

Office of Dispute Resolution  
1050 First Street, N.E., Third Floor  
Washington, D.C. 20002

<i>Student,</i> <sup>1</sup>	)	Case No.: 2020-0120
through <i>Parent,</i>	)	
<i>Petitioner,</i>	)	Date Issued: 9/14/20
	)	
v.	)	Hearing Officer: Keith L. Seat, Esq.
	)	
District of Columbia Public Schools	)	Hearing Dates (using Microsoft Teams):
(“DCPS”),	)	8/19/20, 8/26/20 & 9/4/20
Respondent.	)	
	)	

## HEARING OFFICER DETERMINATION

## Background

Petitioner, Student's Parent, pursued a due process complaint alleging that Student had been denied a free appropriate public education ("FAPE") in violation of the Individuals with Disabilities Education Improvement Act ("IDEA") due to inappropriate Individualized Education Programs ("IEPs") and placement, as well as lack of implementation. DCPS responded that the IEPs/placement were appropriate and implemented, so there was no denial of FAPE.

## Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to the IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations (“D.C.M.R.”).

## Procedural History

Following the filing of the due process complaint on 6/18/20, the case was assigned to the undersigned on 6/19/20. Respondent filed a response on 6/29/20, and did not challenge jurisdiction. A resolution session meeting (“RSM”) was held on 7/1/20, which did not resolve the dispute or shorten the 30-day resolution period, which ended on 7/18/20.

<sup>1</sup> Personally identifiable information is provided in Appendix A, including terms initially set forth in italics.

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A final decision in this matter must be reached no later than 45 days following the end of the resolution period, as extended by a 13-day continuance, which requires a Hearing Officer Determination (“HOD”) by 9/14/20.

The prehearing conference was held on 7/15/20 and the Prehearing Order was issued that same day addressing the use of a videoconference platform to conduct the due process hearing. The due process hearing took place on 8/19/20, 8/26/20 and 9/4/20 and was open to the public. Petitioner was represented by *Petitioner’s counsel*. DCPS was represented by *Respondent’s counsel*. Petitioner was present by video or telephone for most of the hearing.

Petitioner’s Disclosures, submitted on 8/4/20, contained documents P1 through P74, which were admitted into evidence over objection to certain documents. Respondent’s Disclosures, submitted on 8/5/20, contained documents R1 through R24, all of which were admitted into evidence without objection, except for R1, R3, R4 and R7, which were not offered by Respondent.<sup>2</sup>

Petitioner’s counsel presented 4 witnesses in Petitioner’s case-in-chief (*see* Appendix A):

1. *Educational Advocate A* (qualified over objection as an expert in Psychology and Neuropsychology as Related to Evaluations and IEP Development)
2. *Tutor* (qualified without objection as an expert in Tutoring)
3. *Educational Advocate B* (qualified without objection as an expert in Special Education as It Relates to IEP Development and Programming)
4. Parent

Respondent’s counsel presented 5 witness in Respondent’s case (*see* Appendix A):

1. *Social Worker at Public School* during 2019/20 (qualified without objection as an expert in Social Work)
2. *General Education Teacher* at Public School
3. *Special Education Teacher* at Public School (qualified over objection as an expert in Special Education and IEP Programming)
4. *School Psychologist* at Public School during 2019/20 (qualified without objection as an expert in School Psychology)

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<sup>2</sup> Citations herein to the parties’ documents are identical except that Petitioner’s documents begin with a “P,” while Respondent’s documents begin with an “R,” followed by the exhibit number and then a “p” (for page) and the Bates page number or numbers (which are numbered consecutively through to the end of the exhibits), with any leading zeros omitted.

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5. *Special Education Coordinator* at Public School (qualified over objection as an expert in Educational Planning and DCPS Procedures Concerning Special Education)

Petitioner's counsel did not present any rebuttal witnesses.

The issues to be determined in this Hearing Officer Determination are:

**Issue 1:** Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and/or placement (A) on 4/29/20 due to lack of (1) sufficient specialized instruction for deficits and limited progress, (2) behavior support services ("BSS") as needed and agreed upon, (3) sufficient academic goals, (4) assistive technology despite team agreement, and/or (5) a behavior intervention plan ("BIP") despite team agreement, and/or (B) on 6/12/20 due to lack of (1) an increase in specialized instruction hours, (2) placement in a suitably restrictive setting to address academic deficits and attention issues, (3) appropriate adaptive goals, and/or (4) a sufficient amount of BSS. *(Respondent has the burden of persuasion, if Petitioner establishes a prima facie case.)*

**Issue 2:** Whether DCPS denied Student a FAPE by failing to fully implement Student's IEP in 2019/20<sup>3</sup> by (A) not introducing any academic goals in advisories 1 or 2, and/or (B) not providing an appropriate placement/location of service by removing Student from the classroom and placing Student in a lower grade for not less than 2 weeks. *(Petitioner has the burden of persuasion on this issue.)*

The relief requested by Petitioner is:

1. A finding that Student was denied a FAPE.
2. DCPS shall conduct an assistive technology assessment as soon as possible given current Covid-19 restrictions.
3. DCPS shall amend Student's IEP to provide (a) 120 minutes/month of BSS, (b) revised academic goals to incorporate skills Student has not mastered, (c) increased hours of specialized instruction outside general education, and (d) placement in an appropriate full-time Specific Learning Support ("SLS") program with parental participation, and/or in a separate day school.
4. DCPS shall provide compensatory education for any denial of FAPE, with reservation of compensatory education until completion of the additional assessment, or alternatively, DCPS shall fund a compensatory education evaluation to determine appropriate compensatory education.<sup>4</sup>
5. Any other just and reasonable relief.

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<sup>3</sup> All dates in the format "2019/20" refer to school years.

