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OSSE
Office of Dispute Resolution
September 1, 2023

Confidential

Parent on Behalf of Student, ¹	HEARING OFFICER'S DETERMINATION
Petitioner,	Hearing Dates: August 2, 2023 August 3, 2023 August 4, 2023 August 7, 2023
v.	
District of Columbia Public Schools (Local Education Agency "LEA")	
Respondent.	Counsel for Each Party listed in Appendix A
Case # 2023-0098	
Date Issued: September 1, 2023	<u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u>

¹ Personally identifiable information is in the attached Appendices A & B.

JURISDICTION:

The hearing was conducted, and this decision was written, pursuant to the Individuals with Disabilities Act ("IDEA"), P.L. 101-476, as amended by P.L. 105-17 and the Individuals with Disabilities Education Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter 5-A30.

BACKGROUND AND PROCEDURAL HISTORY:

The student who is the subject of this due process hearing ("Student") resides in the District of Columbia. Student has been determined eligible for special education and related services pursuant to IDEA with a disability classification of autism. District of Columbia Public Schools ("DCPS" or "Respondent") is Student's local education agency ("LEA"), and Student attends a self-contained special education program in a DCPS school ("School A").

Prior to August 2021, Student resided with Student's mother. Since then, Student has been in the care of the District of Columbia Department of Child and Family Services ("CFSA") and resides in a group home in the District of Columbia. In March 2023, the District of Columbia Superior Court appointed a guardian to oversee Student's affairs, including educational decision-making.

On May 24, 2023, Student's guardian ("Petitioner") filed a due process complaint alleging that DCPS denied Student a free appropriate public education ("FAPE") by failing to timely and comprehensively evaluate Student and failing to provide Student an appropriate individualized education program ("IEP") during school year ("SY") 2021-2022 and SY 2022-2023. Petitioner alleges, inter alia, that Student's IEPs did not provide appropriate services, including assistive technology ("AT"), and an appropriate least restrictive environment ("LRE"). Petitioner alleges that Student's educational placement is and should have been a non-public separate special education school.

Petitioner seeks the following relief for the denials of FAPE alleged:

- Student's eligibility be extended at least through age 25;
- Award Student non-public educational placement, including transportation;
- Order that Student's IEP include appropriate related services including, but not limited to, speech-language and behavioral support.
- Order that Student's IEP include extended school year ("ESY");
- Order DCPS to fund independent evaluations including but not limited to vocational, psycho-educational, speech-language, assistive technology, and occupational therapy, and that DCPS convene a meeting to review these evaluations and revise the IEP accordingly;
- Award Student compensatory education including but not limited to the following: tutoring, counseling, and transition/vocational support services from a provider of Petitioner's choice; and that any compensatory education may be used through age 25;
- Award funding to cover the cost of additional special education programming to meet Student's transition needs, such as vocational and workforce development opportunities, such as applications, test preparation, career exploration, and internship and apprenticeship opportunities; a laptop, combined with a wireless connection to complete homework and online courses and to search for employment opportunities.

DCPS's Response to the Complaint:

DCPS filed a response to the complaint on June 5, 2023. In its response, DCPS stated, inter alia, the following:

Student was first determined eligible for special education services in 2008 under the disability category of autism. Student left DCPS and attended school in Virginia. Student returned to DCPS in 2020 during SY 2019-2020. When Student returned to DCPS, the IEP team proposed to complete comparable services for Student based on Student's then-current IEP dated March 1, 2019.

On February 13, 2020, DCPS convened an analysis of existing data "AED" meeting, which included Student's parent, to review Student's educational data. On March 25, 2020, DCPS issued a prior written notice ("PWN") stating that "the team reviewed current evaluations and determined that no new testing was needed in order to move forward with the reevaluation process." Student nor Student's advocates, parents, or guardians disagreed with this decision.

DCPS held annual review IEP meetings for Student on March 17, 2021, and March 9, 2022. These IEPs were finalized with the support of Student's parent. To make this determination and develop the IEPs, the team utilized a variety of formal and informal assessments, including but not limited to report cards, progress report information, informal observations, teacher input, related service provider input and notes, and input from the family.

