K on grounds of lack of qualifications. Rulings on these objections were deferred until completion of *voir dire* of the witnesses. DCPS also objected to P1-3, P6-11, P14, P60, P62, and P65. During Petitioner's direct case, Petitioner's Exhibits P1-P5, P8, P-10, P12-13, P15-P59, and P61-P69 were admitted into evidence.²

Respondent's disclosures, also filed on September 12, 2023, contained a witness list of nine witnesses and documents R-1 through R-61. Petitioner filed no objections to Respondent's disclosures. During Respondent's direct case, Respondent's Exhibits R-1 through R-61 were admitted into evidence.

Petitioner presented as witnesses in chronological order: Witness A, Witness B, Petitioner/father, Witness C, and Petitioner/mother. Witness A was admitted as an expert in Counseling Psychology and Witness B was admitted as an expert in Special Education. Respondent presented as witnesses in chronological order: Witness D, Witness E, Witness F, Witness G, Witness H, and Witness J. Witness F was accepted as an expert in School Psychology,

² Petitioner's counsel took particular exception to the Hearing Officer's exclusion of Petitioner's Exhibit P-60 from evidence. That document was a "To whom it May Concern" letter from an individual who self-identified him/herself on the document as a nurse practitioner. Petitioner's counsel did not assert that the document was part of Student's educational record, and the author of the letter was not on Petitioner's witness list. Thus, the letter could not be authenticated. More important, the letter provided a special education opinion and recommendation. The author was not included as an expert witness in Petitioner's disclosure, and the author's *curriculum vitae* was not submitted as required for a proposed expert witness in the *Prehearing Order*. Thus, even if the witness appeared and authenticated the document, s/he would not have been allowed to provide an opinion in the area of special education.

Witness G and Witness J were accepted as experts in Special Education, and Witness H was accepted as an expert in School Social Work. At the conclusion of the testimony, the parties' counsel gave oral closing arguments.

ISSUES

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

1. Whether DCPS denied Student a FAPE by failing timely to update Student's June 8, 2022 IEP. Specifically, Petitioner alleges that DCPS did not honor Petitioner's February 8, 2023 request to update Student's IEP once s/he was hospitalized after a suicide attempt on school premises on February 3, 2022 due to bullying.
2. Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on June 6, 2023. Specifically, Petitioner alleges that the IEP did not provide sufficient specialized instruction outside general education, a dedicated aide, or adaptive living goals.

FINDINGS OF FACT

1. Student is X years old. Student was found eligible for special education services at School C during the 2020-21 school year.³ S/he was enrolled in grade D at School B during the 2021-22 school year.⁴

2. In the spring of 2022, School B administered Partnership for Assessment of Readiness for College and Careers ("PARCC") assessments to Student in English Language Arts ("ELA"), Mathematics, and Science. In Reading, Student's score of 687 was at Level 1 of Five Levels: Did Not Yet Meet Expectations for grade D.⁵ Student also scored at Level 1 in Mathematics (699)⁶ and at Level 2 in Science (420).⁷

3. On June 8, 2022, School B conducted an IEP Annual Review. Student was classified with Multiple Disabilities ("MD"), Specific Learning Disability ("SLD") and Other Health Impairment ("OHI").⁸ The Consideration of Special Factors indicated that Student's behavior did not impede his/her learning or that of his/her classmates.⁹ The Areas of Concern included Mathematics, Reading, Written Expression, and Emotional, Social, and Behavioral Development ("Behavior"). The Present Levels of Performance ("PLOP") in Mathematics reported

³ Testimony of Petitioner/father.

⁴ Petitioners' Exhibit ("P:") 5 at page 1 (58). The exhibit number and exhibit page numbers are followed by the electronic page number in the disclosure in parentheses, i.e., P5:1 (58).

⁵ P18:1 (215). Level 2 is Partially Met Expectations, Level 3 is Approached Expectations, Level 4 is Met Expectations, and Level 5 is Exceeded Expectations.

⁶ P19:1 (218).

⁷ P20:1 (221).

⁸ P5:1 (58).

⁹ *Id.* at 2 (59).

Student's scores on a psychological evaluation conducted in June of 2021. On the Weschsler Intelligence Scale for Children ("WISC-V"), scored in the Average range on the Verbal Comprehension Index, in the Low Average range on the Visual Spatial Index, in the Very Low range on the Fluid Reasoning Index, in the Extremely Low range on the Working Memory Index and the Processing Speed Index. On the Weschsler Individual Achievement Test ("WIAT-IV"), Student scored in the Extremely Low range on the Mathematics Composite (68) assessment. In September 2021, School B administered the Measures of Academic Progress ("MAP") mathematics assessment. His/her beginning of the year ("BOY") score of 184 was below the grade level mean of 209, indicating that s/he was performing at the middle of the year ("MOY") grade C level, two grade levels below his/her current grade level. The goals involved: (a) adding and subtracting within 10,000, (b) understanding place value, (c) multistep word problems within 100, and (d) multiplication facts up to 12).¹⁰

In Reading, the PLOP reported that Student scored in the Low Average range on the WIAT-V Reading Composite assessment (86). On the September 2021 MAP, his/her score of 190 was below the grade level mean of 204, placing him/her at the MOY level of grade F, the grade below his/her current grade. In October 2021, his/her score on the Fountas & Pinnell ("F&P") assessment placed him/her at the BOY level of grade F. In January 2022, s/he was reading grade level passages at a rate of 117 words correct per minute with 99% accuracy; the MOY expectation is 122 words per minute with 99% accuracy. The goals involved: (a) determining the main idea in informational or literary text, (b) comparison of main ideas, similarities, and information in two informational texts on similar topics, and (c) explaining the relationship between two or more paragraphs of an informational text.¹¹ In Written Expression, the PLOP reported that Student scored in the Very Low range on the WIAT-V Written Expression Composite assessment (73). The goals involved: (a) strengthening her/his own writing by planning, revising, editing, and rewriting sentences and (b) summarizing informational texts.¹² In Behavior, the PLOP reported that Student's scores on the Behavior Assessment System for Children ("BASC-3") led to a diagnosis of Attention Deficit Hyperactivity Disorder ("ADHD"). S/he was described as a pleasure to have in class, but had difficulty initiating novel academic tasks and interpreting body language. The goals involved: (a) asking for help when needed, (b) seeking feedback regarding her/his work, (c) correctly identifying feelings and thoughts of another through body language, and (d) practicing conversation pragmatics.¹³