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### Findings of Fact

After considering all the evidence, as well as the arguments of counsel, the Findings of Fact<sup>5</sup> are as follows:

1. Student is a resident of the District of Columbia; Petitioner is Student's Parent.<sup>6</sup> Student is *Age*, *Gender* and has completed *Grade* at Public School.<sup>7</sup> Public School is a dual language, advanced placement school; Student had "no interest" in Spanish and found it too difficult.<sup>8</sup> Student's recent IEP described Student as likeable, animated and respectful, while a Functional Behavioral Assessment ("FBA") summarized Student as very playful, energetic and creative, wanting to perform well academically.<sup>9</sup>

2. IEPs. Student initially entered special education in 2014.<sup>10</sup> Student's 12/20/17 IEP was based on the disability classification of Other Health Impairment ("OHI") due to Attention Deficit Hyperactivity Disorder ("ADHD") or Attention Deficit Disorder ("ADD") and provided 7.5 hours/week of specialized instruction outside general education and another 7.5 hours/week of specialized instruction inside general education, along with 60 minutes/month of occupational therapy ("OT").<sup>11</sup> Student's 1/29/19 IEP again provided 7.5 hours/week of specialized instruction outside general education and 7.5 hours/week of specialized instruction inside general education, plus 60 minutes/month of OT.<sup>12</sup>

3. Student's 5/15/19 IEP for the first time was based on the disability classification of Multiple Disabilities ("MD"), with the addition of Specific Learning Disability ("SLD") to OHI; the IEP again provided 7.5 hours/week of specialized instruction outside general education and 7.5 hours/week of specialized instruction inside general education, plus 60 minutes/month of OT.<sup>13</sup>

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<sup>5</sup> Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

<sup>6</sup> Parent.

<sup>7</sup> *Id.*

<sup>8</sup> P6p68-69 (Student is enrolled in the bilingual program; as of 6/7/18 science and history classes were taught all in Spanish); Educational Advocate B; General Education Teacher; P16p191.

<sup>9</sup> P19p211; P41p407.

<sup>10</sup> P42p411.

<sup>11</sup> P5p51,58.

<sup>12</sup> P9p95,103; P10p113,122.

<sup>13</sup> *Id.*

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4. In a draft 4/24/20 IEP, DCPS proposed only 5 hours/week of specialized instruction, as well as 60 minutes/month of OT.<sup>14</sup> Student's 4/29/20 IEP, the first IEP at issue in this case, was again based on MD (SLD and OHI) and provided the usual 7.5 hours/week of specialized instruction outside general education and 7.5 hours/week of specialized instruction inside general education, along with 60 minutes/month of OT.<sup>15</sup>

5. Student's IEP was amended on 6/12/20 to change PLOPs, add socio-emotional goals, and add 60 minutes/month of BSS, which is the other IEP challenged in this case.<sup>16</sup> Another draft IEP amendment dated 7/8/20 would have increased BSS to 120 minutes/month, but was not finalized.<sup>17</sup>

6. Cognitive Abilities. The 2/14/14 comprehensive psychological evaluation found that Student's cognitive ability was in the Average range with a Full Scale IQ ("FSIQ") of 91 based on the Wechsler Intelligence Scale for Children – Fourth Edition ("WISC-IV").<sup>18</sup> A 3/15/19 psychological triennial evaluation found Student's overall cognitive functioning measures in the Very Low range with a General Intellectual Ability ("GIA") score of 57 based on the Woodcock-Johnson IV Tests of Cognitive Ability ("WJ-IV Cognitive").<sup>19</sup>

7. Academic Achievement. According to the 2/14/14 comprehensive psychological evaluation, many of Student's achievement scores were below the 1<sup>st</sup> percentile compared to peers; Student's pattern of achievement scores was consistent with SLD in reading, written expression and math.<sup>20</sup> The Kaufman Test of Educational Achievement – Third Edition ("KTEA-III") conducted as part of the 3/15/19 psychological triennial evaluation found that all 9 of the academic skills composites were in the Below Average range.<sup>21</sup>

8. Reading. General Education Teacher stated in the 4/24/20 Multi-disciplinary Team ("MDT") meeting and in testimony that Student was doing better reading in class and that Student's skill levels were higher than standardized testing reflected; General Education Teacher had done a number of class assessments that showed Student was functioning higher, especially in vocabulary.<sup>22</sup> Student's reading was consistently improving and Student's vocabulary was 2 years above overall comprehension.<sup>23</sup> Student cannot read at grade level, so is provided "read-aloud" by computer, a teacher or a peer as an IEP accommodation.<sup>24</sup>

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<sup>14</sup> P14p158.

<sup>15</sup> P15p169,179.

<sup>16</sup> P19p202,215; Educational Advocate B.

<sup>17</sup> P21p230,248; Educational Advocate B.

<sup>18</sup> P40p392,397; Educational Advocate A.

<sup>19</sup> P42p418,422.

<sup>20</sup> P40p397.

<sup>21</sup> P42p423.

<sup>22</sup> R6p71; General Education Teacher.

<sup>23</sup> P12p139; General Education Teacher.

<sup>24</sup> P10p124; Special Education Coordinator.

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9. Student's Reading Inventory ("RI") scores on reading comprehension showed: Student's 2017/18 Beginning of Year ("BOY") score was 712 (which Public School considered an anomaly), Middle of Year ("MOY") was 459, and End of Year ("EOY") was 376, which showed Student regressed to 5 years below grade level.<sup>25</sup> Student's 2018/19 BOY score was 444; MOY was 353; and EOY was 472 (other EOY testing yielded scores of 530 and 541), which showed regression in MOY where Student was 6 years below grade level.<sup>26</sup> Student was enrolled in the Read 180 intervention to help bridge the gap.<sup>27</sup> In 2019/20, Student's BOY score was 590, and MOY was 673, which remained 6 years below grade level.<sup>28</sup> Student's percentile rank compared to peers increased from 1% at EOY 2017/18 to 12% by MOY 2019/20.<sup>29</sup> Student's written expression is weaker than reading; Student had 0% accuracy on the written expression portion of an ANET assessment in October 2019.<sup>30</sup>

10. Math. In math, Student's overall score for 2017/18 at BOY was 418, MOY was 428, and EOY was 436, an improvement from 4 years below grade level to 3 years below.<sup>31</sup> For 2018/19, Student's score at BOY was 426, MOY was 460, and EOY was 489, an improvement from being 5 years below grade level, to 3 years below, and then 1 year below grade level.<sup>32</sup> For 2019/20, Student's score at BOY was 438, and MOY was 471, a large regression to 5 years below grade level and then 3 years below grade level.<sup>33</sup>

11. Grades. Student's grades at Public School were much better, which Educational Advocate B asserted were based on participation and effort, rather than academic achievement.<sup>34</sup> The 2019/20 report card for Term 2 (the final term before the challenges of distance learning) showed that Student earned 5 "Bs," 1 "B-" and 1 "C+."<sup>35</sup> Student's grades in algebra were a "B" in both Terms 1 and 2, a "C" in Term 3, and no mark for Term 4. Considering the 2019/20 report card for the full year (despite the pandemic and distance learning), Student's letter grades (without pluses and minuses) for all terms, including final grades, showed a total of 5 "As," 21 "Bs," 8 "Cs," 2 "Ds," and 1 "F."<sup>36</sup>

12. Specialized Instruction. Parent's advocates consistently sought a more restrictive environment for Student, and specifically sought a full-time SLS program for Student with parental participation (preferably at Cardozo or Wilson).<sup>37</sup> The DCPS IEP team believed

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<sup>25</sup> R9p81.