DCPS convened an AED meeting in January 2023, as Student was due for a reevaluation. The AED also included a review of communication/speech-language, which was completed by Student's speech-language provider at the time. Following the AED, a PWN was sent stating that "DCPS proposes to proceed with evaluation for [Student], who will be assessed in the following areas: speech-language and review the psychological report to determine if additional assessments are needed. This determination was based on a review of Student's educational record, observations, and "input that was provided by [Student's educational attorney, and Student's social worker from CFSA.

DCPS completed a speech and psychological evaluation, as agreed to by Student and Student's advocates. DCPS convened an annual IEP meeting on March 3, 2023. Student was present for this meeting along with Student's CFSA social worker and educational attorney. The IEP was then finalized with the support of Student and Student's advocates.

Student's guardian requested that Student graduation planning be changed. The IEP team accepted this request. Student's IEP was amended to have the Graduation Planning and Projected Exit Category section changed to: "H.S. Certificate at age 22... [Student's] projected graduation [date] changed from [REDACTED]."

DCPS denies that AT has ever been an area of concern for Student, and there have been no requests for an AT evaluation by any IEP team members, including Student and Student's advocates. DCPS denies that it failed to timely, accurately, and comprehensively evaluate Student for speech

services and conduct a psycho-educational evaluation. Student returned to DCPS during SY 2019-2020, and the IEP team determined that Student did not require a speech or psychological evaluation in 2020. Neither Student nor Student's advocates dissented from this opinion in 2020.

When Student was due for a reevaluation in 2023, DCPS completed a speech and psychological evaluation, which were used to create Student's IEP. Student has continued to make progress towards Student's reasonably calculated goals. DCPS asserts that all of Student's IEPs, including those in SY 2022-2023 and SY 2023-2024, were/are reasonably calculated for Student to make appropriate progress.

Resolution Meeting and Pre-Hearing Conference:

Petitioner and DCPS participated in a resolution meeting on June 6, 2023. The parties did not mutually agree to shorten the 30-day resolution period. The due process complaint ("DPC") was filed on May 24, 2023. The 45-day period began on June 24, 2022, and ended, and the Hearing Officer's Determination ("HOD") was initially due on August 7, 2023. One party was unavailable on the hearing dates offered by the Hearing Officer. DCPS filed an unopposed motion to continue the hearing and extend the HOD due date. The HOD is now due on September 1, 2023.

The undersigned independent hearing officer ("IHO") conducted a pre-hearing conference on June 23, 2023, and issued a pre-hearing order ("PHO") on June 28, 2023, outlining, inter alia, the issues to be adjudicated.

ISSUES:²

The issues adjudicated are:

1. Did DCPS deny Student a FAPE because the IEP dated March 9, 2022, was not reasonably calculated to allow Student to make appropriate progress (a) in all areas³; (b) in adaptive/daily living skills; (c) in speech-language; (d) with behavioral and emotional needs; (e) because it failed to identify and evaluate and program for Student's intellectual disability; (f) because it failed to provide Student appropriate AT; (g) because it failed to provide extended school year ("ESY"); (h) because it failed to provide an appropriate transition plan; (i) because it failed to consider Student's full educational record; and (j) because it failed to provide a full-time IEP in an appropriate private placement ?
2. Did DCPS deny Student a FAPE because the IEP dated May 3, 2023, was not reasonably calculated to allow Student to make appropriate progress (a) in all areas; ⁴ (b) in adaptive/daily living skills;

² At the outset of the due process hearing, the parties agreed that the three issues stated here are the issues to be adjudicated.

³ The IHO interpreted this claim to apply to the following areas that are included in Student's IEP, some of which are explicitly addressed in the other subsections of this issue: academics (math/reading), adaptive/daily living skills, communication/speech and language, and transition services.

⁴ The IHO interpreted this claim to apply to the following areas that are included in Student's IEP, some of which are

(c) in speech-language; (d) because it failed to identify and evaluate and program for Student's intellectual disability; (e) because it failed to provide Student appropriate AT; (f) because it failed to provide ESY; (g) because it failed to provide an appropriate transition plan; (h) because it failed to consider Student's full educational record; and (i) because failed to provide a full-time IEP in an appropriate private placement ?