The IEP team prescribed 3.75 hours per week of specialized instruction in Math outside general education, five hours per week inside general education, 3.5 hours per week of Reading and 1.5 hours per week of Written Expression inside general education, and two hours per month of behavioral support services ("BSS") outside general education. Other Classroom Aids and Services prescribed by the IEP team included repeated instructions, immediate feedback, visual charts, graphic organizers, anchor charts, and manipulatives.¹⁴

4. At the beginning of the 2022-23 school year, Petitioner enrolled Student at School A.¹⁵

¹⁰ *Id.* at 3-7 (60-64).

¹¹ *Id.* at 8-10 (65-67).

¹² *Id.* at 10-12 (67-69).

¹³ *Id.* at 12-13 (69-70).

¹⁴ *Id.* at 14 (71).

¹⁵ Testimony of Student's father.

5. After an Analysis of Existing Data meeting on January 10, 2023,¹⁶ DCPS issued a Prior Written Notice (“PWN”) indicating its intention to evaluate Student for autism upon the parents’ request.¹⁷

6. On February 2, 2023, DCPS issued Student’s IEP Progress Report for the second reporting period of the 2022-23 school year. Student was reported to be Progressing on all of her/his Math goals by Teacher C. In Reading, Witness D, Student’s special education teacher, reported that Student was making progress on all of her/his Reading goals including a personal best on an October 2022 ANet ELA assessment, but opined that Student could make “more aggressive progress” if s/he consistently completed her/his nightly Reading Plus (one lesson, four nights per week). Witness D also reported that Student was making progress on all of her/his Written Expression goals. In Behavior, Student was reported to be making progress on the body language goal and the conversation pragmatics goal, but s/he had made no progress on the goal of asking for help when needed, and the goal of seeking feedback regarding her/his work had not been introduced. Witness H, the school social worker, reported that Student was increasingly work avoidant during the grading period.¹⁸ Student’s second term grades were issued on March 15, 2023. The grades and teacher comments were as follows: Drama – A (Pleasure to have in the class), Advanced English – F (Good participation. Does not do homework), World Geography and Cultures – C+, Math – B, Middle Grades Math Support – B, Science – C+.¹⁹

7. On February 3, 2023, Student was non-verbal with Witness D, his/her special education teacher, which the teacher found to be unusual; another student was sitting in Student’s assigned seat, causing her/him to find another seat. Witness D stepped away from Student momentarily. When Witness D returned, she noticed a pair of scissors on Student’s desk that had not been present before she stepped away; Witness D put the scissors in Student’s backpack. When Witness D stepped away again and returned, the scissors were back on Student’s desk. When Witness D asked Student why, Student gestured towards her/his wrist; Student did not attempt to cut [REDACTED] with the scissors. Witness D escorted Student to a school social worker.²⁰

8. At 2:44 p.m. on February 3, 2023, Student was admitted to Facility A. The history provided Facility A was that s/he “grabbed scissors and threatened to harm [REDACTED] and another student who has been bullying [him/her], school staff had to coax pt out of the bathroom and had pt talk to social work; pt’s therapist referred pt to ED.”²¹ At 5:42 p.m. the next day, “Given that [s/he] has no behavioral concerns in the ED and the family consented to keep [him/her] safe at home, [s/he] can be discharged with outpatient resources.”²² The discharge instructions provided that “The patient should be able to return to school.”²³ The diagnosis was Suicidal Ideation.²⁴

9. At 3:05 p.m. on February 12, 2023, Student was admitted to Facility A. The history

¹⁶ P65:1 (545).

¹⁷ R29:1 (169).

¹⁸ P24:1-9 (255-63).

¹⁹ P26:1 (269-70).

²⁰ Testimony of Witness D.

²¹ P54:1 (383).

²² *Id.* at 3 (385).

²³ *Id.* at 13 (395).

²⁴ *Id.* at 32 (414).

provided was that “[s/he] wants to kill [him/herself] with a knife.”²⁵ Subsequently, the reason for the admission was indicated to be for a “Major depressive disorder, suicidal ideation, homicidal ideation and wants to kill [REDACTED] with a knife.”²⁶ While waiting in the emergency room for a bed in the psychiatric unit, Student complained of suicidal ideation and hearing voices.²⁷ Student was examined by Examiner C, the facility’s Medical Director of Psychiatric Emergency Services. She recommended that Student be evaluated:

I believe that [s/he] has some cognitive delay, Autism Spectrum Disorder, and a lower IQ. I am concerned about possible dyslexia. It would benefit [him/her] to obtain testing to assess these issues. In addition [s/he] seems to have trouble grasping basic concrete question[s], which also makes me concerned for a language processing issue. Hence, I would recommend testing to determine if [s/he] has expressive or receptive language delays.²⁸

At 11:58 a.m. the next morning, Student was discharged; the diagnoses were Chronic Idiopathic Constipation and Suicidal Ideation.²⁹ The discharge instructions provided that “The patient should be able to return to school.”³⁰