<sup>26</sup> R9p81-82.

<sup>27</sup> P42p427 (3/15/19).

<sup>28</sup> R9p81; no EOY data was available.

<sup>29</sup> R9p82.

<sup>30</sup> P12p139 (General Education Teacher); P15p176.

<sup>31</sup> R9p83.

<sup>32</sup> R10p85.

<sup>33</sup> R10p87.

<sup>34</sup> Educational Advocate B; P32-P36.

<sup>35</sup> P36p340-41.

<sup>36</sup> R8p77-79.

<sup>37</sup> P60p535-36; P63p550; P64p553-54 (6/18/20 Dissent Letter).

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the specialized instruction hours on Student's IEP were appropriate, but agreed to seek an "LRE referral" to get additional input.<sup>38</sup>

13. Student is very capable with proper supports; General Education Teacher testified that he could meet Student's academic level through differentiated work and scaffolding support; Student was in the middle group of 3 skill levels in General Education Teacher's ELA class.<sup>39</sup> Student was making overall progress in 2019/20 before in-person learning was suspended in mid-March; Student did not complete many assignments with distance learning at the end of 2019/20.<sup>40</sup>

14. The level of specialized instruction on Student's IEPs was appropriate and a full-time, 20-hour IEP was not needed "at all" based on Student's progress, report card grades, general education teachers, and working with Student; Student had enough time outside general education.<sup>41</sup> Student did not need a more restrictive environment; Student can do grade level work with proper supports.<sup>42</sup> Special Education Coordinator agreed that Student was making progress in the inclusion setting and that 7.5 hours/week outside and 7.5 hours/week inside general education were appropriate for Student; an SLS classroom would slow Student's progress.<sup>43</sup>

15. Academic Goals. Student's advocates were concerned that Student lacked foundational skills and that Student's IEP academic goals were not attainable.<sup>44</sup> Educational Advocate B was concerned about new goals on Student's 2020 IEP, since the previous goals had not been mastered.<sup>45</sup> Special Education Coordinator acknowledged that none of the academic goals in the 2020 IEPs were basic.<sup>46</sup> The goals developed for Student were appropriate; Student could and did make progress based on the goals.<sup>47</sup>

16. The 3/15/19 psychological triennial evaluation concluded that Student continued to have deficits in reading, written expression and math, but showed improvement on foundational skillsets based on classroom-based assessments; discrepancies with Student's abilities to work fluently with math facts, reading comprehension, written language and composition were consistent with Student's cognitive abilities.<sup>48</sup> DCPS agreed at the 7/1/20

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<sup>38</sup> P16p192; P17p196 (placement is team decision; referral merely provides a recommendation).

<sup>39</sup> Special Education Teacher; General Education Teacher (Student was performing in the low end of the middle group).

<sup>40</sup> General Education Teacher; Special Education Teacher.

<sup>41</sup> Special Education Teacher.

<sup>42</sup> School Psychologist.

<sup>43</sup> Special Education Coordinator.

<sup>44</sup> P16p191; P20p226; P11p135 (5/15/19); Tutor (Student lacked basic skills).

<sup>45</sup> Educational Advocate B; P60p535-36.

<sup>46</sup> Special Education Coordinator; P15.

<sup>47</sup> Special Education Teacher.

<sup>48</sup> P42p428.

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RSM to make changes to Student's IEP goals and continued working on goals to address Parent's concerns.<sup>49</sup>

17. Goals Not Introduced. Student's 2019/20 IEP Progress Reports for Reporting Periods 1 and 2 stated that Student's academic goals were not introduced in those terms; Special Education Teacher's comments in the Progress Reports explained that the goals were not introduced because they were goals from the previous year; thus, the math goals were not appropriate as Student was in algebra class.<sup>50</sup> Special Education Teacher commented in Reporting Period 3 on the math goals that Student had shown "progression towards" mastery of the goals the previous year in Public School's Summit Learning program.<sup>51</sup> Petitioner's counsel, Educational Advocate B and Parent raised questions during the 4/24/20 team meeting and General Education Teacher and Special Education Teacher confirmed that Student was not working on the stated IEP goals because they were from the prior year.<sup>52</sup> Special Education Teacher acknowledged that he did not call a team meeting to revise the goals that he thought were not appropriate; the IEP team never had a chance to say whether they agreed or not.<sup>53</sup>

18. Behavior. The 3/15/19 psychological triennial evaluation found that Student had difficulty sustaining attention on tasks, difficulty concentrating and impulsivity that were impacting Student's behaviors resulting in "defiant like behaviors" and adverse effects on Student in the academic setting.<sup>54</sup> Student's 2019 IEPs stated that Student worked well in small groups, but relied heavily on peers for answers and would not advocate for self when lacking understanding; Student was easily distracted.<sup>55</sup>

19. A 3/11/19 FBA-II stated that baseline data from 3 teachers revealed that Student had "NO behavioral problems," but a hard time beginning independent work requiring verbal prompts, and that Student is easy to redirect.<sup>56</sup> Class observations found Student appropriately engaged and cooperating in daily instruction.<sup>57</sup> The FBA-II noted that Student "does not exhibit any behavior[al] problems that warrant further investigation" and concluded that at that time the BIP did not need to be updated since there were "no out of control behaviors."<sup>58</sup>

20. Another FBA-II was conducted on 1/17/20 based on Student's off task behaviors, such as not engaging in instruction, and hyperactivity including talking, singing, dancing,

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<sup>49</sup> Educational Advocate B; P67p564 (7/16/20).

