

District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution
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OSSE
Office of Dispute Resolution
September 08, 2020

Confidential

Parents on behalf of Student¹)	Case No. 2020-0100
)	
Petitioner,)	Hearing Dates: August 18 and 31, 2020
)	Conducted by Video Conference
v.)	
)	Date Issued: September 8, 2020
District of Columbia Public Schools,)	
)	Terry Michael Banks,
Respondent.)	Hearing Officer

HEARING OFFICER DETERMINATION

INTRODUCTION

Petitioners are the parents of a [REDACTED] student ("Student") attending School A. On May 5, 2020, Petitioners 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 provide an appropriate Individualized Education Program ("IEP") and placement for the second semester of the 2019-20 school year, and failing to approve an observation of the program DCPS proposed at School B. DCPS filed *District of Columbia Public Schools' Response* ("*Response*") on May 29, 2020 denying that it had failed to provide Student a FAPE.

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

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

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

PROCEDURAL HISTORY

Petitioners filed the *Complaint* on May 5, 2020 alleging that DCPS denied Student a FAPE by (1) failing to provide an appropriate IEP and placement for the second semester of the 2019-20 school year, (2) failing to authorize Student's father to observe the proposed program at School B, and (3) declining to reimburse Petitioners for expenses related to Student's placement at [REDACTED].

DCPS filed its *Response* on May 29, 2020 and asserted that (1) it offered an appropriate program for the student for the second semester of the 2019-20 school year, but Petitioners rejected the proposed program, (2) Petitioner/mother and Student's educational advocate were allowed to observe the proposed program at [REDACTED], and (3) School A is not an appropriate placement for Student.

The parties participated in a resolution meeting on May 15, 2020, that did not result in a settlement. The resolution period ended on June 4, 2020.

A prehearing conference was not conducted. Petitioners filed virtually identical claims in Case No. 2020-0018, but withdrew that Complaint due to scheduling conflicts. Scheduling conflicts also precluded a timely prehearing conference in this proceeding, and the parties did not object to prehearing order based on the discussion in the prehearing conference in the prior proceeding. The Prehearing Order was issued on July 3, 2020.

The due process hearing was conducted on August 18 and 31, 2020 by video conference and was closed to the public. Respondent's *Disclosure Statement*, filed August 11, 2020, contained a witness list of ten witnesses and documents R-1 through R-23, including R2A and R3A. Petitioner filed no objection to Respondent's disclosures. At the inception of Respondent's direct case, Respondent's Exhibits R-1 through R-23, including R2A and R3A, were admitted into evidence.

Petitioner's Disclosures were also submitted on August 11, 2020, containing a list of six witnesses and documents P1-P43, including P19A and P35A. On August 14, 2020, Respondent filed *District of Columbia Public Schools' Objections to Petitioner's Disclosures*, objecting to the expert designations of Witness A, Witness B, Witness C, and Witness D. DCPS also objected to P2, P3, P5, P6, P15, P17, P19, P19A, P20, P21, P25, P28, P29, P30, P32, P33, P35, P36, P37, and P39 on the grounds of relevance, authentication, and hearsay. Petitioner withdrew exhibit P25. I overruled objections to P2, P3, P5, P6, P15, P17, P19, P28, P29, P30, P32, P33, P35, P36, and P37, and I deferred consideration of P19A, P20, and P39. Exhibits P1-P19, P21-24, P26-P38, and P40-43 were admitted into evidence at the inception of the hearing. P19A was admitted during the testimony of Petitioner/mother. At the close of all testimony, Petitioner withdrew Exhibit P20, and I indicated that admission of P39 would be addressed in this decision. Respondent's objection to P39 is sustained on the grounds of relevance. Thus, Exhibits P1-P19, P21-24, P26-P38, and P40-43 were admitted into evidence.

Petitioner presented as witnesses in chronological order: Witness A, Witness B, and Witness C, and Petitioner/mother. Petitioner offered Witness A as an expert in special education programming and placement, Witness B was offered as an expert in social work and private school administration, and Witness C was offered as an expert in psychology. Respondent's counsel did not object to the qualifications of any of these witnesses, and I allowed opinion testimony from each of these witnesses. Respondent presented as witnesses in chronological order: Witness E, Witness F, Witness G, and Witness H. Witness E was offered as an expert in School Psychology, Witness F was offered as an expert in Special Education Programming and Placement, Witness G was offered as an expert in occupational therapy, and Special Education Programming and Placement, and Witness H was offered as an expert in Special Education Programming. Respondent did not object to these witnesses' qualifications, and I allowed each to offer opinion testimony in their areas of expertise.

After the close of testimony, I authorized written closing statements to be filed on or before September 4, 2020. On September 4, 2020, Petitioner filed *Parent's Closing Memorandum*, and Respondent filed *District of Columbia Public Schools' Closing Statement*.

ISSUES

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

1. Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and placement for the second semester of the 2019-20 school year.
2. Whether DPCS denied Student a FAPE by failing to authorize Student's father to observe the proposed program at School B.
3. Whether School A is an appropriate placement.

FINDINGS OF FACT

1. Student is X years old and was in grade J at School A during the 2019-2020 school year.²

2. On January 10, 2016, Examiner A completed a Psychoeducational Evaluation of Student. At the time, Student was in grade F at School C. On the Weschler Intelligence Scale for Children (WISC-V), Student scored in the Low Average range in Working Memory, Average in Full Scale IQ (104) and Processing Speed, High Average in Verbal Comprehension and Fluid Reasoning, and Very High in Visual Spatial. Student scored in the High Average range in the General Ability Index ("GSI").

FSIQ is a better estimate of [his/her] true intellectual abilities... [Student's] GAI score was significantly higher than [his/her] FSIQ score. *The significant difference between [his/her] GAI and FSIQ scores indicates that the effects of*

² Petitioner's Exhibit ("P:") 22 at page 1, electronic page 250. The exhibit number and page are followed by the electronic page number in the disclosure in parentheses, i.e., P22:1 (250).

