

**District of Columbia**  
**Office of the State Superintendent of Education**

Office of Dispute Resolution  
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OSSE  
Office of Dispute Resolution  
October 30, 2023

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<b>Parent, on behalf of Student,<sup>1</sup></b>	)	
<b>Petitioner,</b>	)	
	)	<b>Hearing Dates: 10/11/23, 10/12/23</b>
<b>v.</b>	)	<b>Hearing Officer: Michael Lazan</b>
	)	<b>Case No. 2023-0123</b>
<b>District of Columbia Public Schools,</b>	)	
<b>Respondent.</b>	)	

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**HEARING OFFICER DETERMINATION**

**I. Introduction**

This is a case involving an X-year-old student (the “Student”) who is currently eligible for services. A due process complaint (“Complaint”) was received by District of Columbia Public Schools (“DCPS”) and Office of the State Superintendent of Education (“OSSE”) pursuant to the Individuals with Disabilities Education Act (“IDEA”) on June 28, 2023. The Complaint was filed by the Student’s parent (“Petitioner”). On July 11, 2023, Respondent filed a response.

**II. Subject Matter Jurisdiction**

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the IDEA, 20 U.S.C. 1400 et seq., its implementing regulations, 34 C.F.R. Sect. 300 et seq., Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations (“DCMR”), Title 5-A, Chapter 30.

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

A prehearing conference took place by telephone on September 5, 2023.

Participating in the prehearing conference were Attorney A, Esq., attorney for Petitioner, and Attorney B, Esq., attorney for DCPS. On September 8, 2023, a prehearing order was issued, summarizing the rules to be applied in the hearing and identifying the issues in the case.

On September 6, 2023, Petitioner moved to extend the timeline for filing the Hearing Officer Determination (“HOD”). The motion was granted by order dated September 8, 2023. The HOD is currently due on October 30, 2023.

The matter proceeded to trial on October 11, 2023, and October 12, 2023. The hearing was conducted through the Microsoft Teams videoconferencing platform, without objection. After testimony and evidence, the parties presented oral closing statements on October 12, 2023. During the proceeding, Petitioner moved into evidence exhibits P-1 through P-30 without objection. DCPS moved into evidence exhibits R-1 through R-89 without objection. Petitioner presented as witnesses, in the following order: Witness A, an occupational therapist (expert in occupational therapy); Witness B, an educational advocate and special education teacher (expert in special education and Individualized Education Plan (“IEP”) programming); and Petitioner. DCPS presented as witnesses: Witness C, a psychologist (expert in school psychology); Witness D, a school psychologist (expert in school psychology); Witness E, an occupational therapist (expert in school-based occupational therapy); Witness F, a special education teacher at School C (expert in school-based occupational therapy); and Witness G, a special education teacher and local educational agency (“LEA”) representative at School C (expert in special education programming and placement).

#### **IV. Issues**

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

**1. Did Respondent violate the IDEA when it failed to comprehensively reevaluate the Student in or about autumn 2021? If so, did Respondent deny the Student a Free Appropriate Public Education (“FAPE”)?**

Petitioner contended that the Student should have received a formal evaluation in occupational therapy and a more comprehensive psychological evaluation.

**2. Did Respondent violate the IDEA by failing to provide the Student with appropriate IEPs and/or locations of services during the 2021-2022 and 2022-2023 school years? If so, did Respondent deny the Student a FAPE?**

The contention is that the Student needed a “full-time” special education placement with additional specialized instruction during both school years.

As relief, Petitioner seeks compensatory education with a reservation of rights, a comprehensive psychological evaluation, an occupational therapy evaluation, and a meeting to review the Student’s occupational therapy needs.

#### **V. Findings of Fact**

1. The Student is an X-year old who is currently eligible for services as a student with Intellectual Disability. The Student functions far below grade level in all academic areas, especially in reading, where the Student remains at or about the first-grade level, despite many years of schooling. The Student, who is described as hard-working, struggles particularly with phonics, decoding skills, reading fluency, and writing complex sentences. P-22. Over the past several school years, the Student has not fully understood his/her school lessons, and his/her classes were too big. Testimony of Petitioner.