10. On February 16, 2023, DNP A completed a Physician Verification for DCPS’ Home and Hospital Program (“HHIP”). S/he diagnosed Student with Major Depressive Disorder, Severe, Suicidal Ideation, and Homicidal Ideation. DNP A opined as follows: “[S/he] need to have accommodation after few months of home schooling while [s/he] gets treatment. Accommodation may include 1:1 supervision.”³¹ HHIP arranges special education services at home for students who have medical issues requiring confinement for two weeks or more. HHIP could not authorize services until reaching Student’s treating physician directly. This did not occur until late March 2023.³² On April 7, 2023, HHIP notified Petitioner that it would provide a teacher who was available to work with Student on English Language Arts at Student’s home from 3:45 to 5:15 p.m. on Wednesdays, beginning on April 12, 2023. The email indicated that details for the availability of a Math teacher would be forthcoming.³³ Petitioner responded on April 12, 2023, declining services unless they could be provided between 9:00 a.m. and 3:00 p.m. Petitioner noted that the proposed time conflicted with the parents’ work schedules, caregivers’ schedules, and sibling pickup times. Petitioner also opined that HHIP’s late afternoon/evening proposal would not meet Student’s IEP requirements and would exacerbate his/her anxiety.³⁴ Petitioner also declined to follow a transition plan developed by HHIP for Student to return to School A on June 5, 2023.³⁵

²⁵ P55:2 (424).

²⁶ *Id.* at 5 (427).

²⁷ *Id.* at 6 (428).

²⁸ P56:2 (476).

²⁹ P55:38 (414).

³⁰ *Id.* at 35 (457).

³¹ P57:2 (478).

³² Testimony of Witness E. *See also*, Respondent’s Exhibit (“R:”) 59 at page 1-4 (411-14). The exhibit number and exhibit page numbers are followed by the electronic page number in the disclosure in parentheses, i.e., P59:1-4 (411-14).

³³ R58:2 (402).

³⁴ *Id.* at 3 (403).

³⁵ *Id.* at 9-10 (409-10).

11. On February 26, 2023, when Student was in grade G at School A, Examiner A completed a Speech and Language Initial Evaluation of Student upon a referral by the IEP team.³⁶ Examiner A interviewed Witness D, Student special education teacher, but Petitioner was unavailable for an interview, and Student was unavailable on the days Examiner attempted classroom observations. Witness D reported that Student always imitates sounds correctly, sometimes speaks willingly in class, sometimes follows spoken or written directions and recalls content information during class discussions. Student is often nonverbal and occasionally makes repetitive loud noises in the classroom, but is easily redirected. Student's Articulation, Fluency, and Voice were unremarkable. On the Expressive One Word Picture Vocabulary Test (95), Student scored in the 79th percentile. On the Receptive One Word Picture Vocabulary Test (101), s/he scored in the 53rd percentile. Both scores were in the Average range. On the Clinical Evaluation of Language Fundamentals ("CELF-5"), Student's score of 90 in Core Language was in the Average range. His/her score of 6 on the Pragmatic Profile was Below Average, indicating

... [b]elow average to very low social communication abilities relative to age peers... [S/he] has been observed to have difficulty maintaining turn-taking skills during social interactions and participating/interacting in structured and unstructured group activities. [Student] at times has challenges understanding nonverbal cues, matching gestures/facial expression, and some verbal messages... [Student] has challenges maintaining topics during conversational exchange and often has to be redirected to the topic.³⁷

Examiner A concluded that Student's receptive and expressive language skills were within normal limits. Thus, in the classroom, s/he should comprehend spoken language without difficulty and understand the meaning of concepts without difficulty. His/her articulation, voice, hearing, were all normal. Although his/her pragmatic skills fell below average, "Communications skills does not appear to have a negative impact on [his/her] academic performance."³⁸

12. On February 27, 2023, Witness F, School A's School Psychologist, completed a Confidential Comprehensive Psychological Reevaluation to determine Student's eligibility for special education services under a classification of Autism Spectrum Disorder ("ASD"). Witness F reported that Student's inability to return to school prevented the completion of necessary assessments. These included the WISC-V and the Kaufman Test of Educational Achievement.³⁹ Witness F also attempted to complete a BASC-3, but Petitioner did not return her rating scale, and Student was unavailable.⁴⁰ Witness F concluded that the inability to complete necessary assessments precluded a diagnosis of ASD. She recommended that Student continue to receive services under his/her current IEP until a comprehensive evaluation could be completed.⁴¹

13. On March 29, 2023 at 1:35 p.m., when his/her grandparents took Student to a scheduled medical appointment, s/he expressed self-harm.⁴² Student was admitted to Facility A

³⁶ P12:1 (136).

³⁷ *Id.* at 9 (144).

³⁸ *Id.* at 10 (145).

³⁹ P13:1-2 (148-49).

⁴⁰ *Id.* at 9-10 (156-57).

⁴¹ *Id.* at 13 (160).

⁴² Testimony of Petitioner/father.

for suicidal ideation. “[S/he] planned to eat paper or cut [her/himself] with plastic knife...”⁴³ S/he was diagnosed with Acute Depression and discharged at 7:26 p.m. that day.⁴⁴ The discharge instructions provided that “The patient should be able to return to school.”⁴⁵