*cognitive proficiency, as measured by working memory and processing speed, may have led to a lower overall FSIQ score. This estimate of [his/her] overall intellectual ability was lowered by the inclusion of working memory and processing speed subtests. This result supports that [his/her] working memory and processing speed skills are areas of specific weakness.*³

On the Woodcock-Johnson Achievement Test (“WJ-VI”), Student’s Reading scores were Average in Broad Reading, Letter-Word identification, Passage Comprehension, and Sentence Reading Fluency, and Low Average in Word Attack. Student’s Math scores were Low Average in Broad Mathematics, Average in Applied Problems and Calculation, and Low in Math Facts Fluency. Student’s Writing scores were Low Average in Broad Written Language, Low in Spelling, and Average in Writing Samples and Sentence Writing Fluency.⁴ On the Behavior Assessment System for Children (“BASC-2”), Student’s mother reported problems that fall in the Clinically Significant range in Internalizing Problems, Depression, Somatization, Atypicality, and Withdrawal. Student’s mother rated Student in the At-Risk range for Adaptability, Leadership, and Activities of Daily Life.⁵ Student’s responses on the Rorschach Inkblot Test indicated

“a tendency to see reality in a very unique manner, which can have negatively impact[ed] [his/her] interpersonal relationships as the way in which [s/he] might interpret situations may conflict with the way others see things. [Student] also had a high number of responses that are indicative of a dysphoric (negative/depressive) affect. The Rorschach also contained a significant number of responses that indicate difficulties with self-esteem and a tendency to focus on negative aspects of the self. [Student’s] tendency for negative self-judgment can also be affecting [his/her] willingness to be engaged in interpersonal relationships. [S/he] might be prone to retreat into her/his fantasy worlds as a way to avoid the anxiety that [s/he] experiences in the context of interpersonal relationships.”⁶

Examiner A concluded as follows:

Although there is not a significant difference between [his/her] cognitive scores and [his/her] achievement scores, the results of his/her Achievement test are indicative of a specific disability in the area of writing. [Student’s] difficulties in [his/her] academic work are likely to be impacted by weaknesses in areas of attention control, working memory and processing speed.

In addition to these cognitive weaknesses, [Student’s] ability to stay focused on academic tasks seems to be also impacted by a high level of internal stimulation, as revealed by the assessment of his/her emotional functioning. [Students’] mother is reporting significant levels of symptoms of depression

³ P3:3-4 (29, 30), emphasis supplied in original text, and at 10(36).

⁴ *Id.* at 8-9 (34-35).

⁵ *Id.* at 9-10 (35-36).

⁶ *Id.* at 10 (36).

and anxiety, and reports that [Student] seems withdrawn and behaves at times in ways that seem unusual. [Student] presented as a bright, creative child who at times may struggle to stay connected to the present moment, and at times [s/he] might have a preference to retreat into [his/her] fantasy world.⁷

Examiner A recommended (1) “potential” intervention for Student’s processing speed, (2) a relative weakness, a full or partial neuropsychological evaluation to assess the nature of Student’s difficulties with attention and working memory, and (3) a number of classroom accommodations.⁸

3. On February 10, 2016, School C completed an annual IEP review.⁹ Student was classified with a Specific Learning Disability (“SLD”). In Reading, the Present Levels of Academic Achievement and Functional Performance (“PLOPs”) recounted Student’s WJ-VI scores. The baselines were that Student (1) is able to identify concrete information from text but has difficulty inferring an idea from a given set of hints, and (2) is an avid reader, but has difficulty determining how a situation is affected by the events and characters’ decisions. The goals were (1) given four paragraphs of non-fiction, Student will be able to answer 4 of 6 inferential questions related to the text, and (2) given eight fictional paragraphs, Student will be able to determine the mood of the described situation.¹⁰ The Written Language PLOPs also cited Student’s WJ-IV scores. The baselines were (1) Student is inconsistent with spelling patterns, spelling the same word differently, and (2) Student is able to write a short paragraph response with some structure and with more than 2 misspelling out of 10 words. The goals were (1) Student will generalize learned spelling patterns with not more than one prompt with 80% accuracy, and (2) given a prompt, Student will be able to write a three-paragraph response with no more than one misspelling out of 10 words.¹¹

In Social, Emotional, and Behavioral Development (“Behavior”), the PLOPs indicated that Student struggles with issues of anxiety. “If feeling challenged academically, [s/he] often asks to leave the classroom to get water or to use the restroom, rather than attempt the task at hand.¹² The baselines were (1) Student has difficulty managing anxiety throughout the school day, which interferes with [his/her] ability to focus on task and remain in the classroom, (2) Student struggles to interact appropriately with peers at times; s/he has difficulty initiating conversation and veers off topic, and (3) Student admits to struggling with dyslexia and a past concussion, which affects [his/her] self-esteem. The goals were (1) Student will identify signs of anxiety in self and practice coping strategies, (2) Student will identify and practice behaviors needed to improve peer relationships, such as staying on topic and promptly responding to questions, and (3) Student will identify positive aspects of self to increase self-esteem.¹³

The IEP team prescribed one hour per week of specialized instruction outside general education, 30 minutes per week for Behavioral Support Services (“BSS”), and 30 minutes

⁷ *Id.* at 11 (37).

⁸ *Id.* at 11-13 (37-39).

⁹ P4.

¹⁰ *Id.* at 3-4 (44-45).

¹¹ *Id.* at 4-5 (45-46).

¹² *Id.* at 5 (46).