2. For the 2020-2021 school year, the Student attended School A. An IEP was written for the Student on October 28, 2020. This IEP contained “area of concern” sections in reading, math, written expression, and communication/speech and language. The IEP recommended 10.5 hours per week of specialized instruction outside general education (two hours in reading, six hours in math, and 2.5 hours in written expression), two hours per week of specialized instruction inside general education (in math), and three hours per month of related services (in speech-language pathology). The IEP stated that, based on the i-Ready measure, the Student’s overall math performance was at the second-grade level. The IEP also stated that, based on a Text Reading and Comprehension (“TRC”) beginning-of-year benchmark assessment, which was administered on September 15, 2020, the Student was reading on a Reading Behaviors (“RB”) level, which is equivalent to a kindergarten reading level. This IEP included language in the “Other Classroom Aids and Services” section that encouraged teachers to do the following to assist the Student: use a multi-sensory approach to introduce new skills and information; pair new vocabulary words and concepts with visual representations; use visual cues to support understanding of unfamiliar routines and directions; create a list of preferred/desired items or activities that could promote more positive communication skills; utilize manipulative and hands-on activities; and segment multi-step directions into single steps and check for understanding. P-7.

3. During the 2020-2021 school year, the Student continued to demonstrate difficulties with verbally recognizing the letters of the alphabet, recognizing and reading pre-primer sight words, verbally responding to "wh" questions, and decoding “eve” words. P-20-208. On the Student’s report card for the 2020-2021 school year, s/he

received mostly “1” and “2” grades in academic subjects. The report card indicated that the Student made progress during the school year in writing, reading comprehension, and speaking skills, though s/he was not able to consistently attend classes during the period of distance learning. R-75. The Student made inconsistent progress on math goals. During the fourth reporting period, the Student made no progress on either of the two math goals. Progress was reported in reading and written expression during all four reporting periods, with one exception. R-13.

4. The Student changed schools for the 2021-2022 school year and began attending School B. Petitioner voiced concerns about the Student’s lack of progress to School B staff at the start of the 2021-2022 school year. Testimony of Petitioner. An IEP was written for the Student on September 29, 2021. This IEP also contained “area of concern” sections in reading, math, written expression, and communication/speech and language. The Student was again recommended for 10.5 hours per week of specialized instruction outside general education (two hours in reading, six hours in math, and 2.5 hours in written expression), two hours per week of specialized instruction inside general education (in math), and three hours per month of related services (in speech-language pathology). This IEP stated that, based on i-Ready measures, the Student’s overall math performance was at the second-grade level and, in reading, s/he was considered to be at the first-grade level. The “Other Classroom Aids and Services” section in this IEP was the same as in the prior IEP at School A. R-22.

5. DCPS reevaluated the Student through a speech and language evaluation, which was conducted over three sessions in October 2021. The corresponding report, issued on November 2, 2021, found that the Student had delays in expressive vocabulary,

receptive vocabulary, receptive language, and expressive language. Receptively, the Student's score suggested that s/he had difficulty following directions of increasing complexity and may have had trouble recalling specific facts during classroom lessons, following orally presented multi-step directions, comprehending word relationships, and making comparisons. Expressively, the Student's scores suggested difficulties with recalling sentences, formulating sentences, and transforming word classes into complete sentences. R-27.

6. An amended comprehensive psychological evaluation of the Student was issued on November 10, 2021. The evaluator, Witness D, interviewed several of the Student's teachers. The Student's general education teacher said that s/he constantly needed redirection and assistance to complete and log in to simple tasks. The teacher said that the Student was academically on a kindergarten to first-grade level, which was "concerning," and that the Student's preferred method of learning was cooperative, hands-on, and interactive. The Student's special education teacher described his/her ability to retain information as "very limited" and said that s/he was only learning basic math facts and was still a beginning reader. The Student was observed by Witness D for thirty minutes on September 10, 2020, during a "writing/social studies block." The Student fluctuated between putting his/her head down, putting his/her hood over his/her head, and leaning on different sides of his/her desk. When instruction was generalized for the entire class, the Student was in good spirits. However, as individual work began, the Student became withdrawn and needed reminders and redirections to stay focused and participate in class. A math observation of the Student was conducted on September 16, 2021, with sixteen students sitting at ten tables in the classroom. The Student leaned and

fell out of his/her chair during instruction and worked on the wrong material part of the time. The Student was also observed in his/her reading block on September 22, 2021, with nineteen students in the classroom. The Student sat in front and got some answers right. P-20.