<sup>50</sup> P30p312-14; P31p319-21; Special Education Teacher.

<sup>51</sup> R5p59-60; Special Education Teacher; R20p158; Special Education Teacher.

<sup>52</sup> P12p139; Special Education Teacher.

<sup>53</sup> Special Education Teacher.

<sup>54</sup> P42p426.

<sup>55</sup> P9p98 (1/29/19 IEP); P10p116 (5/15/19 IEP).

<sup>56</sup> P41p405 (emphasis in original).

<sup>57</sup> P41p405.

<sup>58</sup> P41p407,408.



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and being playful.<sup>59</sup> Issues arose when Student did not have glasses on and could not see the board, and from other causes.<sup>60</sup> Student appropriately engaged in the classroom activity 47% of the time and was off task 45% of the time.<sup>61</sup> Based on a 1/9/20 Strengths and Difficulties Questionnaire (“SDQ”), Student’s overall stress and difficulties getting along with other children were each “slightly raised,” while the other 5 categories were “close to normal.”<sup>62</sup> Teachers noted that Student was never disrespectful and was easily redirected; another teacher reported that Student has no behavior issues in class.<sup>63</sup> In an interview with Student, Student stated that teachers were helpful, although the pace could be fast, and that Student got good grades.<sup>64</sup>

21. Separating Students. Student and a peer got into a fight in February 2020, which resulted in Special Education Teacher separating them for their safety.<sup>65</sup> General Education Teacher testified that Student met 1:1 with him during his planning period for 7 days in his classroom (where there was a lower grade class in part of the classroom with another teacher) for Student’s daily personal learning time (“PLT”) period when Student could work on whatever needed support from the teacher.<sup>66</sup> Student was easily distracted and needed “constant” redirection during PLT.<sup>67</sup> This arrangement was based on General Education Teacher having a preparation period during Student’s PLT period and a positive relationship with Student and the family.<sup>68</sup> Parent understood that Student had been moved to a class 2 years below Student’s grade level for 2 weeks.<sup>69</sup> Student was working in the school’s online system and could not have accessed the lower grade’s materials even if Student sought to do so.<sup>70</sup> Student was also assigned to the restorative justice room for 2 days and engaged in a restorative justice circle.<sup>71</sup>

22. BSS. Social Worker agreed at the 4/29/20 MDT meeting that Student needed behavioral support and that there was enough data to move forward with adding BSS to Student’s IEP.<sup>72</sup> Special Education Coordinator stated that the team agreed at the 4/29/20

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<sup>59</sup> P45p450.

<sup>60</sup> P45p451. The importance of Student wearing glasses was a repeated issue: P5p54 (Student was able to improve reading with use of glasses); P15p171,173,175 (Student’s 4/29/20 IEP noted that if Student did not bring glasses, to seat Student in the front of the class); Social Worker.

<sup>61</sup> P45p452; P19p211.

<sup>62</sup> P45p453.

<sup>63</sup> P45p454-55.

<sup>64</sup> P45p456.

<sup>65</sup> P18p199.

<sup>66</sup> Educational Advocate B; General Education Teacher; Special Education Teacher (corroborated General Education Teacher’s explanation).

<sup>67</sup> P7p75 (1/29/19).

<sup>68</sup> General Education Teacher.

<sup>69</sup> Parent.

<sup>70</sup> Special Education Teacher.

<sup>71</sup> P16p191; P59p530.

<sup>72</sup> R6p73.

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meeting to add BSS, but needed an eligibility meeting, so did not add BSS to the 4/29/20 IEP.<sup>73</sup> Social Worker testified that she considered 60 minutes/month to be appropriate for Student to begin and see how Student responded; not pulling Student from class too much was a consideration.<sup>74</sup>

23. Adaptive Assessment. Due to Student's low cognitive scores, the 3/15/19 psychological triennial evaluation strongly recommended an adaptive measure be conducted to understand Student's adaptive abilities and ability to function since Student was hit by a car on 5/8/18 and missed about 3 months of school, causing difficulties with Student's memory retrieval.<sup>75</sup> DCPS authorized a neuropsychological independent educational evaluation ("IEE") on 12/4/19, which has not yet been completed by Petitioner's team (with the shutdown in mid-March).<sup>76</sup>

24. School Psychologist reviewed the adaptive assessment she conducted using the Vineland Adaptive Behavior Scales – 2<sup>nd</sup> Edition ("VABS-2") and included as a December 2019 addendum to the 3/15/19 psychological triennial evaluation, in which teachers rated Student average and Parent rated Student moderately low in communication and socialization; School Psychologist believed Parent's concerns could be addressed in a BIP and with behavioral goals on the IEP, without specific adaptive goals.<sup>77</sup>

25. BIP. Following the adaptive assessment, School Psychologist agreed at the 4/24/20 team meeting that emotional regulation issues should be addressed in a BIP; Social Worker agreed at that meeting to develop a BIP.<sup>78</sup> Social Worker provided a BIP on 4/29/20 following the team meeting, although it was not finalized or implemented until after 6/9/20.<sup>79</sup>

26. Assistive Technology. Parent sought assistive technology for Student to help with deficits; Educational Advocate A explained that assistive technology could help keep Student engaged in school.<sup>80</sup> Special Education Coordinator agreed to an assistive technology referral at the 4/29/20 team meeting, but noted it could not be conducted until school opened.<sup>81</sup> An assistive technology section was added to Student's IEP in the 6/12/20 amendment, noting Student's need for a keyboarding device and that the team was considering other assistive technology to assist Student in math, reading, and written expression.<sup>82</sup>

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<sup>73</sup> R6p73; P16p191; P17p196.

<sup>74</sup> Social Worker.

<sup>75</sup> P42p427,412; Parent.

<sup>76</sup> R18p145; Educational Advocate B.

<sup>77</sup> R6p72; P43p432,433-35; P12p140; P13p143.

<sup>78</sup> R6p72; P12p140; P13p142.

<sup>79</sup> Social Worker; R12p100; P62p545.

<sup>80</sup> Parent; Educational Advocate A.

<sup>81</sup> R6p72; P16p190,191.

<sup>82</sup> P19p204.