¹³ *Id.* at 5-6 (46-47).

per week of occupational therapy (“OT”).¹⁴

4. Student attended School A for the 2016-17 and 2017-18 school years.¹⁵

5. On May 4, 2018, Petitioners filed a Due Process Complaint against School C alleging the failure to provide an appropriate IEP in February 2016 for the 2016-17 and 2017-18 school years. Petitioners requested reimbursement for tuition at School A for the 2016-17 and 2017-18 school years. The Hearing Officer Determination (“HOD”) was issued on July 27, 2018 in which the Hearing Officer found that the February 2016 IEP and program were inappropriate and granted reimbursement of one-half of the School A tuition for the 2016-17 school year.¹⁶

6. On September 7, 2018, DCPS conducted an Analysis of Educational Data (“AED”) Review meeting.¹⁷ DCPS agreed to conduct OT, Cognitive Psychological, Social Emotional Observation/Behavior Scale Measure, Motivational Rating Scales, and Parent Questionnaire.¹⁸ DCPS issued a Prior Written Notice (“PWN”) indicating that Student “continues to qualify for special education and related services, based on [his/her] previous eligibility that expired July 2018.”¹⁹

7. On October 15, 2018, Witness D completed a Comprehensive Psychological Re-evaluation.²⁰ On the WISC-V, Student scored in the Average range in Working Memory and Processing Speed, High Average in Verbal Comprehension and FSIQ (111), and Very High Average in Visual Spatial and Fluid Reasoning.²¹ On the WJ-IV, Student scored lowest in Math with scores in the Low range for Calculation and Math Facts Fluency, Low Average in Broad Math, and Average in Applied Problems. In all other categories, s/he was Low Average in Spelling and Average in everything else: Broad Reading, Letter-Word Identification, Reading Fluency, Passage Comprehension, Word Attack, Sentence Reading Fluency, Oral Reading, Broad Written Language, Writing Samples, and Sentence Writing Fluency.²² On the BASC-3, both Petitioner and Teacher A’s responses indicated behaviors “consistent with anxiety, depression, withdrawal, and attention concerns across setting[s]. Though [Student’s] teachers appear to observe more severe internalizing behaviors, this may be consistent with challenges that are unique to school environments.”²³ Student’s previous year’s grades were A- in Science and Performing Arts, B+ in English, B in Citizenship, B- in Pre-Algebra, and P in Reading.²⁴

Witness D concluded that with respect to eligibility for SLD, Student’s performance on math calculation and math fluency were over two standard deviations below [his/her]

¹⁴ *Id.* at 7 (48).

¹⁵ P5.

¹⁶ P7: 15-16, 22-23 (79-80, 86-87).

¹⁷ P8.

¹⁸ *Id.* at 3 (92).

¹⁹ P9:1 (101).

²⁰ P10.

²¹ *Id.* at 7 (113).

²² *Id.* at 11 (117).

²³ *Id.* at 16 (122).

²⁴ *Id.* at 16-17 (122-23).

cognitive ability, which met eligibility criteria. Witness D also concluded that eligibility criteria were met for classification as Other Health Impaired.²⁵

...[T]he significant discrepancy between [her/his] cognitive abilities and academic skills suggests the presence of a learning disability. [Student] is an engaging and creative young [boy/girl]. [S/he] has a history of learning challenges as well as anxiety concerns. On previous evaluations, teachers and parents have reported elevated scores on internalizing behavior indices. Areas of concern have been depression, somatization, anxiety, withdrawal, and atypicality. Based on teacher and parent report, [Student] has made progress but continues to have challenges in these areas. Additionally, challenges with focus and engagement were replete throughout the assessment sessions. During the assessment [s/he] had concerns ignoring outside noises as well as environmental noises (i.e., air conditioner).

Given [his/her] academic history and challenges with math and spelling, it is recommended that [Student] be eligible for special education services as a student with a Multiple Disability (MD). Therefore, [s/he] should be considered for MD including Specific Learning Disability and Other Health Impairment. However, the MDT team makes the final determination for a student's eligibility for special education and related services.²⁶

8. On October 16, 2018, Witness F completed an Occupational Therapy Assessment Report.²⁷ Witness F made the following significant findings and recommendations:

[Student] scored in the average range in the areas of fine motor precision, fine motor integration, overall fine manual control, [and] manual dexterity according to the Bruininks Oseretsky Test of Motor Proficiency (2nd Edition). On the Beery... (BOT2) and the Motor Free Visual Perception Test-4th Edition (MVPT4), [Student's] performance also fell in the average range. [S/he] had some difficulty with the upper limb coordination (BOT-2) subtest falling in the below average range... In terms of [his/her] availability for learning within the learning environments..., [Student] requires much more support than other typically developing children in the normative sample to sustain [his/her] ability to engage in the learning process. It should be noted however that other challenges outside of pure sensory processing may impact [his/her] need for support and that sensory accommodations may support [him/her] through other challenges (i.e., anxiety) in order to access learning.²⁸

9. On November 28, 2018, DCPS issued a PWN determining that Student remained eligible for special education and related services with a classification of MD for

²⁵ *Id.* at 19 (125).

²⁶ *Id.* at 20 (126)

²⁷ P11 (128).

²⁸ *Id.* at 11-12 (138-39).

10. On December 5, 2018, DCPS convened an IEP Annual Review meeting; Student was in grade I at School A.³⁰ The Mathematics PLOPs recounted the findings in Witness D’s Comprehensive Psychological Re-evaluation. According to the School A Junior End of the Year Report for the 2017-18 school year, Student’s instructional level was two grades below his/her current grade. However, Student received an A in Algebra 1 for the first quarter of the 2018-19 school year. The baselines were (1) Student’s Broad Math skills were in the Low Average range, his/her performance on basic mathematical operations such as adding and subtracting fell in the Low range, s/he had difficulty completing simple math calculation problems, s/he would not attempt to complete longer multiplication and division problems or decimals, and his/her ability to perform math problems within a time limit fell within the Low range. The goals were (1) by November 2019, Student will demonstrate his/her knowledge of multiplication and division facts up to a quotient of 100 either verbally or in writing, (2) s/he will be able to compute long division with and without remainders with 80% accuracy, and (3) given a one-step equation with whole numbers, s/he will solve for the variable using visual or arithmetic strategies.³¹