7. The psychological evaluation of the Student also included cognitive and academic testing. The Student's Full Scale IQ was measured at 72, at the 3rd percentile. The Student's academic functioning was in the extremely low range in broad reading, broad math, and broad written expression. P-20; Testimony of Witness D.

8. On November 9, 2022, the Student was screened for occupational therapy and determined to be ineligible for the service. The screening was mainly a handwriting test, in which the Student copied a typed paragraph at an appropriate speed. P-24; Testimony of Witness E.

9. An IEP meeting was held for the Student on November 11, 2021. The team observed that s/he was on the first-grade level in reading and at the kindergarten level in math, two grade levels below the levels noted in the Student's prior IEP. The Student could not name all the letters and could not write his/her last name. R-21. The ensuing IEP contained the same "area of concern" sections as the prior IEP, but reduced the Student's specialized instruction services outside general education to six hours per week (four hours in reading, two hours in math). The IEP also reduced the Student's speech-language pathology services to two hours per month, and provided four hours per week of specialized instruction inside general education (two hours apiece of reading and writing). The IEP's "Other Classroom Aids and Services" section was the same as in the prior IEPs. P-10.

10. A Prior Written Notice was issued on November 11, 2021, indicating that the IEP team discussed the updates made to the Student's IEP at the meeting on November 11, 2021. The Prior Written Notice did not explain why the Student's services were reduced. P-13. The Student's IEP was amended on February 4, 2022, with the same "area of concern" sections and no changes to the accommodations. P-10.

11. During the 2021-2022 school year, the Student made progress on math goals in the fourth reporting period, on reading goals in three of the four reporting periods, and on writing goals in every reporting period. R-72. On the Student's report card for the 2021-2022 school year, s/he received mostly "1" and "2" grades in academic subjects, with "1" grades in math for three of the four reporting periods. The Student's test scores during this time showed some progress, but also made it clear that the Student was functioning at a low level. In math, the Student's i-Ready test scores improved from 423 on September 10, 2021, to 526 on June 2, 2022. In English language arts, i-Ready testing put the Student at the third-grade level, though on the reading inventory test, where students were expected to score between 830 and 1010, the Student scored 306, far below grade level. R-83.

12. For the 2022-2023 school year, the Student changed to another school, School C. According to an i-Ready assessment from September 2022, the Student was performing at the second-grade level in math and at the first-grade level in reading. P-14. Another IEP was written for the Student on November 7, 2022. This IEP again contained "area of concern" sections in reading, math, written expression, and communication/speech and language. The IEP recommended four hours per week of specialized instruction outside general education (in reading), and nine hours per week of specialized

instruction inside general education (three hours each in reading, math, and written expression), and 120 minutes per month of speech-language pathology. This IEP stated that, based on i-Ready testing, the Student's overall math performance was at the second-grade level, and s/he was considered to be at the first-grade level in reading. The language in the IEP's "Other Classroom Aids and Services" section was again taken from the prior IEPs. R-50.

13. During the 2022-2023 school year, the Student was described as "hard working," though sometimes s/he did not understand the concepts in class. The Student continued to push, not give up, and try to engage, even though s/he might not have understand what was being said or taught. Sometimes the Student could be playful, but s/he was easily redirected, so behavior was not an issue. However, the Student's mental fatigue was of great concern. The Student took a long time to process information, which resulted in him/her missing material in class. Testimony of Witness F.

14. Witness C conducted another psychological evaluation of the Student in or about December 2022 and issued a corresponding report on December 29, 2022. The Student's teachers indicated that the Student had difficulty with the curriculum. The Student's English language arts teacher indicated that the Student thrived in a quiet, small-group setting. The Student's world history and geography teacher said that s/he was extremely reluctant to start working on tasks and often just sat, notebook unopened. This teacher's "hunch" was that the Student acted that way because of "a low sense of self-efficacy when it comes to academic tasks in general," and reading and writing in particular. This teacher also observed that the Student was extremely restless, verging on hyperactive, and often wandered around the classroom. Another teacher indicated that the