3. Did DCPS deny Student a FAPE by failing to timely evaluate Student for assistive technology by no later than May 1, 2021?
4. Did DCPS deny Student a FAPE by failing to timely, accurately, and comprehensively evaluate Student for speech services by no later than May 1, 2021?
5. Did DCPS deny Student a FAPE by failing to timely, accurately, and comprehensively provide a psycho-educational evaluation by no later than May 1, 2021?

DUE PROCESS HEARING:

The Due Process Hearing was convened on August 2, 2023, August 3, 2023, August 4, 2023, and August 7, 2023. The hearing was conducted via video teleconference on the Microsoft Teams platform.

RELEVANT EVIDENCE CONSIDERED:

The IHO considered the testimony of the witnesses and the documents submitted in each party's disclosures (Petitioner's Exhibits 1 through 21 and Respondent's Exhibits 1 through 35) that were admitted into the record and are listed in Appendix 2.⁵ The witnesses testifying on behalf of each party are listed in Appendix B.⁶

SUMMARY OF DECISION:

Respondent held the burden of persuasion on issues #1 and #2 after Petitioner presented a prima facie case on at least some sub-categories of those issues. Petitioner held the burden of persuasion on issues #3, #4, and #5. Based on the evidence adduced, the IHO concluded that Respondent did not sustain the burden of persuasion by a preponderance of the evidence on issues #1 and #2. Petitioner sustained the burden of persuasion by a preponderance of the evidence that DCPS denied

explicitly addressed in the other subsections of this issue: academics (math/reading), adaptive/daily living skills, communication/speech and language, and transition services.

⁵ Any item disclosed and not admitted or admitted for limited purposes was noted on the record and in Appendix A.

⁶ Petitioners presented four witnesses: (1) Student's guardian (Petitioner), (2) Student's CFSA social worker, (3) an independent speech-language pathologist who testified as an expert witness, (4) an independent educational consultant who testified as an expert witness. Respondent presented three witnesses, all designated as expert witnesses: (1) a DCPS school psychologist, (2) School A's Transition Coordinator, and (3) School A's Director of Specialized Instruction. The IHO found the witnesses credible unless otherwise noted in the conclusions of law. Any material inconsistencies in the testimony of witnesses that the IHO found are addressed in the conclusions of law.

Student a FAPE by failing to appropriately evaluate Student as to issue #3, but not as to issues #4 and #5. The IHO directed DCPS to authorize independent evaluations, granted Student compensatory services, and directed DCPS to convene meeting(s) to review and revise Student's IEP as appropriate, and convene a meeting to review Student's placement with OSSE's participation and to consider whether Student needs a non-public placement.

FINDINGS OF FACT:⁷

1. Student resides in the District of Columbia and has been determined eligible for special education and related services pursuant to IDEA with a disability classification of autism. DCPS is Student's LEA. Student attends School A's self-contained Communication Educational Support ("CES") classroom. (Petitioner's Exhibit 11, Witness 6's testimony)
2. Student had noted speech and social development delays during Student's first two years of life and was diagnosed with Autism Spectrum Disorder ("ASD") at age two. Student was first determined eligible for special education services by DCPS in 2008 under the disability category of autism and later ASD. DCPS conducted psychological and occupational therapy evaluations in July 2008 and a comprehensive speech-language evaluation in September 2008. Student's initial DCPS IEP was developed on September 30, 2008. (Petitioner's Exhibit 1 pgs. 1032, 1111, 1117, 1218, Petitioner's Exhibit 17)
3. In November 2012, when Student was attending a DCPS school and assigned to a full-time special education classroom, a DCPS speech-language pathologist ("SLP") conducted an initial inquiry for an augmentative and alternative communication ("AAC") consultation. The SLP recommended that Student be provided an AAC device with a dynamic display with an application for communication. The SLP noted that Student had difficulty forming developmental consonant sounds in words, which impacted Student's intelligibility. The device, she noted, would help Student ask and answer questions, ask for help, comment, request, and use social language, and provide Student with auditory output of a vocal language model. (Petitioner's Exhibit 1 pg. 236-240)
4. Student's February 9, 2015, DCPS IEP noted the following regarding Student's communication and need for AT: (Petitioner's Exhibit 1 pg. 403)

Communication

Consideration:

[Student's] speech is difficult to understand due to many inconsistent sound deletions, and substitutions of sounds in words; because of this, [Student] utilizes an AAC device with voice output and a total communication approach (AAC, pictures, vocalizations, sign).