The Reading PLOPs recounted the findings in Witness D’s Comprehensive Psychological Re-evaluation. S/he had earned a P in Reading and a B in English for the first quarter of the 2018-19 school year. S/he was reported to be a good, participatory student whose only fault was the failure to submit work on time. Student was making progress on goals and objectives and was proficient in using inflection, speed and accuracy when reading aloud, and comprehension. The baseline was that Teacher B reported that Student was progressing with organizing and synthesizing textual evidence. The goal was: after reading an informational text, and given a prompt with a claim, Student will identify one piece of textual evidence and explain how it supports the claim.³² The Written Expression PLOPs recounted the findings in Witness D’s Comprehensive Psychological Re-evaluation. The baseline was that s/he was progressing with organizing and synthesizing textual evidence. The goal was: using an editor’s checklist, Student will edit his/her writing, prior to submission, to ensure that it contains appropriate spelling, capitalization, punctuation, and logical flow.³³

In Behavior, the PLOPs indicated that the parents were concerned with Student’s attention span and his/her avoidance of communicating with peers. When s/he perceives a task as challenging, s/he will demonstrate avoidance. Teacher B reported that while s/he is a loner, s/he will engage in conversations with others and vice versa, and s/he was improving on turning in homework assignments, but remains inconsistent. Teacher B also reported that Student does not always follow the social norms of the classroom and can become impatient. The baselines were: (1) Student has difficulty remaining on task and not completing assignments when s/he becomes anxious, (2) Student becomes anxious when [s/he] is often with peers, preferring to converse with adults than classmates, (3) s/he becomes anxious when

²⁹ P14 (158).

³⁰ P16 (165).

³¹ *Id.* at 4-6 (168-70).

³² *Id.* at 7-8 (171-72).

³³ *Id.* at 8-9 (172-73).

[s/he] perceives a task to be difficult and does not engage as often as his/her peers, (4) s/he does not consistently request assistance when frustrated or needs support, (5) Student can become overwhelmed and withdraw when faced with an unfamiliar task or challenge, (6) s/he has difficulty remaining engaged, especially when faced with a new challenge or task, (7) Student will shut down when s/he experiences strong feelings or become overwhelmed, and avoids discussing his/her feelings when feeling overwhelmed. The goals were: (1) s/he will utilize coping strategies to reduce anxiety when s/he perceives situations to be stressful, (2) s/he will identify three positive aspects of herself and three areas of improvement to increase self-esteem, (3) during a group activity, Student will maintain focus for 35 minutes with no more than two prompts, (4) during a group activity, Student will remain on the topic of discussion and make relevant contributions, (5) when engaged in a classroom-related task, Student will request assistance for clarification at appropriate times, (6) when given a multi-step academic task, Student will successfully plan and verbally express the steps to be followed, in correct sequence (7) given a challenging academic task, Student will demonstrate the ability to take risks by attempting the task, (8) Student will verbally express general awareness of the connection between thoughts, feeling and behavior, and (9) Student will verbally express his/her emotions in an age-appropriate manner.³⁴

The IEP prescribed five hours per week of specialized instruction outside general education, 10 hours per week of specialized instruction in general education, two hours per month of BSS, and two hours per year of OT consultation services.³⁵

11. On February 12, 2019, School A developed an IEP for Student. The IEP prescribed 32 hours per week of specialized instruction, 3 hours per month of individual psychological services from a clinical psychologist, and 3 hours per month of group psychological services.³⁶ The Reading goal was to use analytical reading skills when reading a literary selection. The objectives were: (1) to defend successfully an opinion and justify an answer accurately using supporting text, (2) after reading a literary selection, to identify accurately traits, behaviors, and relationships of characters, (3) to identify correctly traits, behaviors, and relationships of characters, (4) to distinguish accurately between facts and opinions, (5) to make accurate thematic or inferential connections, in writing of in class discussions, between works of literature, and (6) to compare and contrast accurately authors' purposes for writing on a particular topic with the author's writings on other topics.³⁷

In Written Language, the first goal was to write sentences accurately that demonstrate the effective use of capitalization and punctuation. The second goal was to develop an essay by correctly following the steps of the Writing Process.³⁸ There were five Math goals: (1) to demonstrate progress in using algebra skills by (a) accurately translating mathematical phrases or sentences into algebraic symbols and open sentences, (b) solving problems with variables, (c) given pairs of polynomials to multiply, to apply the distributive property and rules of exponents to compute answers, and (d) given pairs of polynomial to add or subtract, to compute and write their sum or difference in the simplest form; (2) to demonstrate

³⁴ *Id.* at 9-12 (173-76).

³⁵ *Id.* at 13 (177).

³⁶ P17:1 (183).

³⁷ *Id.* at 6-7 (188-89).

³⁸ *Id.* at 8-9 (190-91).

improved use of pre-algebra and algebra vocabulary, (3) to apply reasoning to math problem solving situations, (4) to multiply whole numbers with products up to 100, and (5) to divide whole numbers with a quotient up to 100.³⁹

In Academic Behavior/Executive Functioning, the goals were: (1) given a multi-step academic task, to plan and verbally express the steps to be followed in correct sequence, (2) to ask for clarification or help at appropriate times, and (3) to remain focused in class discussions.⁴⁰ In Social Behavior, the goals were: (1) given challenging academic task, to demonstrate the ability to take risks by attempting the task, (2) to share verbally his/her frustration with his/her teacher, and (3) to establish and maintain relationships with peers and adults.⁴¹ In Psychological Services, the goals were: (1) to increase understanding of the sources of anxiety and to manage his/her responses to it, (2) to utilize effective interpersonal problem-solving strategies, and (3) to express verbally to the therapist the knowledge of the impact that personal attributions have on feelings and behavior.⁴²

12. On April 22, 2019, Petitioners filed a due process complaint alleging that (1) DCPS failed to provide an appropriate IEP and placement for the 2018-19 school year due to the lack of full-time specialized instruction and support outside general education and placement in programs that were inappropriate due to the need for dual-language ability or special education inclusion with isolation resulting from no pull-out of other students, as well as size of building and classes, noise, pacing of instruction, instructional presentation method, and level of staffing, and (2) School A was an appropriate placement for Student.⁴³ The Hearing Officer found that