Student would shut down and did not want to complete work. Another teacher pointed out that the Student needed small-group instruction with teacher-led reinforcement, as well as video assignments with closed captions. The Student was not attempting to do homework or daily assignments and regularly left long-term projects incomplete (or lost them). The Student evaded critical-thinking tasks (unless pushed) by choosing to go to the bathroom or putting his/her head down. The Student's teachers informed Witness C that the Student received average grades only due to significant scaffolding, 1:1 teaching, and modifications that did not meet grade-level standards. The teachers reported that the Student also needed 1:1 support to complete classroom assignments. Witness C felt that the Student's issues had a lot to do with just not being able to do grade-level work, which caused anxiety and work avoidance. Testing was conducted with respect to cognitive issues, academic issues, and behavioral issues through the Behavior Assessment Scales for Children ("BASC") and the Connors-4, which indicated that the Student also had issues with attention, focus, and listening. Academic testing showed that the Student was still functioning in the low range in broad reading and math, with scores in the very low range in reading comprehension. P-21; Testimony of Witness C.

15. By or about March 2023, the Student was struggling to stay focused and retain information in both small and large groups. The Student struggled to understand the information provided, had issues with memory, and refused to use technology that was provided to him/her. P-22-256-257.

16. On March 15, 2023, DCPS conducted an assistive technology assessment of the Student. This assessment found that the Student's handwriting was legible, but his/her typing was below grade level and s/he did poorly on spelling tests. The Student

was asked to read a story that was well below grade level, but s/he only understood 55% of the material and had trouble using strategies such as referring back to the text to answer questions. The report stated that the Student could only write simple sentences and struggled with spelling, grammar, and punctuation. The evaluator felt that the Student required help with starting a topic sentence, had issues responding to prompts, and would benefit from additional writing instruction. P-22.

17. The assistive technology assessment also concluded that the Student needed small-group and 1:1 instruction because s/he engaged more when working one-on-one with a teacher “in comparison to engagement in a whole group setting.” The evaluator felt that the Student would benefit from access to a consistently assigned, dedicated device to allow him/her to type his/her work. The evaluator recommended the following assistive technology tools: dictation, word prediction, text-to-speech, and editing and revision tools (paper-based checklists or Microsoft Editor). The evaluator also recommended continued academic interventions to support the Student’s reading and comprehension skills, including systematic and evidence-based instruction for the writing process, graphic organizers, extended time, preferential seating, modified assignments, and related interventions. P-22.

18. By at least March 2023, School C staff felt that the Student should be reclassified as a student with Intellectual Disability and that the school did not have the resources to serve the Student. Testimony of Petitioner; Testimony of Witness C.

19. A new IEP was written for the Student on May 15, 2023. This IEP again contained “area of concern” sections in reading, math, written expression, and communication/speech and language. The IEP recommended seventeen hours per week

of specialized instruction outside general education (seven hours in reading and five hours each in math and written expression), two hours per week of specialized instruction inside general education (one hour each in math and reading), and 120 minutes per month of speech-language pathology. This IEP again stated that, based on i-Ready testing, the Student's overall math performance was at the second-grade level, and s/he was considered to be at the first-grade level in reading. The IEP's "Other Classroom Aids and Services" section was again taken from the prior IEPs. R-22.

20. On the Student's report card for the 2022-2023 school year, s/he received generally passing grades, though according to an SRI test administered on January 24, 2023, the Student was still reading at the first-grade level. R-77.

21. On July 11, 2023, a new IEP was issued in conjunction with the Student's new placement in the SLS program at School D. This IEP included new present levels of performance and twenty hours of specialized instruction outside general education. P-16; P-17.

## **VI. Conclusions of Law**

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.” D.C. Code Sect. 38-

2571.03(6)(A)(i). Accordingly, on Issue #1, the burden of persuasion is on Petitioner.

On Issue #2, the burden of persuasion is on Respondent if Petitioner presents a *prima facie* case.

**1. Did Respondent violate the IDEA when it failed to comprehensively reevaluate the Student in or about autumn 2021? If so, did Respondent deny the Student a FAPE?**

Petitioner contended that the Student should have received a formal evaluation in occupational therapy and a more comprehensive psychological evaluation. For this issue, the burden of persuasion is on Petitioner.