14. On May 28, 2023, Examiner B completed a Comprehensive Occupational Therapy Initial Evaluation.⁴⁶ On the Berry-Buktenica Developmental Test of Visual-motor Integration (“Berry VMI”) and supplemental tests for Visual Perception and Motor Coordination, Student was Below Average in Visual-Motor Integration (87) and Visual Perception (82), and Very Low (51) in Motor Coordination. The Sensory Processing Measure (“SPM-2”) assesses behaviors and characteristics related to sensory processing, social participation, and motor planning. Rating forms were completed by Petitioner and Teacher A, Student’s math teacher. The SPM-2 measures Vision (visual processing), Hearing (auditory processing challenges), Touch (tactile processing challenges), Taste and Smell processing challenges, Body Awareness (proprioception), Balance and Equilibrium, Planning and Ideas, and Social participation. Petitioner reported severe difficulties in all subtests, while Teacher A reported typical abilities in all subtests except planning and social participation. Academically, Student scored in the Typical range in Vision, Hearing, Touch, Taste and Smell, Body Awareness, and Balance & Equilibrium. Student scored in the Severe Difficulties range in Planning & Ideas, indicating a consistently impaired performance in many activities that require motor planning. S/he scored in the Severe (Ppetitioner’s form) and Moderate (Teacher A’s form) in Social Participation, indicating difficulties participating with others at home, school, and in the community. S/he was reported to have difficulty maintaining friendships and interacting appropriately with same aged peers. The Developmental Test of Visual Perception measures visual perceptual and visual motor abilities. Student was Moderately Below Average in General Visual Perception and Visual-Motor Integration, and Below Average in Motor-Reduced Visual Perception and Visual-Motor Efficiency. On subtests, Student was Average in Form Constancy, Copying, and Visual Closure, Moderately Below Average in Figure-Ground, Below Average in Visual-Motor Search and Visual-Motor Speed, and Significantly Below Average in Eye-Hand Coordination. Overall, Examiner B reached the following conclusions:

Based on testing results, [Student] demonstrates challenges completing tasks in the classroom in an efficient and timely manner. [S/he] demonstrates some challenges participating independently in the academic setting. Difficulty was observed in the areas of visual motor, visual motor integration, visual perception, written communication, all factoring from decreased executive functioning/processing skills, and inability to properly process sensory stimuli. Deficits within sensory processing and executive functioning skills can greatly impact [his/her] ability to learn new skills and demonstrate age-appropriate responses to classroom tasks. This can impact [his/her] participation in written expression, solving math equations, following directions, etc., and participating in both preferred and not preferred activities. [S/he] has demonstrated the decreased ability to maintain [her/his] attention to and follow teacher demands within classroom tasks, and overall participation in grade level work. This greatly impacts [her/his] ability to

⁴³ P59:4 (490).

⁴⁴ *Id.* at 5 (491).

⁴⁵ *Id.* at 26 (512).

⁴⁶ P15:1 (167).

learn any new skills and reinforce previously learned skills.⁴⁷

Examiner B's recommendations included, but were not limited to: seating near teacher or out of high traffic areas, extended time to complete assignments, chunking of assignments, movement breaks, and written schedule/checklist/expectations of required tasks.⁴⁸

15. On May 28, 2023, Witness F completed a Comprehensive Psychological Reevaluation to determine Student's cognitive and academic functioning as well as her/his eligibility for services under an ASD classification.⁴⁹ On the WISC-V, Student scored in the Average range in Verbal Comprehension (103), in the Very Low range in Fluid Reasoning (79), and his/her Full Scale IQ (82) was Low Average. On the Processing Speed subtest, Student was Borderline Delayed. On the Kaufman Test of Educational Achievement ("KTEA-3"), Student scored in the Average range in Reading Composite (90), in the Low range in Math Composite (73) and Written Language Composite (79).⁵⁰ On the MOY Reading Inventory, Student score of 371 was Below Basic, and his/her i-Ready Math assessment score of 427 was "At Risk for Tier 3," i.e., special education support. Student was consistently Below Basic on the Reading Inventory from August 30, 2019 through January 11, 2023. S/he was also consistently At Risk in Math from September 3, 2019 through January 19, 2023, and "would likely benefit from more intensive, individualized interventions at the Tier 3 level..."⁵¹

On the BASC-3, Student, Petitioner, and Witness D, Student's special education teacher, completed rating scales. Petitioner's ratings yielded Clinically Significant scores in Hyperactivity, Aggression, Conduct Problems, Anxiety, Depression, Somatization, Atypicality, Withdrawal, Attention Problems, Adaptability, Leadership, Activities of Daily Living, and Functional Communication. Witness D's ratings were in the Clinically Significant range in Anxiety, Somatization, Atypicality, Withdrawal, Adaptability, and Functional Communication. "As such, [Student's] teacher reports that [Student] frequently displays behaviors stemming from worry, nervousness, and/or fear, and that [s/he] displays a high number of health-related concerns." Student's self-ratings were in the Clinically Significant range only in Self-Esteem.⁵² On the Adaptive Behavior Assessment System ("ABAS-3"), Petitioner and Witness D submitted rating scales. Petitioner's responses yielded a score in the Extremely Low range in General Adaptive Composite (65), Low in Communication, Functional Academics, Self-Direction, Leisure, Social, Community Use, Home Living, Health and Safety, and Self-Care. Witness D's responses yielded a score in the Below Average range in General Adaptive Composite (81) and Social, Low in Communication, Self-Direction, and Leisure, and Average in Functional Academics, Community Use, School Living, Health and Safety, and Self-Care.⁵³

⁴⁷ *Id.* at 14 (180).

⁴⁸ *Id.* at 15 (181).

⁴⁹ P16:1 (183). This evaluates completed the evaluation that as initiated in February 2023, but could not be completed due to Student's unavailability. Student was made available for testing though an agreement with the parents, their counsel, and their educational advocates to minimize Student's interaction with others while in the school building. *Id.* at 7 (189).

⁵⁰ *Id.* at 10-11 (192-93).

⁵¹ *Id.* at 17-18 (200-201).

⁵² *Id.* at 13-14 (195-96).

⁵³ *Id.* at 14-16 (196-98).