Respondent did not meet its burden of persuading the undersigned that 5 hours/week of specialized instruction outside general education and 10 hours/week inside general education were reasonably calculated to enable Student to make appropriate progress in Student's circumstances... The undersigned concludes that on balance Respondent has failed to carry its burden of persuasion on the placement issue. There was a material failure in the ability of Proposed Public School⁴⁴ to provide the services required by Student's IEP, and the placement proposed would not afford Student the opportunity to make appropriate progress in Student's particular circumstances... Petitioners demonstrated that Nonpublic School,⁴⁵ where Student is doing well and has been educated for 3 years, is proper and appropriate for Student... Student's 2018/19 Progress Report and report card at Nonpublic School indicate that Student is doing well – due to cueing, prompting and support – with Student's NWEA MAP reading scores rising from the 53rd to the 86th percentile and math from the 48th to 62nd percentile while at Nonpublic School. Psychology Director persuasively testified that Student has “absolutely” made progress at Nonpublic school, but needs

³⁹ *Id.* at 10-11 (192-93).

⁴⁰ *Id.* at 12-13 (194-95).

⁴¹ *Id.* at 14 (196).

⁴² *Id.* at 16-17 (198-99).

⁴³ P18:3 (203).

⁴⁴ Proposed Public School is identified in the Appendix as School D.

⁴⁵ School A.

support, so is appropriately placed there. In short, Nonpublic School is providing meaningful educational benefit and Student is making progress appropriate in Student's circumstances. For these reasons, this Hearing Officer concludes that Nonpublic School is proper and appropriate for Student.⁴⁶

... Least Restrictive Environment: As discussed in Issue 1, above, based on Student's educational needs, and behavioral needs including anxiety, a general education setting such as Proposed Public School is not appropriate and is not Student's LRE for it is not sufficiently restrictive. Placement at Nonpublic School, where Student only has interaction with peers who are like Student, even though there is no interaction with nondisabled peers, is the least restrictive environment for Student at this time... The least restrictive environment factor in *Branham* is of less importance than the IDEA's "primary goal of providing disabled students with an appropriate education."⁴⁷

On August 5, 2019, the Hearing Officer ordered DCPS to reimburse Petitioners for tuition and related services at School A for the entire 2018-19 school year, for the first half of the 2019-20 school year, and "until a FAPE is offered by DCPS."⁴⁸

13. On Student's MAP Student Report for the fall of 2019, s/he scored 236 in Math, in the 69th percentile. Student's scores were above the district's grade level mean and the normal grade level mean since the fall of 2018. Student scored 242 in Reading, 89th percentile, and above district and normal grade level mean in the fall of 2017.⁴⁹

14. DCPS convened an IEP Annual Review meeting on November 25, 2019; student was in grade J.⁵⁰ The Math PLOPs noted his/her previous year grade of A in Algebra, but s/he was currently earning a C+ in Geometry, his/her fall NWEA scores were in the High Average range in Geometry and Statistics and Probability, and Average in Operations and Algebraic Thinking and Real and Complex Number Systems. Her/his May School A Progress Report indicated that s/he had mastered all 5 goals. The baselines were: (1) Student is struggling with the concepts, processes, and organization of problems in Geometry, (2) s/he has shown improvement in using pre-algebra and algebra vocabulary, but sometimes needs prompting, (3) s/he had mastered a goal of solving problems with variables, and (4) s/he had mastered a goal of divide whole number with a quotient up to 100. The goals were: (1) given math problems involving geometry concepts, Student will use math aids and previously taught strategies to solve problems correctly, (2) Student will demonstrate improved use of pre-algebra and algebra vocabulary, (3) given open sentences of related verbal math problems which contain variables in both members, Student will accurately solve problems, and (4) Student will accurately divide whole number with a quotient up to 100 80% of the time.⁵¹

⁴⁶ P18:16-18 (216-18)

⁴⁷ *Id.* at 20 (220), citations omitted.

⁴⁸ *Id.* at 21 (221).

⁴⁹ P19 (224).

⁵⁰ P22.

⁵¹ *Id.* at 4-6 (253-55).

In the Reading PLOPs, Student earned a B in English and a P in Reading for the 2018-19 school year and was currently earning a C+ in English. Her/his HWEA for the fall of 2019 were in the High range. The baselines were: (1) Student is inconsistent when making thematic connections between texts but is able to pinpoint the connections when presented in a discussion, (2) s/he scored in the High range for Vocabulary on the Spring 2019 NWEA Assessment, and (3) figurative language was noted as a concern in a parent/teacher conference. The goals were: (1) when reading a literary selection, Student will successfully use analytical skills to reach the objects listed, (2) given a grade level reading text, Student will determine the meaning of at least 3 unknown words or phrases from the text by using vocabulary skills, and (3) given an independent informational text, with 5 highlighted figurative words and phrases, Student will explain the meaning of each highlighted word or phrase as it is relevant to the text.⁵² In Written Expression PLOPs, Student earned a B in English for the 2018-19 school year, a P in Reading, and was currently earning a C+ in English. S/he was mastering most goals, but needed to maintain relevance to topic, sequencing, mechanics, and spelling. The baselines were: (1) Student has made good progress with writing correctly punctuated sentences and is performing approximately two and one-half grades below grade level, and (2) s/he is a more confident writer and is now able to use the steps of the writing process with minimal teacher cues. The goals were: (1) Student will accurately write sentences that demonstrate the effective use of capitalization, punctuation, and spelling, and (2) given a writing assignment, Student will develop an essay by correctly completing the steps of the Writing Process.