Pursuant to 34 C.F.R. Sect. 300.303 (a) and (b), a public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with 34 CFR 300.304 through 34 CFR 300.311 at least once every three years. The reevaluation should involve assessments in “all areas of suspected disability.” 20 U.S.C. Sects. 1414(b)(3)(B) and (c)(1); 34 C.F.R. Sect. 300.304(c)(4). The child’s reevaluation must consist of two steps. First, the child’s evaluators must “review existing evaluation data on the child,” including any evaluations and information provided by the child’s parents, current assessments and classroom-based observations, and observations by teachers and other service providers. 34 C.F.R. Sect. 300.305(a)(1). Based on their review of that existing data, the evaluators must “identify what additional data, if any, are needed” to assess whether the child has a qualifying disability and, if so, “administer such assessments and other evaluation measures as may be needed.” Sect. 300.305(a)(2), (c). The school district is required to “[u]se a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including

information provided by the parent.” Sect. 300.304(b). All the methods and materials used must be “valid and reliable” and “administered by trained and knowledgeable personnel.” Sect. 300.304(c)(1). For there to be a finding of FAPE denial on this issue, a parent should show that the failure to evaluate resulted in substantive harm to the student. Suggs v. District of Columbia, 679 F. Supp. 2d 43 (D.D.C. 2010).

Petitioner argued that an occupational therapy evaluation was necessary for the Student in 2021, pointing to the expert testimony of Witness A. Petitioner pointed out that the Student was last evaluated comprehensively for occupational therapy in 2016, and that the evaluation identified deficiencies in the Student’s visual motor integration and fine motor quotient. A screening of the Student’s handwriting was conducted in 2021, but Witness A testified that this screening was insufficient. Witness A argued that, during the 2021-2022 school year, the Student struggled with writing, math, overall fluency, reversals, decoding, sentences, addition, subtraction, attitude, shutting down, falling out of his/her chair, frustration tolerance, and poor academic scores. Witness A argued that, therefore, an occupational therapy evaluation would be good to rule out this service as part of the Student’s programming.

But Witness A was not specific about what occupational therapy services were contemplated, or how those services would actually help this Student with his/her main issue, understanding the material in class. As discussed later in this HOD, and as acknowledged by a number of the Student’s teachers at School C, the Student’s main problem is that s/he has been reading at the first-grade level. With significant receptive language delays, the Student has had difficulty understanding the material in class for years. Witness A’s speculative testimony did not explain how occupational therapy

could possibly have enabled the Student to understand the class reading material that was far above his/her level. Petitioner pointed to an occupational therapy report from 2016, but a child can develop a lot in seven years. This Hearing Officer agrees with Witness E that the handwriting screening was sufficient to pass muster under the IDEA.

Petitioner also contended that Witness D's psychological evaluation of the Student was not appropriate, pointing to Witness D's lack of experience, but no witness testified as such, including Petitioner. Witness B provided very little meaningful testimony on this issue, and no psychologist was called to rebut the contentions of Witness D that her evaluation was appropriate. Petitioner suggested that the evaluation was supposed to determine if the Student was eligible for services as a student with Intellectual Disability, and Witness D should have therefore conducted a Vineland assessment. While such an assessment might have been a good idea (indeed, Witness C later conducted a Vineland assessment of the Student in 2022, which resulted in a change to his/her eligibility category), the Student's eligibility category did not drive his/her educational program. Moreover, it was already apparent that the Student did not understand enough of his/her class lessons and needed small special education classes with intensive support in all academic areas. Finally, a review of Witness D's evaluation makes it clear that Witness D did thoroughly assess the Student. The three teacher interviews in the evaluation, combined with testing that showed the Student's low cognitive levels and low academic testing scores, gave the IEP team enough information to provide the Student with an appropriate program. These claims must be dismissed.

**2. Did Respondent violate the IDEA by failing to provide the Student with appropriate IEPs and/or locations of services during the 2021-2022 and 2022-2023 school years? If so, did Respondent deny the Student a FAPE?**

The contention is that the Student needed a “full-time” special education placement with additional specialized instruction during both school years.

The IEP is the “centerpiece” of IDEA. Honig v. Doe, 484 U.S. 305, 311 (1988). In Endrew F. v. Douglas County School District, 580 U.S. 386 (2017), the Court held that an IEP must be reasonably calculated “in light of the child’s circumstances.” Id. at 399. The Court also held that parents can fairly expect school authorities to offer a “cogent and responsive explanation” for their decisions, and that its ruling “should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of school authorities, to whose expertise and professional judgment deference should be paid.” Id. at 404. However, the “educational program must be appropriately ambitious in light of...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.” Id. at 402.