The Social Responsiveness Scale (“SRS-2”) identifies social impairment associated with ASD. Petitioner and Teacher B, Student’s Social Studies teacher, completed rating scales. Petitioner’s ratings resulted in a T-Score of 100, in the Severe range, indicating “deficiencies in reciprocal social behavior that are clinically significant and lead to severe interference with everyday social interactions. Such scores are strongly associated with clinical diagnosis of an autism spectrum disorder.” Teacher B’s ratings also led to a T-Score (89) in the Severe range.⁵⁴

Witness F concluded that Student met the criteria for eligibility for services under classifications of ASD and Emotional Disturbance (“ED”).⁵⁵ Witness F’s recommendations included, but were not limited to, continued BSS, development of a safety plan, learning coping strategies, scaffolding, frequent breaks, and extra time.⁵⁶

16. On June 6, 2023, DCPS conducted an IEP Annual Review. Student was classified with ASD.⁵⁷ In Consideration of Special Factors, the IEP reported that Student’s behavior impeded his/her learning and that of other children. In Mathematics, the PLOP reported the results of Witness F’s cognitive and achievement tests and indicated that Student continues to perform below grade level expectations. The goals included: (a) dividing whole numbers by fractions, (b) word problems involving multiplying and dividing rational numbers, a pictorial representation, and fake money, and (c) word problems involving whole numbers and percentages.⁵⁸ In Reading, the PLOP reported the results of Witness F’s cognitive and achievement tests as well as her/his recent Reading Inventory scores showing her/him to be performing well below grade level. The goals involved: (a) identifying the themes in independent level literary texts, and (b) locating information in texts.⁵⁹

In Written Expression, the PLOP reported the results of Witness F’s cognitive and achievement tests and indicated that Student continues to perform below “the level that would be expected for [his/her] age.” The goals involved: (a) correcting writing convention errors in instructional-level sentences, and (b) writing sentences with claims and supporting evidence with the use of a graphic organizer.⁶⁰ In Communication/Speech and Language, the PLOP reported the findings of Examiner A’s Speech and Language Evaluation. The goal was designed to improve Student’s pragmatic language and self-advocacy skills by maintaining topic during conversations, practicing turn-taking skills in conversations with peers, and monitoring the use of consistent eye contact during interactions.⁶¹

In Behavior, the PLOP reported that Student tends to gravitate more to adults than his/her peers, is talkative and engaging, and that s/he concedes that s/he has difficulty making friends. The PLOP also reported the February 3, 2023 incident of threatened self-harm. On an MOY Strength and Difficulties Questionnaire (“SDQ”), Student endorsed Very High levels of stress, emotional distress, hyperactivity and concentration difficulties, and getting along with other children, a High level of behavioral difficulties, and an Average level of difficulties on child’s life. “Diagnostic

⁵⁴ *Id.* at 16-17 (198-99).

⁵⁵ *Id.* at 20 (202).

⁵⁶ *Id.* at 21 (203).

⁵⁷ R50:1 (312).

⁵⁸ *Id.* at 4-9 (315-320).

⁵⁹ *Id.* at 9-11 (320-22).

⁶⁰ *Id.* at 11-13 (322-24).

⁶¹ *Id.* at 13-14 (323-25).

predictions for this survey place [Student] at a medium risk for a behavioral disorder and a low risk for an emotional or hyperactivity/concentration disorder.” The goals involved: (a) identifying the feelings and thoughts of others through their body language, (b) practicing conversation pragmatics, and (c) demonstrating increased self-advocacy by using an assertive voice, speaking up for him/herself, and expressing his/her needs and questions clearly in the classroom.⁶²

In Motor Skills/Physical Development, the PLOP reported the results of the May 2023 Occupational Therapy Evaluation, and indicated that Student would benefit from OT services to increase her/his independence in the general education environment. The goals involved: (a) mastering transitions, organizing and using materials, opening a combination lock, and initiating and completing tasks independently, (b) evincing improved executive functioning skills by completing multi-step tasks, (c) using adapted paper, demonstrating visual-motor integration skills by sentence writing, and (d), demonstrating improved visual perception skills through figure-ground tasks.⁶³

The IEP team prescribed ten hours per week of specialized instruction outside general education in Mathematics and Reading, ten hours inside general education in Mathematics, Reading, and Written Expression, three hours per month of BSS outside general education, ninety minutes per month of OT services outside general education and thirty minutes inside general education, and thirty minutes per month of S/L consultation services. Other Classroom Aids and Services included, but were not limited to, classroom organizational tools, modeling appropriate responses to ambiguous social situations, ample time to process information, having Student repeat instructions, immediate feedback, visual charts, graphic organizers, anchor charts, manipulatives, speech to text and text to speech, and chunked assignments.⁶⁴ The team also authorized twelve hours per week of extended year services outside general education.⁶⁵

17. Attorney A, Petitioner’s counsel, attended the IEP meeting and requested a “full-time therapeutic placement” (27.25 hours outside general education) “in light of everything that occurred this year,” as well as more BSS.⁶⁶ Witness B, Petitioner’s Educational Advocate, testified that she had advocated for Student receiving 27.5 hours per week of specialized instruction in a therapeutic facility, a safety plan, and a dedicated aide. Witness B opined that a dedicated aide was needed because of Student’s suicidal and homicidal ideation. As for the homicidal ideation, Witness B relied on the Physician Verification Form referenced in paragraph 10 above. Witness B further opined that Student required a full-time special education program due to his/her anxiety

18. On June 9, 2023, DCPS authorized Student to receive three hours of independent counseling from a licensed social worker at an hourly rate not to exceed \$85.28 and eighty-eight hours of independent tutoring at an hourly rate not to exceed \$75.15.⁶⁷

19. Witness A, provides counseling services to Student pursuant to the authorization referenced in the previous paragraph. He opined that the three hours per month of BSS in the IEP

⁶² *Id.* at 14-16 (325-27).

⁶³ *Id.* at 16-18 (327-29).

⁶⁴ *Id.* at 19 (330).