⁷ The evidence (documentary and/or testimony) that is the source of the Findings of Fact ("FOF") is noted within parentheses following the finding. A document is noted by the exhibit number. If there is a second number following the exhibit number, that number denotes the page of the exhibit from which the fact was obtained. When citing an exhibit submitted by more than one party separately, the IHO may only cite one exhibit.

Assistive Technology

Consideration:

An AAC (Augmentative Alternative Communication) Device-dynamic display with voice output is used by [Student] from the DCPS assistive technology department. [Student] has difficulty forming developmental consonant sounds in words, impacting [Student's] intelligibility. This helps [Student] ask and answer questions, ask for help, comment, request, and use social language in the classroom.

5. Student's February 9, 2015, IEP prescribed AT for communication with the following statement: An AAC (Augmentative Alternative Communication) Device dynamic display with voice output (iPad with proloquo2go) has been given to [Student]. [Student] has difficulty forming developmental consonant sounds in words, impacting [Student's] intelligibility. This AAC device helps [Student] ask and answer questions, ask for help, comment, request, and use social language in the classroom. This device also provides an auditory output of a vocal model for language. (Petitioner's Exhibit 1 pg. 410)
6. The same IEP prescribed that Student be provided ESY with ESY goals in communication, academics, and adaptive/daily living skills. Student's ESY communication goal was as follows: To increase expressive language skills, [Student] will communicate wants, needs, and ideas in the classroom by answering questions, requesting, and commenting using a sentence (noun+verb) using a total communication approach (AAC, gestures, pictures, sign, vocalizations) 4/5 opportunities over three sessions. Student's IEP was amended on April 1, 2015, to address ESY. (Petitioner's Exhibit 1 pg. 413, 782, 793)
7. In February 2015, while Student was attending a DCPS middle school ("School B"), DCPS exited Student from occupational therapy ("OT") services based on Student mastering the prescribed OT goals. Student's parent acknowledged Student's exit from OT as a related service with her signature. The following was noted regarding Student's OT progress:

"[Student is able to write [Student's] first and last name from memory. [Student] uses a right functional grasp and stabilizes the paper with the opposite hand. [Student] has good upper body strength and wrist/hand control. [Student] is able to copy the letters of the alphabet with a near-point model with adequate sizing and line orientation. [Student] is able to copy a four-to-five-line sentence with adequate spacing, line orientation, and sizing. For the most part, [Student's] handwritten work is neat and legible. [Student] can also cut out basic shapes (circle, triangle, square) using regular scissors with occasional cues to orient the scissors in [Student's] hand correctly. [Student is able to follow simple 1-2 step commands and complete a three-part activity with minimal cueing. [Student] does not display any sensory." (Petitioner's Exhibit 1 pgs. 606, 608)
8. In 2018, Student left DCPS and began attending school in Richmond, Virginia (Henrico County), where Student was re-evaluated during the summer of 2018. Student's March 1, 2019, Richmond, Virginia, IEP noted the following regarding evaluations: "[Henrico County re-evaluated student in the summer of 2018, and Eligibility was completed on

10/02/2018. [Student] received the following results: Educational Evaluation done was Brigance Inventory of Basic Skills II for Math and Reading. The educational results fell in the very low range (Pre-K). The social evaluation was the applied behavior analysis (ABA), and the results all fell in the extremely low range (standard score 56). Psychological evaluation was Autism Spectrum Rating Scales (Teacher Report), Behavior observation 8/13/2018 found autism-related behaviors." (Petitioner's Exhibit 1 pgs. 902, 903, 929, 935).