**2021 IEPs (September 29, 2021, and November 11, 2021)**

At the start of the 2021-2022 school year, teachers reported that the Student was struggling to write his/her last name, could not recognize all the letters, and did not completely understand that, in English, writing goes from left to right. The Student still needed to work on pre-primer words, became easily frustrated, and sometimes did “not try” when working independently. The Student’s general education teacher said that the Student constantly needed redirection and assistance to complete and log in to simple tasks. The Student’s special education teacher described the Student as “very limited” in his/her ability to retain information and said s/he was still a beginning reader. Testing by

Witness D showed that the Student was in the extremely low range in broad reading, broad math, and broad written expression.

Witness B, an expert in special education and IEP programming, testified that the Student's reading and related academic deficits required [REDACTED] to be placed in self-contained special education classes in academic subjects, a conclusion that DCPS also eventually reached. Witness B's testimony shifted the burden of persuasion to DCPS, which then had to show that it provided Petitioner with a "cogent and reasoned explanation" as to why the IEP services at issue were recommended.

However, the Student was again recommended for 10.5 hours per week of specialized instruction outside general education (two hours in reading, six hours in math, and 2.5 hours in written expression), two hours per week of specialized instruction inside general education (in math), and three hours per month of related services (in speech-language pathology). There is nothing in the record to suggest that the IEP team provided Petitioner with a cogent and reasoned explanation of why DCPS offered the Student the services that it did. Indeed, no teacher was called from School B to explain why the IEP was drafted as it was, or how the Student could receive educational benefit through large general education classes, even if some of the classes also had a special education teacher in the room. Certainly, there was no explanation of how instruction for the Student could have been differentiated enough to bridge the wide discrepancy between his/her reading level and the reading levels of the other students in his/her classroom.

On November 11, 2021, the IEP team at School B revisited the same issues after receiving the Student's psychological report from Witness D. This report should have

influenced the IEP team to provide the Student with more services. The report indicated that the Student was in the very low range in all academic areas. Also, as noted above, the Student's special education teacher described the Student as "very limited" in his/her ability to retain information and said s/he was only learning basic math facts and was still a beginning reader. Nevertheless, the School C IEP team decided to reduce the Student's specialized instruction outside general education from 10.5 hours per week to six hours per week, while increasing the Student's specialized instruction inside general education to four hours per week.

There is no document in the record to explain why DCPS decided to reduce the Student's specialized instruction outside general education or place this struggling reader into more general education classes. DCPS argued that the Student made progress during the 2021-2022 school year. However, on the Student's report card for the 2021-2022 school year, s/he received mostly "1" and "2" grades in academic subjects, with "1" grades in math for three of the four reporting periods. There is nothing in the record to show that the Student made any significant progress in reading during this school year. In fact, the Student's most recent IEP still put him/her at the first-grade level in reading, which was the same level reported for the Student at the start of the 2021-2022 school year.

This Hearing Officer agrees with Witness B that the Student needed more specialized instruction outside general education in view of his/her inability to read and his/her other academic deficits. This Hearing Officer therefore finds that the IEPs of both September 29, 2021, and November 10, 2021, denied the Student a FAPE.

**November 7, 2022 IEP**

The 2022-2023 school year did not start well for the Student. The Student's world history and geography teacher said that the Student was extremely reluctant to start work on tasks, often just sat there with notebook unopened, and also wandered around the classroom. This teacher had a "hunch" that the Student was bothered by a low sense of self-efficacy when it came to academic tasks in general, and reading and writing in particular. The Student's special education teacher indicated that the Student shut down and did not want to complete his/her work. The Student's science teacher pointed out that the Student did not attempt to do homework or daily assignments, regularly left long-term projects incomplete (or lost them), and evaded critical thinking tasks (unless pushed) by choosing to go to bathroom or putting his/her head down. Moreover, according to an i-Ready assessment in September 2022, the Student was still at the first-grade level in reading.