In the Behavior PLOPs, Student “continues to have difficulty engaging in large groups and requires consistency routine and struggles to perform with less anxiety.” School A reported that s/he prefers to spend time alone or with other adults. S/he needs support developing interpersonal relationships, and will withdraw from challenging academic tasks. Student has difficulty with attention and anxiety; his/her self-esteem is vulnerable but improving. The baselines were: (1) s/he has a tendency to withdraw from attempting challenging tasks due to anxiety, (2) s/he does not always express his/her frustration with staff when s/he cannot complete a task, (3) s/he withdraws from peers instead of trying to get to know them, (4) s/he relies on adult support to assist him/her in identifying sources of his/her anxiety, and (5) s/he would benefit from discussing possible responses instead of withdrawing or avoiding an activity. The goals were: (1) when given a challenging academic task, with facing prompts, Student will take the risk of attempting 80% of the time, (2) s/he will verbally describe his/her feelings of frustration or anxiety of a school task or social interaction with a teacher, (3) during unstructured social or class time, Student will initiate conversation daily with unfamiliar peers, (4) in counseling sessions, Student will accurately identify situations that can be anxiety or frustration producing and identify coping strategies, and (5) s/he will discuss and determine the size of a problem and determine the best tool to solve the problem.⁵³

In Motor Skills/Physical Development, s/he was noted to have a long-standing history of auditory sensitiveness that may impact his/her ability to attend to tasks, but with accommodations, s/he is able to access the curriculum. Student was reported to struggle with organizing materials, initiation of tasks, and planning out assignments. The baselines were:

⁵² *Id.* at 7-9 (256-58).

⁵³ *Id.* at 11-13 (260-62).

(1) Student turned in only 54% of assignments on time and complete, does not consistently take notes independently, will take notes 50% of the time with prompting, but the notes are not usable, (2) s/he struggles to identify the steps of a multi-step academic task, and (3) s/he consistently requires prompts from the teacher (2-3 per period) to maintain attention throughout the period. The goals were: (1) s/he will plan, organize, initiate, and utilize appropriate resources to complete short and long-term academic tasks with adherence to deadlines, (2) s/he will plan, organize, initiate and execute manageable steps for a multi-step activity, and (3) s/he will identify and implement adaptive and compensatory strategies to sustain an optimal level of alertness and focus for the duration of an academic or functional task.⁵⁴

The IEP team prescribed 20 hours per week of specialized instruction outside general education, three hours per month of BSS, two hours per month of OT services, and 30 minutes per month of OT consultation services.⁵⁵

15. Petitioners' only significant disagreement with the IEP was as to the twenty hours of specialized education outside of general education. Attorney C, Petitioners' co-counsel, noted that the August 5, 2019 HOD found School A to be an appropriate placement, which provides full-time specialized instruction, about 35 hours per week. Two of Student's six teachers at School A are certified in special education.⁵⁶ DCPS proposed placing Student at School B.⁵⁷

16. Witness A and Petitioner/mother visited School B on December 18, 2019 to gauge its feasibility for Student's placement.⁵⁸ They determined that School B was inappropriate for Student⁵⁹ because (1) Student would receive only 20 hours per week outside of general education instead of throughout the entire day,⁶⁰ (2) there would be students from Behavioral Education Services ("BES") and Specialized Learning Services ("SLS") programs in the classroom with Student, which would present increased noise and students with externalizing behaviors with which Student has difficulty managing her/his emotions,⁶¹ (3) Student's electives would not be outside general education,⁶² (4) Student requires access to an electronic device throughout the school day,⁶³ (5) the building is too large for Student to navigate, (6) the noise level in the large gathering areas (lunchroom, recess area, building entrances) is high and inappropriate for Student,⁶⁴ (7) School B cannot offer integrated OT and speech and language services,⁶⁵ (8) Student requires the services of a psychologist, not a social worker, (9) it cannot be determined whether appropriate group therapy can be provided at School B, and (10) School B offers no support during lunch and recess.⁶⁶

⁵⁴ *Id.* at 13-15 (262-64).

⁵⁵ *Id.* at 17 (266). The IEP also included a transition goal. *Id.* at 25 (274).

⁵⁶ P23:6 (282).

⁵⁷ *Id.* at 7 (283).

⁵⁸ P29:304.

⁵⁹ *Id.* at 1-2 (305-6).

⁶⁰ *See* P30:2-3 (312-13).

⁶¹ *See* P30:1 (311) and at 6-7 (316-17).

⁶² *See* P30:2-3 (312-13).

⁶³ *See* P30, ¶ 12 at 4 (314).

⁶⁴ *Id.* at 1-2 (311-12).

⁶⁵ *See* P30, ¶¶ 17 and 18 at 5 (315).

⁶⁶ P29:1-2 (305-6).

17. In January 2020, Psychologist A, who provides psychological services to Student at School A,⁶⁷ completed a Psychotherapy Progress Report.⁶⁸ The findings include the following:

[Student] was slow to adjust to the transition to high school. The increased academic expectations, larger work load and faster pace have been challenging for [Student]. [S/he] has needed time to become comfortable with the new schedule and program. [S/he] has shown more stress in response to these increased academic demands and deadlines. [Student] has become overwhelmed at times, had more somatic complaints and shown more withdrawal... [Student] has benefitted from the small class sizes and adult support to help [him/her] problem solve and manage [his/her] stress so that [s/he] can engage with academics and complete school work.

Socially, it has taken [Student] time to feel safe with [his/her] classmates and to make connections with [his/her] peers. For a long time, [s/he] was reluctant to reach out to others due to [his/her] poor self-concept. [School A] has provided consistency, strategies and support that have allowed [Student] to feel safe enough to engage with peers.... [Student] is more comfortable and successful in extracurricular groups that are structured and have adult support. [S/he] finds it challenging to navigate large and less structured social groups. [Student] continues to work on strategies to help her/him feel more at ease in an interactive in these settings.

[Student] has made progress managing [his/her] mood and anxiety over [his/her] years at [School A], but [s/he] continues to struggle with anxiety and negative mood at times. When [Student] becomes overwhelmed or faces challenges that [s/he] perceives as too much, [s/he] will want to withdraw and escape... [S/he] will leave the classroom and go to the nurse's office and [s/he] will want to go home. [Student] needs immediate one-to-one support when this occurs to help [him/her] manage [her/his] feelings, problem solve and help [him/her] see [s/he] can handle the situation and remain at school.