9. Student's March 1, 2019, Richmond, Virginia IEP provided Student special education instruction for 225 minutes per week that covered math, reading, written expression, behavior, social skills, and job readiness. The IEP prescribed speech and language as the only related service for 40 minutes per month. The IEP noted that Student was operating far below grade level. The IEP math and reading goals targeting Student's ability to add and subtract single digit numbers and to read and spell words at the pre-primer to primer level. The IEP also noted the following regarding an AAC device: "in the District of Columbia, Student used an AAC device with voice output. The team will discuss if this is still a necessity for Student to communicate effectively." The IEP had a projected graduation or exit date of 2022. The IEP team determined that Student did not require ESY services and that Student's educational placement was a public day school. (Petitioner's Exhibit 1 pgs. 903, 928, 929, 935).
10. Student returned to DCPS in December 2019 and enrolled in a DCPS high school ("School C"). DCPS issued a PWN to Student's parent on December 17, 2019, stating: "IEP Team proposed to complete comparable services for [Student] based on Student's then-current IEP dated March 1, 2019. Student will receive 22.5 hours of specialized instruction outside general education and 40 minutes per month of speech and language." "Student with a classification of Autism is in need of specially designed instruction and self-contained program." (Petitioner's Exhibit 1 pgs. 852)
11. On January 1, 2020, School C issued a letter of invitation to Student's parent, inviting her to attend an AED meeting on January 13, 2020, to review Student's academic achievement, functional performance, and educational needs. (Petitioner's Exhibit 1 pg. 628, 631)
12. On January 13, 2020, School C convened an AED meeting to review Student's educational data. Student's parent participated in the meeting. (Petitioner's Exhibit 1 pg. 598)
13. Sometime after the January 13, 2020, AED meeting, Student was placed in the CES self-contained special education program at School A. On March 17, 2020, School A sent Student's parent a letter of invitation to a meeting at School A scheduled for March 25, 2020, to review Student's academic achievement, functional performance, and educational needs. School A attempted unsuccessfully to reach Student's parent by telephone on March 17, 2020. (Petitioner's Exhibit 1 pgs. 634, 1238)
14. DCPS describes its CES program as follows: The [CES] program is designed to meet students' individual learning and behavioral needs with significant communication delays and considerable to significant delays in all developmental areas. Students in the CES

program receive communication development support, social-emotional skill development, adaptive and independence skills, and academic support. The CES program integrates an Applied Behavior Analysis (ABA) instructional framework, including discrete trial instruction, natural environment training, prompting, fading, and reinforcement. The CES program primarily serves students whose intellectual functioning scaled score ranges from an upper limit of approximately 59 to 20. The disability classification of students in the CES program ranges from autism spectrum disorders severe to profound intellectual disabilities and developmental delays. These students' academic, social, and adaptive needs cannot be addressed in general education settings or in self-contained programs that serve students with mild to moderate disabilities. (Witness 6's testimony, Respondent's Exhibit 33-3)

15. On March 25, 2020, School A held an eligibility determination meeting. Neither Student nor Student's parent participated in the meeting. The School A team included a school psychologist, three special education teachers, and a speech-language pathologist. The team determined that Student continued to be eligible for special education with the disability classification of autism. The team reviewed Student's classwork data and samples from School C and the results of assessments conducted while Student was attending school in Richmond, Virginia, including the Brigance Inventory of Basic Skills II, a social evaluation update regarding Student's adaptive-daily living skills, and the Autism Spectrum Rating Scales (ASRS). The eligibility determination report noted the following regarding Student's level of functioning: "Student has extreme difficulty reading and is still learning how to identify certain letters of the alphabet; Student is able to state and write [Student's] first and last name, recognize some colors, copy shapes, identify 16 out of 30 body parts, and recite certain letters of the alphabet. Student is functioning at the .2 percentile of adaptive behavior in the Extremely Low Range. [Student] needs to work on social and communication skills. [Student] also struggles with self-advocacy." (Petitioner's Exhibit 1 pgs. 641- 643)
16. The eligibility determination report noted the following regarding Student's communication skills: "The data below has been taken from [Student's] most recent documentation given to the MDT at [School C] in relation to [Student's] speech-language pathology performance concluded by the previous Speech-Language Pathologist [Name]. Moreover, it appears that [Student's] goals fall under social emotions versus speech-language pathology for this out-of-state IEP." "The speech-language pathologist will support [Student's] needs in the area of expressing and understanding feelings and emotions. [Student] will work on improving [Student's] ability to recognize facial expressions and gestures as related to feelings and emotions and use a feelings chart to express [Student's] own emotions." The evaluation report noted the following statement from Student's Richmond IEP regarding Student's previous use of an AAC device in DCPS: "In the District of Columbia, [Student] used an argumentative alternative communication device with voice output. The team will discuss if this is still a necessity for [Student] to communicate effectively." The evaluation report also noted the following about Student's communication skills: [Student's] speech is sometimes difficult to understand. [Student] repeats and says a few words. [Student] is currently receiving speech services to address