Given these reports, it was time to finally consider placing the Student in self-contained special education classes in academic subjects throughout the school day. From virtually all reports, this was a student that needed small class size in order to get more direct instruction, and to pay more attention in class. Nevertheless, there is nothing in the record to establish that DCPS even considered this option at that time. Instead, DCPS continued to recommend that the Student receive instruction in large general education classes. In fact, like the prior IEPs, this IEP provides for the Student to attend some general education classes without any support at all. The Student, who has increasingly suffered from social, emotional, and behavioral issues, was now supposed to attend general education classes for all but four hours per week. DCPS did add to the Student's specialized instruction mandate inside general education in the November 7,

2022 IEP, but the DCPS witnesses did not clearly explain why an “inclusion” setting would make general education classes manageable for the Student given his/her extremely low reading level. Indeed, when Witness C was asked about the reasons for the specialized instruction mandate in the November 7, 2022 IEP, she did not clearly or directly answer the question.

Nor did the November 10, 2022 IEP team provide Petitioner with a cogent and reasoned explanation of why DCPS offered the Student the services that it did. Indeed, the School C program was so inappropriate for the Student that by March 2023, staff at School C agreed with Petitioner that the Student needed special education classes for all academic subjects. The May 15, 2023, IEP therefore recommended that the Student receive seventeen hours of specialized instruction outside general education, the most that School C could provide, anticipating a change of placement to a more restrictive setting. For the current school year, the Student was finally assigned to School D, in a self-contained SLS special education program, and the Student’s July 11, 2023, amended IEP provides for twenty hours per week of specialized instruction outside general education.

As a result of the foregoing, this Hearing Officer finds that DCPS denied the Student a FAPE by providing him/her with inappropriate IEPs during the 2022-2023 school year.

### **RELIEF**

As relief, Petitioner seeks compensatory education, an occupational therapy evaluation, and a psychological evaluation for the Student. When school districts deny students a FAPE, courts have wide discretion to ensure that students receive a FAPE going forward. As the Supreme Court stated, the statute directs the Court to “grant such

relief as [it] determines is appropriate.” School Committee of the Town of Burlington v. Dep’t of Education, Massachusetts, 471 U.S. 359, 371 (1985). The ordinary meaning of these words confers broad discretion on a hearing officer, since the type of relief is not further specified, except that it must be “appropriate.”

Petitioner seeks compensatory education as relief. Hearing officers may award “educational services to be provided prospectively to compensate for a past deficient program.” Reid v. District of Columbia, 401 F.3d 516, 521-23 (D.C. Cir. 2005). The award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. Id., 401 F.3d at 524; see also Friendship Edison Public Charter School v. Nesbitt, 532 F. Supp. 2d 121, 125 (D.D.C. 2008) (compensatory award must be based on a “qualitative, fact-intensive” inquiry used to craft an award “tailored to the unique needs of the disabled student”). A petitioner need not “have a perfect case” to be entitled to a compensatory education award. Stanton v. District of Columbia, 680 F. Supp. 201 (D.D.C. 2011).

Petitioner seeks 216 hours of tutoring and thirty-six hours of counseling for the Student. Given that the Student has been denied a FAPE for two years because s/he did not receive enough specialized instruction, this Hearing Officer finds Petitioner’s request to be modest and reasonable. However, since this Hearing Officer did not find that DCPS denied the Student a FAPE by failing to provide counseling or behavioral support services, Petitioner’s request for compensatory counseling will be declined. Moreover, this Hearing Officer is unaware of any persuasive authority that allows hearing officers to unilaterally preserve a parent’s rights to compensatory education in an HOD. This

Hearing Officer will accordingly decline to provide Petitioner with a reservation of rights with respect to compensatory education.

Finally, since this Hearing Officer did not find that DCPS denied the Student a FAPE by failing to provide him/her with appropriate evaluations, this Hearing Officer will decline to order that the Student be evaluated through an occupational therapy evaluation and a comprehensive psychological evaluation.

### **VII. Order**

As a result of the foregoing:

1. The Student is awarded 216 hours of compensatory tutoring, to be provided by a certified special education teacher at a reasonable and customary rate in the community;
2. All other requests for relief are denied.

Dated: October 30, 2023

Michael Lazan  
Impartial Hearing Officer

cc: Office of Dispute Resolution  
Attorney A, Esq.  
Attorney B, Esq.

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

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

Dated: October 30, 2023

Michael Lazan  
Impartial Hearing Officer