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27. Social Aspects. According to Special Education Teacher, who is Student's case manager, Student is the "life of the party" and Student would not thrive with a full-time IEP; Student would likely shut down and rebel due to being embarrassed and feeling inferior in a self-contained program rather than continuing in general education.<sup>83</sup> Student would be isolated from general education and not be able to socialize with friends.<sup>84</sup> Student's social functioning is too high for a more restrictive environment.<sup>85</sup>

28. Compensatory Education. Educational Advocates' Compensatory Education Proposal considered where Student would be performing educationally had there been no denial of FAPE, and what it would take to get Student to that position.<sup>86</sup> Specifically, the Proposal sought 300 hours of tutoring to remedy the failure to introduce academic goals during Terms 1 and 2 of 2019/20, plus another 40 hours of tutoring for inappropriate IEP issues beginning on 4/29/20, and 20-30 hours of counseling in the school setting (to avoid too many providers) to make up for harm to Student's self-image.<sup>87</sup> Parent had also sought additional tutoring for Student during the 6/9/20 meeting.<sup>88</sup>

### Conclusions of Law

Based on the Findings of Fact above, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law are as follows:

The overall purpose of the IDEA is to ensure that "all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). *See Boose v. Dist. of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (the IDEA "aims to ensure that every child has a meaningful opportunity to benefit from public education").

"The IEP is 'the centerpiece of the statute's education delivery system for disabled children.'" *Andrew F. ex rel. Joseph F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017), *quoting Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L.Ed.2d 686 (1988). "The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Andrew F.*, 137 S. Ct. at 994, *quoting Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982).

Once a child who may need special education services is identified and found eligible, Respondent must devise an IEP, mapping out specific educational goals and requirements in light of the child's disabilities and matching the child with a school capable

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<sup>83</sup> Special Education Teacher.

<sup>84</sup> *Id.*

<sup>85</sup> Special Education Coordinator.

<sup>86</sup> P68; Educational Advocate A; Educational Advocate B.

<sup>87</sup> P68p575-76; Educational Advocate A; Educational Advocate B.

<sup>88</sup> P18p200.

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of fulfilling those needs. *See* 20 U.S.C. §§ 1412(a)(4), 1414(d), 1401(a)(14); *Endrew F.*, 137 S. Ct. at 994; *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385 (1985); *Jenkins v. Squillacote*, 935 F.2d 303, 304 (D.C. Cir. 1991); *Dist. of Columbia v. Doe*, 611 F.3d 888, 892 n.5 (D.C. Cir. 2010).

The IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S. Ct. at 1001. The Act’s FAPE requirement is satisfied “by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” *Smith v. Dist. of Columbia*, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), *citing Rowley*, 458 U.S. at 203. The IDEA imposes no additional requirement that the services so provided be sufficient to maximize each child’s potential. *Rowley*, 458 U.S. at 198. In its decision, the Supreme Court made very clear that the standard is well above *de minimis*, however, stating that “[w]hen 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.” *Endrew F.*, 137 S. Ct. at 1001.

In addition, the LEA must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114; *Endrew F.*, 137 S. Ct. at 1000 (children with disabilities should receive education in the regular classroom to the extent possible); *Montuori v. Dist. of Columbia*, No. 17-cv-2455, 2018 WL 4623572, at \*3 (D.D.C. 9/26/18).

A Hearing Officer’s determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a Hearing Officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child’s right to a FAPE; (ii) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a). In other words, an IDEA claim is viable only if those procedural violations affected the child’s *substantive* rights. *Brown v. Dist. of Columbia*, 179 F. Supp. 3d 15, 25-26 (D.D.C. 2016), *quoting N.S. ex rel. Stein v. Dist. of Columbia*, 709 F. Supp. 2d 57, 67 (D.D.C. 2010).

Petitioner carries the burden of production and persuasion, except on issues of the appropriateness of an IEP or placement on which Respondent has the burden of persuasion, if Petitioner establishes a *prima facie* case. D.C. Code Ann. § 38-2571.03(6); *Z.B. v. Dist. of Columbia*, 888 F.3d 515, 523 (D.C. Cir. 2018) (party seeking relief bears the burden of proof); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005). “Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether . . . sufficient evidence [was presented] to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE.” 5-E D.C.M.R. § 3030.3.

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**Issue 1:** *Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and/or placement (A) on 4/29/20 due to lack of (1) sufficient specialized instruction for deficits and limited progress, (2) BSS as needed and agreed upon, (3) sufficient academic goals, (4) assistive technology despite team agreement, and/or (5) a BIP despite team agreement, and/or (B) on 6/12/20 due to lack of (1) an increase in specialized instruction hours, (2) placement in a suitably restrictive setting to address academic deficits and attention issues, (3) appropriate adaptive goals, and/or (4) a sufficient amount of BSS. (Respondent has the burden of persuasion, if Petitioner establishes a prima facie case.)*

Petitioner established a prima facie case through expert testimony and documents on this issue, shifting the burden to DCPS, which met its burden of persuasion except for provision of BSS and a BIP.

The applicable legal standard for analyzing the appropriateness of the IEPs at issue in this case was articulated by Chief Justice Roberts for a unanimous Supreme Court as whether they were “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S. Ct. at 1001. As the Court of Appeals for the District of Columbia emphasized in *Z.B.*, 888 F.3d at 517, *Endrew F.* “raised the bar on what counts as an adequate education under the IDEA,” requiring more than “merely some” educational benefit. *See also Damarcus S. v. Dist. of Columbia*, 190 F. Supp. 3d 35, 51 (D.D.C. 2016) (IEP must be “reasonably calculated to produce meaningful educational benefit”). The measure and adequacy of each IEP is determined as of the time it was offered to Student, rather than with the benefit of hindsight. *See Z.B.*, 888 F.3d at 524; *S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 66 (D.D.C. 2008). The appropriateness of Student’s IEPs are analyzed by considering the specific concerns raised by Petitioner, which are considered in turn.<sup>89</sup> *See* 34 C.F.R. § 300.320(a); *Honig*, 484 U.S. at 311.