[Student] continues to be an active and engaged participant in psychotherapy. Initially, [Student] was slow to adjust to therapy and feel safe enough to be vulnerable and talk about [his/her] strong emotions and [his/her] challenges. [S/he] has made significant progress over time in [his/her] willingness to talk about a range of feelings and topics. When [Student] first started therapy [s/he] would rarely stay on topic when difficult topics or feelings were discussed. As [s/he] has become more comfortable and secure in therapy, [s/he] can stay on topic and [s/he] is willing to talk through difficult issues...

[Student] was initially reluctant to be part of a small psychotherapy group. [S/he] was slow to warm up to the other participant and it took [him/her] time to feel safe. [Student] has made progress in the group. [S/he] is very

⁶⁷ P33:1 (321).

⁶⁸ P32:1 (319).

comfortable with the other student...

It is recommended that [Student] continue to be placed at [School A] and receive individual and group psychotherapy focusing on expanding coping skills, problem solving and anxiety management.⁶⁹

18. Student's earned the following grades for the 2019-20 school year: B- in English, B- in Ancient World History, C+ in Geometry, C in Physical Science, A- in Latin, A- in Drawing, and A- in Theater.⁷⁰

19. On June 29, 2020, DCPS offered to provide services to Student at School B.⁷¹

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:

In special education due process hearings occurring pursuant to IDEA (20 U.S.C. § 1415(f) and 20 U.S.C. § 1439(a)(1)), the party who filed for the due process hearing shall bear the burden of production and the burden of persuasion; except, that: 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.⁷²

Here, DCPS bears the burden of persuasion on the issues of the appropriateness of the IEP and placement.⁷³

Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and placement for the second semester of the 2019-20 school year.

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*

⁶⁹ *Id.* at 1-2 (319-20).

⁷⁰ P37:1-2 (349-50).

⁷¹ P38:1 (351).

⁷² D.C. Code Sect. 38-2571.03(6)(A)(i).

⁷³ *Schaffer v. Weast*, 546 U.S. 49 (2005).

Hudson Central School District v. Rowley.⁷⁴ 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.’”⁷⁵ 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...”⁷⁶ 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.”⁷⁷

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.⁷⁸ The Tenth Circuit had denied relief, interpreting *Rowley* “to mean that a child’s IEP is adequate as long as it is calculated to confer an ‘educational benefit [that is] merely... more than *de minimis*.”⁷⁹ 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.⁸⁰

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

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

⁷⁴ 458 U.S. 176, 187 (1982).

⁷⁵ *Id.* at 189-90, 200

⁷⁶ *Id.* at 200.

⁷⁷ *Id.* at 203-04.

⁷⁸ *Endrew F. ex rel. Joseph F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (2017).

⁷⁹ *Id.* at 997.

⁸⁰ *Id.* at 1000-01 (citations omitted).

circumstances.”⁸¹

The question in this case is simply whether Student must be educated in a small class environment completely separated from general education peers. In the previous proceeding brought against DCPS, DCPS had developed an IEP that prescribed five hours per week of specialized instruction outside general education, 10 hours per week of specialized instruction in general education, two hours per month of BSS, and two hours per year of OT consultation services. In the August 5, 2019 HOD, the Hearing Officer answered this question affirmatively, finding that “Placement at [School A], where Student only has interaction with peers who are like Student, even though there is no interaction with nondisabled peers, is the least restrictive environment for Student at this time...” The Hearing Officer reached this conclusion due to testimony from Student’s teacher, psychologist, and mother about the high level of stress that Student experiences. The Hearing Officer found that this testimony was corroborated by Witness D’s subsequent psychological evaluation, “which found anxiety, withdrawal, and somatization to all be in the clinically significant range for Student.”

Thereafter, on November 25, 2019, DCPS developed an IEP that prescribed 20 hours per week of specialized instruction outside general education, three hours per month of BSS, two hours per month of OT services, and 30 minutes per month of OT consultation services. During the IEP team meeting, the only significant objection raised by Petitioners’ representatives was the lack of full-time services outside of general education.

This position was supported in the instant hearing through testimony of Witnesses A, Witness B, Witness C, and Petitioner/mother. Witness A, Student’s educational advocate, has observed Student several times since 2017, the latest on December 18, 2019. Witness B is the Associate Head of the High School at School A, and Witness C is the Director of Psychology at School A. Witness B testified that he has frequently discussed Student’s progress with Student’s teachers. Witness C observed Student on two occasions to prepare for giving testimony, but took no notes, and he has never provided services to Student. Witness A’s and Petitioner/mother’s testimony were consistent: Petitioner must be separated from nondisabled peers throughout the school day due to deficits in executive functioning, inattentiveness, anxiety, difficulty with transitions, and safety; s/he may leave the classroom if s/he is frustrated or overwhelmed. Petitioner/mother testified that it was important to maintain Student’s enrollment because Student had developed a level of trust with the staff at School A that enabled him/her to make academic progress and overcome his/her anxiety. Petitioner’s mother was concerned about DCPS’ proposal to offer services at School B because, *inter alia*, having to go through metal detectors daily would be stressful, noise in larger classrooms and hallways would be stressful, being in the same class as some emotionally disturbed children would be stressful, having to transition to classes or related services on different floors would be stressful, not having a cellphone during the school day would be problematic, and Student would not have adequate support at lunch, during breaks, during transitions, and during elective classes such as Art, Music, Physical Education, and foreign languages.