⁶⁵ *Id.* at 23-24 (334-35).

⁶⁶ P8:3-6 (92-95).

⁶⁷ P61:1 (527).

was insufficient, Student does not want to be at school because s/he is bullied, s/he needs to be in a supportive environment to address his/her withdrawal symptoms, s/he needs a dedicated aide because s/he “feels comfortable more with the one-on-one environment,” and that School A could not meet Student’s needs.⁶⁸

20. On July 3 2023, Witness B developed a Compensatory Education Proposal for Student.⁶⁹ The Plan was based on DCPS’ failure to provide Student full-time specialized instruction and a dedicated aide in from February 8, 2023 through August 4, 2023. Witness B opined that due to Student’s IQ in the Average range, s/he would have made a school years’ worth of academic and behavioral progress and mastered his/her IEP goals had DCPS provided the requested services. To bring Student to the level s/he would have been but for the alleged denial of FAPE, Witness B proposed that Student be awarded two hundred hours of tutoring (five hours per week for 40 weeks), forty hours of counseling (one hour per week for 40 weeks), and a placement in a non-public therapeutic day school.⁷⁰

21. Petitioner/father testified that Student’s suicidal incident on February 3, 2023 included his/her threat to kill a classmate who sat in Student’s assigned seat. Petitioner/father also testified that Student’s hospital admission for suicidal ideation on February 12, 2023 was due to her/his being bullied. In response to the Hearing Officer’s question, Petitioner/father disclaimed knowledge of any other serious incident of bullying or any suicidal ideation prior to February 23, 2023. Student returned to School A at the beginning of the 2023-24 school year. Petitioner/father testified that Student “drags [his/her] feet” getting ready for school, evincing anxiety.⁷¹

22. Petitioner/mother testified that Student was a victim of bullying at School A including “boys were moving [his/her] chair, taking [his/her] backpack, taking belongings out of [his/her] backpack, and calling [him/her] sexually derogatory names.” During the current school year at School A, Student has tried to avoid going to school and exhibits anxiety.⁷²

23. Witness D, Student’s special education teacher, testified that she never witnessed anything she perceived to be bullying of Student, and never heard Student use that word.⁷³

24. Witness F, the school psychologist who conducted Student’s May 2023 psychological evaluation, opined that the June 2023 IEP adequately met the behavioral and academic needs identified in the evaluation. Witness F also opined that a dedicated aide was not warranted as it would impede Student’s social interaction.⁷⁴

25. Witness G, School A’s Special Education Coordinator, testified that during the 2022-23 school year, Student was withdrawn, “trying to adjust to the pace of middle school,” and had an unengaged affect in class, but was always pleasant and happy in Witness G’s office. During the current school year at School A, Student is more engaged in the classroom, has regular

⁶⁸ Testimony of Witness A.

⁶⁹ P62:1 (530).

⁷⁰ *Id.* at 8-9 (537-38).

⁷¹ Testimony of Petitioner/father.

⁷² Testimony of Petitioner/mother.

⁷³ Testimony of Witness D.

⁷⁴ Testimony of Witness F.

interaction with her/his peers, and has exhibited “no challenges.” School A was unaware of any mental health diagnoses for Student prior to the incident on February 3, 2023. Witness G opined that Student’s IEP could not be significantly amended based on that single incident; while the School A staff agreed that Student exhibited symptoms of autism, and had agreed to evaluate him/her, an amendment that would remove Student from general education would require the completion of the agreed upon evaluations. The IEP team amended Student’s IEP in April 2023 to prescribe extended year services, but Student did not attend. Witness G also opined that Student did not need a dedicated aide because s/he was able to transition without assistance and having an aide would make him/her stand out from his/her peers unnecessarily.⁷⁵

26. Witness H, School A’s social worker, testified that she sees Student multiple times each week during the current school year. Student routinely stays in his/her seat, has a pen or pencil in his/her hand, and talks to peers more this year than last year. Witness H opined that the goals in the June 2023 IEP are appropriate, because they address Student’s identified behavioral challenges.⁷⁶

27. Witness J, School A’s Assistant Principal, testified that the school received no referrals for bullying of Student during the 2022-23 school year. If the school receives a referral, it would conduct an investigation. If the investigation results in a finding that bullying occurred, a safety plan would be developed.⁷⁷ On August 31, 2023, School A developed a Safety Plan to address Student’s “anxiety, any safety concerns, feelings of depression, and maintaining peer relationships.” There was no reference in the Plan to bullying.⁷⁸

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.⁷⁹

⁷⁵ Testimony of Witness G.

⁷⁶ Testimony of Witness H.

⁷⁷ Testimony of Witness J.

⁷⁸ P63:2 (541).

⁷⁹ D.C. § 38-2571.03(6)(A)(i).

The issues in this case involve the alleged failure of DCPS to provide an appropriate IEP and placement. Under District of Columbia law, DCPS bears the burden as to these issues. The burden of persuasion must be met by a preponderance of the evidence.⁸⁰

Whether DCPS denied Student a FAPE by failing timely to update Student's June 8, 2022 IEP. Specifically, Petitioner alleges that DCPS did not honor Petitioner's February 8, 2023 request to update Student's IEP once s/he was hospitalized after a suicide attempt on school premises on February 3, 2022 due to bullying.