(A)(1) Specialized Instruction. The first and most important question is whether 15 hours/week of specialized instruction, half inside and half outside general education, was sufficient for Student, or whether Student should be increased to at least 20 hours/week of specialized instruction outside general education and placed in a full-time self-contained SLS classroom focused on children with specific learning disabilities. The answer to this question largely depends on whether Student’s standardized testing or Student’s report cards are viewed as more credible. Student’s standardized testing consistently yields results at least several years below Student’s grade level, but is discounted by Public School as not reflecting Student’s true ability and performance in the classroom. On the other hand, Student’s 2019/20 report card is quite encouraging, but Petitioner’s advocates discount the grades as being based on participation and effort rather than showing academic progress. Also, Student has received the same level of specialized instruction in numerous IEPs, even though Student has not shown the progress – at least in testing – that would be desired.

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<sup>89</sup> A Hearing Officer must also determine whether “the State complied with the procedures” set forth in the IDEA. *A.M. v. Dist. of Columbia*, 933 F. Supp. 2d 193, 204 (D.D.C. 2013), *quoting Rowley*, 458 U.S. at 206-07. Procedural violations are discussed herein.

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Turning to specifics, Student is weak in reading and standardized testing indicated that Student was often 5 or 6 years below grade level. Student's reading level increased some as the school grade increased, and Student's percentile rank compared to peers recently increased from 1% to 12% in less than 2 years. Moreover, General Education Teacher – who the undersigned found highly credible – emphasized that Student's academic levels were higher than standardized testing revealed, as he had conducted a number of class assessments that showed Student was functioning higher. General Education Teacher explained that Student's reading was consistently improving and Student's vocabulary was 2 years above overall comprehension. General Education Teacher testified that he could meet Student's academic level through differentiated work and scaffolding support and that he put Student in the middle group of 3 skill levels in the general education ELA class.

Student performs better in math. Standardized scores varied from 5 years below grade level to only 1 year behind, with the most recent data indicating 3 years below grade level. In 2019/20, Student took algebra and earned a solid "B" in both Terms 1 and 2 before the pandemic, Student then earned a "C" in Term 3 and no mark for Term 4.

Considering Student's letter grades for 2019/20 for all terms and final grades in all subjects, Student earned a total of 5 "As," 21 "Bs," 8 "Cs," 2 "Ds," and only 1 "F" – hardly the record of a failing student in need of much more support. This impression is heightened in the context of Public School, which adds the additional challenge of dual language instruction, so that Student must perform not only in English but in Spanish. Given Student's reported lack of interest in Spanish, avoiding the extra dual language challenge might assist Student in focusing on English language deficits, although not an issue directly before the undersigned.

The undersigned is persuaded by Student's teachers that Student was making overall progress in 2019/20 before in-person learning was suspended, and that Student is capable with proper supports. The specialized instruction on Student's challenged 2020 IEPs was appropriate; a more restrictive, 20-hour IEP was not needed. Moreover, as set forth above, the law is clear that to the maximum extent appropriate children with disabilities must be educated with children who are nondisabled. 34 C.F.R. § 300.114; *Endrew F.*, 137 S. Ct. at 1000 (children with disabilities should receive education in the regular classroom to the extent possible).

Special Education Coordinator agreed that Student was making progress in the inclusion setting and believed that placement in an SLS classroom would slow Student's progress. Further, Special Education Teacher was very concerned that Student would not thrive with a full-time IEP, but would shut down and rebel. Special Education Teacher, who was also Student's case manager, explained that Student would likely feel inferior if placed in a self-contained program, rather than continuing in general education where Student could socialize with friends. Student's social functioning was also considered too high by Special Education Coordinator for the more restrictive environment.

In sum, this Hearing Officer concludes that Student's current level of specialized instruction was reasonably calculated to enable Student to make appropriate progress in light of Student's circumstances, and to access the curriculum to advance toward meeting

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Student's annual goals pursuant to 34 C.F.R. § 300.320(a)(4). *See Damarcus S.*, 190 F. Supp. 3d 35; *A.M. v. Dist. of Columbia*, 933 F. Supp. 2d 193, 204 (D.D.C. 2013).

(A)(2) BSS. The next issue is whether the 60 minutes/month of BSS added to Student's 6/12/20 IEP occurred soon enough and was sufficient support to be reasonably calculated to enable Student to make appropriate progress in light of Student's circumstances, so that Student could access the curriculum. Related services such as BSS must be provided if required to assist a student with a disability in benefiting from special education. *See* 34 C.F.R. § 300.34(a); *Irving Independent Sch. Dist. v. Tatro*, 468 U.S. 883, 890, 104 S. Ct. 3371, 82 L. Ed. 2d 664 (1984).

The IEP team agreed at the 4/29/20 meeting to add BSS and Social Worker specifically agreed at that time that Student needed behavioral support and that there was enough data to move forward to add BSS to Student's IEP. But DCPS insisted on waited for a formal eligibility meeting and did not add BSS to the 4/29/20 IEP. Social Worker considered 60 minutes/month to be appropriate for Student to begin and wait to see how Student responded in order to avoid pulling Student out of class too much.

The undersigned found Social Worker credible and agrees that beginning with 60 minutes/month is reasonable in order to see whether that is sufficient, while keeping Student in class as much as possible. The undersigned also found Social Worker credible that there was sufficient data to add BSS to Student's IEP on 4/29/20. That was an important missed opportunity to support Student in distance learning, which might have been pivotal as Student had difficulty and did not complete many assignments with distance learning at the end of 2019/20. Due to the impact on Student's education, this contributes to the denial of FAPE and award of compensatory education discussed below.

(A)(3) Academic Goals. IEPs are required to contain measurable annual goals pursuant to 34 C.F.R. § 300.320(a)(2). Unlike the usual situation in which parents assert that carrying over the same goals from one year to the next indicates failure to make meaningful progress based on *Andrew F.*, 137 S. Ct. at 996, here Petitioner raised concerns about new goals being added too soon, before earlier goals had been mastered. This was due to concerns that Student lacked foundational skills and that Student's new IEP goals were not attainable.

Yet the 3/15/19 psychological triennial evaluation concluded that Student showed improvement on foundational skillsets based on classroom-based assessments and found Student's performance was consistent with Student's cognitive abilities. Nonetheless, DCPS worked with Parent and agreed at the 7/1/20 RSM to make changes to Student's IEP goals and continued working on goals to address Parent's concerns. On balance, in light of DCPS's efforts, this Hearing Officer concludes that the goals developed for Student in 2020 were appropriate and that Student could and did make progress on the IEP goals.