In his *Parents’ Closing Memorandum*, Petitioner’s counsel argued that under local law, a “presumption of continuity applies with faced with multiple IEPs for the same student

⁸¹ 137 S.Ct. at 1000-01.

with a ruling on a prior year's IEP," citing *Andersen v. District of Columbia*.⁸² However, such a presumption applies only when a school district fails "to review a child's IEP and revise his placement during administrative and judicial review of a contested placement. Without these annual reviews, 'the court is faced with a mere hypothesis of what the [school district] would have proposed and effectuated during the subsequent years, an hypothesis which at the time of trial would have the unfair benefit of hindsight.'"⁸³ As DCPS proposed annual IEPs and placements in 2018 and 2019, *Andersen* provides no support for the presumption posited by Petitioners.

In the prior proceeding, DCPS' proposed IEP prescribed five hours of specialized instruction. The Hearing Officer concluded that this was insufficient to meet Student's academic and emotional needs.

... Student would very likely not succeed in a general education classroom without special education supports, if Student had 10-15 hours unsupported each week, with only 5 hour/week outside general education and 10 inside general education... Respondent did not meet its burden of persuading the undersigned that 5 hours/week of specialized instruction outside general education and 10 hours/week inside general education were reasonably calculated to enable Student to make appropriate progress in Student's circumstances.⁸⁴

Later, in the Remedy section of his decision, the Hearing Officer opined that "a general education setting such as [School D] is not appropriate and is not Student's LRE for it is not sufficiently restrictive. Placement at [School A], where Student only has interaction with peers who are like Student, even though there is no interaction with nondisabled peers, is the least restrictive environment for Student at this time."⁸⁵

Petitioners are not entitled to the *Andersen* presumption of continuity, because DCPS as provided IEPs and placements for the last two school years. Moreover, the prior Hearing Officer's statement that a full-time specialized instruction program is Student's LRE is not binding as that issue was not before the Hearing Officer. The issue was whether five hours of specialized instruction outside of general education was sufficient to meet Student's needs. Once he determined that it was not, the only alternative placement was School A.

Academically, Student is roughly average as compared to his/her same-aged peers. On the WJ-IV, Student scored lowest in Math with scores in the Low range for Calculation and Math Facts Fluency, Low Average in Broad Math and Spelling, and Average in all 11 other categories. Student's grades for the 2017-18 school year were above average (all A's and B's),⁸⁶ and were above average for the 2019-20 school year (3 A's, 2 B's, 2C's).⁸⁷ Her/his

⁸² 877 F.2d 1018 (D.C. Cir. 1989).

⁸³ *Id.* at 1022.

⁸⁴ P18:15-16 (215-16).

⁸⁵ *Id.* at 20 (220), citations omitted.

⁸⁶ P10:3 (109).

⁸⁷ P37:1-2 (349-50).

cognitive scores were higher than achievement scores,⁸⁸ which supports the classification of SLD.

Clearly, Student's academic deficits would not support a full-time IEP; despite his/her SLD, Student is capable of average range achievement scores and above average grades. Thus, Student's social/emotional, anxiety, inattentiveness, and other psychological disabilities must be so significant as to warrant a full-time specialized instruction program. In my view, the record does not support this level of restriction. Nothing in Witness D's Psychological Evaluation suggests that Student's stress, anxiety, and inattentiveness are so severe that s/he cannot progress without a full-time program. Psychologist A's Psychotherapy Report recommends continued placement at School A, but Psychologist A is Student's service provider at School A and understandably wants to help Student continue to make progress. Student's representatives complain of the size and noise at School B, but just as Student overcame difficulties transitioning to high school at School A, the evaluations in the record do not report psychological problems that would prevent Student from adjusting to a new and more robust environment at School B.

DCPS' proposed program provides four times more specialized instruction outside of general education than it did in its 2018 IEP, and three hours per month of BSS. Nothing in Witness D's evaluation or Psychologist A's Psychotherapy Report indicates any harm that Student would suffer by interacting with nondisabled peers. S/he suffers from anxiety, stress, inattentiveness. S/he struggles with developing relationships with peers and is uncomfortable in crowds, but interacts eagerly and well with adults. When overwhelmed with difficult assignments, s/he may withdraw, avoid academic tasks, and on occasion, may leave the classroom. However, s/he is not reported to pose disciplinary problems; s/he does not disturb other children, is not aggressive, and participates in group and individual activities. S/he does not routinely act out.

Most important, with support, s/he makes steady academic progress. DCPS has proposed a significant amount of small-class and individual support: 20 hours per week of specialized instruction, 45 minutes per week of BSS, and 30 minutes per week of OT services. Petitioners' proposed program violates the central tenet of IDEA: "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."⁸⁹

Student's anxiety is not of a severity that s/he cannot continue to make progress with the supports proposed by DCPS. It is indisputable that School A offers a more intensive program than DCPS, and is, therefore, quantitatively "better" for Student; there is more specialized instruction and three more hours per month of psychological services. Moreover,

⁸⁸ P10:7 (113).

⁸⁹ 20 U.S.C §1412(a)(5)(A). *See also*, 34 C.F.R. §300.114(a)(2); *Endrew*, 137 S.Ct. at 999 (the IDEA requires that children with disabilities receive education in the regular classroom "whenever possible."); *Z.B.*, 888 F.3d at 528, 435 U.S.App.D.C. at 207.

the staff is familiar with Student. However, as previously noted, IDEA does not require school districts to maximize educational benefits to disabled students.⁹⁰ I conclude that DCPS has met its burden of proving that it offered Student an appropriate program and placement in its November 25, 2019 IEP.

Whether DPCS denied Student a FAPE by failing to authorize Student's father to observe the proposed program at Roosevelt.

Petitioner withdrew this claim during the hearing.

Whether School A is an appropriate placement.

My ruling on the first issue obviates the need for a decision on this issue. However, Student's steady progress over the past four years at School A indicates that it is an appropriate placement for Student.

RELIEF

For relief, Petitioner requested: (1) an order maintaining the student's placement at School A through the 2020-21 school year, (2) reimbursement for occupational therapy services at School A during the 2019-20 school year.

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 post-hearing submissions by the parties' counsel, it is hereby

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

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
Hearing Officer

Date: September 8, 2020

⁹⁰ *Rowley*, 458 U.S. at 189-90, 200.

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