The record does not support the assertion that Petitioner requested that Student's IEP be updated in response to the "suicide attempt" on February 3, 2023. First, there is no evidence that Petitioner requested that the IEP be updated to reflect the "suicide attempt" on February 3, 2023. Rather, the parties mutually agreed a month before the first suicide-related incident that Student had exhibited symptoms of autism and should be evaluated. Because Student did not return to school after the incident, the evaluations could not be completed. Once the parents and their representatives consented to Student returning to School A in May 2023 for the limited purpose of completing the evaluations, the evaluations were completed, and an IEP was developed within two weeks thereafter. Second, there is no record of a suicide attempt at any time by Student. The only witness to the incident who testified, Witness D, testified that she was concerned about the reappearance of Student's scissors on her/his desk after Witness D had put them in Student's backpack. When Witness D asked why the scissors were back on the desk, Student *gestured* towards her/his wrist. This is suicidal ideation, not a suicide attempt. Moreover, the report given to Facility A, that Student "grabbed scissors and threatened to harm [REDACTED] and another student who has been bullying [him/her]," is manifestly inconsistent with Witness D's eyewitness testimony; Witness D did not testify that Student grabbed the scissors and attempted to cut him/herself *or anyone else*. Thus, the report of homicidal ideation to Facility A upon Student's admission is also uncorroborated. Similarly, there was no suicide attempt on the other two occasions of suicidal ideation, on February 12, 2023 and March 29, 2023. Witness D also denied ever having seen Student being bullied.

There is also no credible evidence of bullying. There is simply no evidence that the parents suspected or complained of bullying at any time before the *Complaint* was filed. Student's special education teacher testified that she never witnessed any bullying of Student. The Assistant Principal testified that the parents made no complaint of bullying during the 2022-23 school year, which would have triggered an investigation.

This leaves the question of whether DCPS denied Student a FAPE by failing to update the IEP on the basis of Student's suicidal ideation on February 3rd. The regulations require that in developing a student's IEP, the IEP team must consider the results of the most recent evaluations of the child,⁸¹ and must address the results of any reevaluation conducted under 34 C.F.R. § 300.303. This provision specifically implicates the evaluations DCPS agreed to conduct on January 10, 2023, as the parties agreed that they were necessary reevaluations.⁸²

⁸⁰ *Schaffer v. Weast*, 546 U.S. 49 (2005).

⁸¹ 34 C.F.R. §300.324(a)(1)(iii).

⁸² 34 C.F.R. §300.303(b)(1).

Prior to the February 3rd incident, Student had no mental health diagnosis that presaged his/her behavior that day. The parties had already agreed to evaluate Student because s/he exhibited symptoms of autism. On February 3rd and February 12th, Facility A diagnosed Student with Suicidal Ideation, released him/her the next day, and on each occasion advised that Student could return to school immediately. It was not until the incident on March 29th that Facility diagnosed Student with Acute (not Chronic) Depression. On that occasion, Facility A discharged Student six hours after admission and indicated that s/he could return to school. While I am in no way minimizing the seriousness of suicidal ideation, Student had no prior history of mental illness, has at no time actually attempted self-harm, and received only a diagnosis of acute depression on one occasion. Petitioner relies on the diagnosis of major depressive disorder offered by DNP A in the Physician Verification on February 16, 2023. However, DNP A is nurse professional, not a licensed psychologist or physician.

Consequently, I conclude that it would not have been appropriate for DCPS to make significant changes to Student's IEP until the completion of the evaluations to which the parties agreed on January 10, 2023. Once Student was made available for testing, the evaluations were completed, and an IEP was developed nine days later. Therefore, I conclude that Petitioner has failed to make a prima facie case that Student's suicidal ideation on February 3, 2023 obligated DCPS to update Student's IEP.

Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on June 6, 2023. Specifically, Petitioner alleges that the IEP did not provide sufficient specialized instruction outside general education, a dedicated aide, or adaptive living goals.

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*.⁸³ 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.'"⁸⁴ Rather, the Court ruled that "Implicit in the congressional purpose of providing access to a 'free appropriate public education' is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child..."⁸⁵ 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."⁸⁶

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.⁸⁷ The Tenth Circuit had denied relief,

⁸³ 458 U.S. 176, 187 (1982).

⁸⁴ *Id.* at 189-90, 200

⁸⁵ *Id.* at 200.

⁸⁶ *Id.* at 203-04.

⁸⁷ *Endrew F. ex rel. Joseph F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (2017).

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*.’”⁸⁸ 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.⁸⁹

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

When all is said and done, a student offered an educational program providing ‘merely more than *de minimis*’ progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to ‘sitting idly... awaiting the time when they were old enough to drop out...’ The IDEA demands more. The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”⁹⁰

The PLOPs from the School B IEP reveal that in the fall of 2021, Student was performing two grades below grade level in Mathematics, one grade below grade level in Reading, and scored in the Very Low range on the WIAT-V in Written Expression. Student’s Spring 2022 PARCC scores were three levels below meeting grade level expectations in Mathematics and Reading. When Student transferred from School B into DCPS at School A for the 2022-23 school year, s/he brought with him/her an IEP developed by School B that provided 13.75 hours per week of specialized instruction: 3.75 hours outside general education and ten hours inside general education, and two hours per month of BSS outside general education. The School B IEP was developed at the end of the 2021-22 school year, less than three months before Student enrolled in School A.

In School A’s mid-year IEP Progress Report, reflecting the term ending on January 25, 2023, just before Student’s first incidence of suicidal ideation, Student was reported to be making progress on all of his/her academic goals, although his/her grades were depressed due to his/her failure to complete homework assignments. S/he was passing all of his/her courses with B’s and C’s except for English; Student was failing English despite good class participation for failure to complete homework assignments. There was no evidence that Student was the cause of, or the target of, behavioral misconduct in the classroom.

⁸⁸ *Id.* at 997.

⁸⁹ *Id.* at 1000-01 (citations omitted).

⁹⁰ 137 S.Ct. at 1000-01.