(A)(4) Assistive Technology. Parent sought assistive technology to assist with Student's deficits, while Educational Advocate A testified that assistive technology could help keep Student engaged in school. Special Education Coordinator agreed to an assistive technology referral at the 4/29/20 team meeting, but noted it could not be conducted until

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school opened. An assistive technology section was added to Student's IEP as part of the 6/12/20 amendment, noting Student's need for a keyboarding device and that the team was considering other assistive technology to assist Student in math, reading and written expression. The undersigned does not consider this issue as contributing to a denial of FAPE, but encourages prompt action by DCPS to further support Student with assistive technology.

(A)(5) BIP. The IDEA requires in the case of a student whose behavior impedes the student's own learning or that of others, that the IEP team consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. 34 C.F.R. § 300.324(a)(2)(i). Here, a 3/11/19 FBA-II found that Student "does not exhibit any behavior[al] problems that warrant further investigation" and class observations found Student appropriately engaged and cooperating in daily instruction. But on 1/17/20, another FBA-II was conducted based on Student's off task behaviors, such as not engaging in instruction, and hyperactivity, including talking, singing and dancing. Notably, Student was appropriately engaged in classroom activity only 47% of the time, although teachers stated that Student was never disrespectful and easily redirected. School Psychologist agreed at the 4/24/20 team meeting that emotional regulation issues should be addressed in a BIP, while Social Worker agreed to develop a BIP. Social Worker did provide a BIP on 4/29/20 following the team meeting, but it was not finalized and implemented until after 6/9/20.

With the FBA-II having occurred in January 2020, and with agreement by DCPS to develop a BIP, the undersigned is persuaded here, as with the BSS, that Student needed the BIP to be added before the end of 2019/20. This might well have assisted Student with distance learning, as Student had an extremely difficult time staying on task and with self-initiation, and was unable to complete many assignments with distance learning at the end of 2019/20. Thus, this delay very likely impacted Student's education, so this also contributes to the denial of FAPE and compensatory education discussed below.

(B)(1) Specialized Instruction. Moving on to the claims relating to the 6/12/20 amended IEP, for the reasons discussed at length in considering the 4/29/20 IEP in subsection (A)(1) above, the undersigned is persuaded by DCPS that additional hours of specialized instruction were not required when amendments were made just 6 weeks later in the 6/12/20 IEP.

(B)(2) Restrictive Placement. DCPS also met its burden of showing that Student did not need a more restrictive environment, as discussed above, and thus did not need a placement that could accommodate a more restrictive IEP.

(B)(3) Adaptive Goals. Due to Student's low cognitive scores in 2019, School Psychologist strongly recommended in her 3/15/19 psychological triennial evaluation that adaptive measures should be conducted to understand Student's adaptive abilities and ability to function since being hit by a car in 2018. DCPS did authorize a neuropsychological IEE that has not yet been completed and will likely yield more information. But based on the VBAS-2 that School Psychologist conducted in December 2019, School Psychologist believed the moderate concerns noted by Parent could be addressed in the BIP and by



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behavioral goals on the IEP, without the need for specific adaptive goals, which the undersigned finds persuasive, especially where the VBAS-2 teacher ratings were average.

(B)(4) BSS. For the reasons discussed when considering the 4/29/20 IEP in subsection (A)(2) above, the undersigned is not persuaded that additional BSS was required when amendments were made just 6 weeks later in the 6/12/20 IEP, as there had been very little interaction with Student during that period on which additional services could be based.

Placement. As for placement, the IDEA requires “school districts to offer placement in a school and in programming that can fulfill the requirements set forth in the student’s IEP.” *Middleton v. Dist. of Columbia*, 312 F. Supp. 3d 113, 143 (D.D.C. 2018), *citing O.O. ex rel. Pabo v. Dist. of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008). *See also Johnson v. Dist. of Columbia*, 962 F. Supp. 2d 263, 267 (D.D.C. 2013) (DCPS “must place the student in a setting that is capable of fulfilling the student’s IEP”). Here, the undersigned concludes that Public School was able to adequately provide the services set forth on Student’s IEP. The undersigned determines that maintaining Student at Public School afforded Student the opportunity to make appropriate progress in Student’s particular circumstances. *See N.W. v. Dist. of Columbia*, 253 F. Supp. 3d 5, 17 (D.D.C. 2017), *quoting James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 139 (D.D.C. 2016).

FAPE. In carefully considering the concerns raised above individually and as a group, the undersigned is cognizant of the fact that the analysis is not about achieving perfection. Instead, an IEP and placement simply need to be reasonably calculated to enable Student to make appropriate progress in the circumstances. *Endrew F.*, 137 S. Ct. at 1001; *Z.B.*, 888 F.3d at 519 (IDEA “stops short of requiring public schools to provide the best possible education”). *See also Hill v. Dist. of Columbia*, No. 14-cv-1893, 2016 WL 4506972, at \*21 (D.D.C. 2016), *quoting Leggett v. Dist. of Columbia*, 793 F.3d 59, 70 (D.C. Cir. 2015). However, on balance, this Hearing Officer concludes that taken together the delay in providing BSS and a BIP to Student are a denial of FAPE by not providing the support that Student needed when 2019/20 shifted to distance learning, causing educational harm. Student’s challenged 4/29/20 IEP was not reasonably calculated to enable Student to make appropriate progress in Student’s circumstances, which contributes to the compensatory education ordered below.

**Issue 2:** *Whether DCPS denied Student a FAPE by failing to fully implement Student’s IEP in 2019/20 by (A) not introducing any academic goals in advisories 1 or 2, and/or (B) not providing an appropriate placement/location of service by removing Student from the classroom and placing Student in a lower grade for not less than 2 weeks. (Petitioner has the burden of persuasion on this issue.)*

Parent met her burden of persuasion on subpart (A) but not subpart (B) of her implementation claim. With a failure to implement claim, the IDEA is only violated when a school district deviates materially from a student’s IEP. *See Middleton*, 312 F. Supp. 3d at 144; *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811, 822 (9th Cir. 2007). A material deviation requires more than a minor discrepancy or a “*de minimis* failure to implement all elements of [the student’s] IEP.” *Johnson*, 962 F. Supp. 2d at 268, *quoting*

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*Catalan ex rel. E.C. v. Dist. of Columbia*, 478 F. Supp. 2d 73, 75 (D.D.C. 2007). Courts are clear that it is “the proportion of services mandated to those provided that is the crucial measure for purposes of determining whether there has been a material failure to implement.” *Turner v. Dist. of Columbia*, 952 F. Supp. 2d 31, 41 (D.D.C. 2013), *citing* *Wilson v. Dist. of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011). Notably, there is “no requirement that the child suffer educational harm in order to find a violation” in a failure to implement claim. *James*, 194 F. Supp. 3d at 139.

(A) Academic Goals Not Introduced. Student’s 2019/20 IEP Progress Reports for Terms 1 and 2 plainly state that none of Student’s academic goals were introduced in those terms. Special Education Teacher’s comments in the Progress Reports forthrightly explained that both math goals, both reading goals, and the written expression goal were not introduced because they were the goals from the previous year. General Education Teacher and Special Education Teacher confirmed during the 4/24/20 team meeting that Student was not working on the stated IEP goals due to them being the wrong goals. Special Education Teacher further commented in Reporting Period 3 on the math goals that Student had shown progression towards mastery of the goals the previous year in Public School’s Summit Learning program.

This is not a *de minimis* matter, but affected all of Student’s academic goals for 2 full terms. While mistakes happen, procedures are in place whereby erroneous IEPs can be corrected, but DCPS did not take appropriate action. Special Education Teacher acknowledged that he did not call a team meeting to revise the goals that he believed were not appropriate, so Parent and the rest of the IEP team never had the chance to weigh in on whether they agreed or not. Nor is “progression towards” mastery of a goal in a different program sufficient to excuse IEP goals from not being implemented.

Accordingly, this Hearing Officer concludes that DCPS failed to fully implement Student’s IEP for the first 2 terms of 2019/20. Failing to implement any of Student’s academic goals is certainly a material deviation from Student’s IEP. As noted above, no educational harm need be shown for Parent to prevail, and the analysis of appropriate compensatory education is set forth below.

(B) Removal from Class. Parent’s second assertion of failure to implement Student’s IEP is another matter. Student and a peer got into a fight which resulted in Special Education Teacher separating them for their safety. Parent somehow understood that Student had been moved to a class 2 grades below Student’s grade level for a 2 week period. But the undersigned was persuaded by General Education Teacher’s testimony that Student met with him 1:1 during 1 period for 7 days in his classroom to get Student away from the peer. Student met with General Education Teacher during the PLT period when Student could work on whatever needed support from the teacher. The fact that Student was not in the lower class was confirmed by the fact that Student was working in the school’s online system where Student did not even have access to materials from the lower grade.

Petitioner failed to meet her burden of persuasion that Student was placed in a lower grade for any period of time or that DCPS materially deviated from Student’s IEP. Indeed, given Student’s need for redirection during PLT and Student’s positive connection to

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General Education Teacher, the 1:1 work with General Education Teacher should have been a benefit to Student.

### Remedies

Having analyzed and resolved the issues in this case, what remains is to consider the compensatory education to be awarded to make up for the denials of FAPE found above. In determining compensatory education, there is often “difficulty inherent in figuring out both what position a student would be in absent a FAPE denial and how to get the student to that position,” *B.D. v. Dist. of Columbia*, 817 F.3d 792, 799 (D.C. Cir. 2016), but that does not permit the effort to be avoided. *See Henry v. Dist. of Columbia*, 750 F. Supp. 2d 94, 98 (D.D.C. 2010) (a disabled student who has been denied special education services is entitled to a tailored compensatory education award and limitations of the record are no excuse). Moreover, a student is not required “to have a perfect case to be entitled to compensatory education.” *Cousins v. Dist. of Columbia*, 880 F. Supp. 2d 142, 148 (D.D.C. 2012) (citations omitted).

Here, it is difficult to calculate the impact of the failure to provide BSS and BIP as quickly as needed by Student during distance learning, as well as the impact of not having the academic goals in Student’s IEP introduced. The undersigned is clear that the delay of the BSS and BIP require consideration of the likely negative impact on Student’s distance learning. The undersigned determines that restoring Student to the position in which Student would be but for the denials of FAPE requires both independent tutoring and counseling in the school setting (to minimize the number of providers).

Educational Advocates A and B testified that the compensatory education hours sought in their Compensatory Education Proposal would put Student in the position Student should have been but for the denials of FAPE in this case. However, the undersigned is not persuaded that the 300 hours of tutoring sought by Petitioner is necessary to make up lack of implementation of academic goals. Moreover, this Hearing Officer has not found a denial of FAPE on all of the claims asserted by Petitioner. Accordingly, the undersigned below orders 150 hours of tutoring and 20 hours of counseling to restore Student to the proper position.

These determinations by the undersigned have been carefully analyzed and specifically tailored to address Student’s unique needs as a matter of equity, as “hearing officers are reminded that ‘[t]he essence of equity jurisdiction’ is ‘to do equity and to mould each decree to the necessities of the particular case.’” *Lopez-Young v. Dist. of Columbia*, 211 F. Supp. 3d 42, 55 (D.D.C. 2016), *quoting Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 523-24 (D.C. Cir. 2005). All compensatory education hours are to be used within 18 months to minimize any administrative burdens on Respondent, although the undersigned encourages Parent to get Student engaged as quickly as possible to ensure that the remedial services that Student needs are obtained without undue delay.

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### **ORDER**

Petitioner has prevailed in part in this case, as set forth above. Accordingly, **it is hereby ordered that:**

As compensatory education for the denials of FAPE found herein, within 10 business days after request by Petitioner, DCPS shall provide a letter(s) of authorization for (a) 150 hours of academic tutoring from an independent provider chosen by Petitioner, and (b) 20 hours of counseling in the school setting. All hours are to be used within 18 months and any unused hours shall be forfeited.

Any and all other claims and requests for relief are **dismissed with prejudice.**

**IT IS SO ORDERED.**

Dated in Caption

/s/ *Keith Seat*

Keith L. Seat, Esq.  
Hearing Officer

### **NOTICE OF RIGHT TO APPEAL**

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 (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. § 1415(i).

Copies to:

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