In the February 2023 Speech and Language Evaluation, Examiner A found that Student's communication skills would not impede his/her academic performance. In the May 2023 OT Evaluation, Examiner B found deficits in Student's visual motor, visual motor integration, visual perception, and written communication skills. Such deficiencies would impair Student's ability to learn new skills and respond appropriately to classroom tasks. Examiner B also found that Student had difficulty maintaining attention and following teacher's instructions. On Witness F's May 2023 Psychological Evaluation, Student's Full Scale IQ was Low Average, and her/his Processing Speed was Borderline Delayed. Together, these metrics suggest that Student would have difficulty keeping pace with same-aged peers. S/he scored in the Average range in Reading Composite on the KTEA-3, which was consistent with her/his Verbal Comprehension score on the WISC-V. However, her/his Math and Written Language Composite scores were in the Low range. Behaviorally, Student's special education teacher's rating scales confirmed that Student's behaviors stem from worry, nervousness, and/or fear. While Student scored in the Extremely Low range on Petitioner's ratings on General Adaptive Composite of the ABAS-3, Witness D's ratings placed Student in the Below Average range, and Average in Functional Academics, Community Use, School Living, Health and Safety, and Self-Care. Based on the SRS-2, Witness D concluded that Student met the criteria for an ASD classification.

When it developed Student's IEP on June 6, 2023, the IEP noted in the PLOPs that Student was performing below grade level in Mathematics, Reading, and Written Expression. This is consistent with the MOY Reading Inventory and i-Ready scores reported in Witness D's evaluation. The IEP team reclassified Student's disability to ASD, consistent with Witness D's diagnosis. The team increased the hours of specialized instruction outside general education from 3.75 to ten hours per week, increased BSS from two hours per month to three hours per month outside general education, and added two hours per month of OT services per month to address concerns raised in Examiner B's OT evaluation.

Petitioner's assertion that Student requires a full-time therapeutic setting is not supported by the record. While Student had three episodes of suicidal ideation in February and March of 2023, there is no evidence that s/he has never attempted suicide. In two of the instances, Facility A released him/her after an overnight observation, and in the third, s/he was released in six hours. In each instance, Facility A's discharge instructions indicated that Student could return to school. Petitioner submitted no documentation or testimony from a licensed clinical psychologist or psychiatrist that Student requires a therapeutic setting to access curriculum in a general education environment. Student has returned to School A for the 2023-24 school year, and the testimony was uncontroverted that there has been no recurrence of the suicidal ideation in the first few weeks of the school year, and Student appears to be engaging more with his/her peers than s/he did last year. Petitioner reported no incidents of suicidal ideation on Student's part since March 29, 2023.

The record also does not support the need for a dedicated aide. Petitioner offered no persuasive evidence that Student requires a dedicated aide. Such assistance might be warranted for a student who has severe physical or mental challenges, who presents a significant behavioral distraction in the classroom, whose inattention is so persistent as to require constant redirection, or who needs assistance in transitions throughout the day. Nothing in the record indicates that any of these circumstances prevail here. Witness A, who is providing Student counseling under a compensatory education authorization, opined that Student needs a dedicated aide because s/he "feels comfortable more with the one-on-one environment." However, Witness A was not accepted as an expert in special education. Witness B, Petitioner's educational advocate, opined that a

dedicated aide was needed because of Student's suicidal and homicidal ideation. In Student's one instance of suicidal ideation at school, s/he was escorted to a social worker's office by his/her special education teacher, apparently without notice by his/her classmates. Witness D, the only eyewitness to the incident who testified, did not testify that any of Student's behavior or statements that day reflected homicidal ideation. In the June 2023 IEP, Student will be supported by a special education teacher, a social worker, or an occupational therapist for more than 75% of the school day. There have been no reports of similar ideation since March 29, 2023. Witness G, School A's Special Education Coordinator, testified that Student is able to transition without assistance.

Similarly, the record does not support the need for adaptive goals. Witness D's rating scales suggest that Student is as capable as his/her same-aged peers in Functional Academics, Community Use, School Living, Health and Safety, and Self-Care in the school environment.

As for the level of specialized instruction, in the two terms that School A implemented the School B IEP, Student made progress on all of his/her academic goals. According to teacher comments, it appears that the greatest obstacle to increased progress was Student's failure to complete assignments. Upon the completion of Witness D's evaluation, the IEP team increased Student's specialized instruction from 13.75 to twenty hours per week, with ten hours outside general education. Thus, in all of his/her core subjects, Mathematics, Reading, and Written Expression, student will always have the support of a special education teacher: half of the time in the general education classroom and the other half in a small class environment outside general education. The IEP Team also increased Student's BSS from two to three hours per month to address Student's ASD symptomology, particularly identifying the feelings and thoughts of others through their body language, and practicing conversational pragmatics,

Providing Student with specialized instruction in all of his/her Math, Reading, and Written Expression classes, and increasing her/his BSS, is reasonably calculated to enable Student to make academic and behavioral progress. S/he was making progress in the first two terms of the school year with 13.75 hours of specialized instruction support. A 45% increase in specialized instruction, all outside general education, along with the increased behavioral and OT support, can reasonably be expected to increase the likelihood of academic and behavioral progress. For an autistic student, it is also important to encourage and support interaction with general education peers; difficulty recognizing and responding to social cues is a characteristic weakness of students with this classification. Additionally, balancing services inside and outside general education 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.*⁹¹

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

For these reasons, I conclude that DCPS has met its burden of proving that it provided Student an appropriate IEP on June 6, 2023.

RELIEF

For relief, Petitioner requests (1) an order requiring DCPC to amend Student's IEP to provide a placement in a full-time therapeutic setting and a dedicated aide, (2) an order requiring DCPS fund the placement in a nonpublic program with transportation, (3) compensatory education services, and (4) attorneys' fees.

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, and the closing arguments of counsel for the parties, it is hereby

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

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 2, 2023

Copies to: Attorney A, Esquire
Attorney B, Esquire
OSSE Office of Dispute Resolution
[REDACTED]/DCPS
[REDACTED]/DCPS