[Student's] need of understanding and expressing emotions." (Petitioner's Exhibit 1 pgs. 643, 644)

17. On March 25, 2020, DCPS issued a PWN stating that "the team reviewed current evaluations and determined that no new testing was needed in order to move forward with the re-evaluation process." DCPS issued a second PWN, dated March 25, 2020, indicating that the team reviewed existing assessments and determined that Student continued to be eligible for special education services under the disability classification of autism and that Student no longer required social-emotional support services. (Petitioner's Exhibit 1 pgs. 843, 847).
18. Soon after the March 25, 2020, meeting, School A and all DCPS schools migrated to a virtual learning platform due to the Covid-19 pandemic. Student did not do well with virtual learning. However, Student began attending School A in-person one day a week once School A moved from virtual learning to a hybrid model. Once in-person learning resumed Student began attending the CES classroom daily and began to engage with the classroom staff and related service providers. Student has become more comfortable and engaged and has made progress in the CES classroom. Student's social skills have improved as Student has gained familiarity with staff and with School A and CES classroom and routines. Student also interacts with nondisabled peers in the cafeteria and other school-wide activities, which seems to be helpful to Student for communication and socializing modeling. Student does not display behavior difficulties that warrant behavior support services. Student will need specialized support in the workforce when Student is ultimately employed. School A coordinates with the D.C. Rehabilitation Services Administration ("RSA") for Student's future employment planning and School A has facilitated Student obtaining a RSA counselor. (Witness 4's testimony, Witness 5's testimony, Witness 6's testimony)
19. On July 14, 2020, DCPS issued a PWN confirming Student's parent refused to make Student available for ESY summer services prescribed by Student's IEP. (Petitioner's Exhibit 1 pgs. 856, 969).
20. On September 28, 2020, School A amended Student's IEP. The IEP noted the following regarding Student's communication: "[Student's] speech is difficult to understand due to many inconsistent sound deletions, substitutions of sounds in words." The IEP noted the following regarding assistive technology: "The IEP team determined that [Student] does not require assistive technology device or services in order to access the curriculum." The IEP included academic goals in math, reading, adaptive/daily living skills, communication/speech, and language. The IEP prescribed the following services: 20 hours per week of specialized instruction outside general education and the following related services outside general education: 60 minutes per month of speech-language pathology and 120 minutes per month of behavior support services. The IEP also prescribed ESY services and a post-secondary transition plan. The IEP noted the following regarding graduation planning: HS Certificate prior to age 22. (Respondent's Exhibit 2)

21. On March 17, 2021, School A convened an annual IEP meeting to review Student's IEP. Student's parent received and signed for the IDEA procedural safeguards. The team determined the Student did not qualify for ESY services. (Respondent's Exhibits 3, 4, 5)
22. DCPS issued a PWN, dated March 18, 2021, that stated the following: "The MDT team meeting was today via "TEAMS" with "Draft IEP" to conduct an annual IEP for [Student] to propose to finalize [Student's] IEP. [Student's mother] was called several times via TEAMS using phone number [number]. The MDT team continued conducting the annual IEP after several attempts were made. I also spoke with [Student's mother] on Wednesday, March 10, 2021, and on Monday, March 15, 2021, to review the "Draft" IEP in totality with her. She agreed to the contents of the IEP and stated that she might not be available for this meeting, but she wanted the MDT team to continue with the meeting in her absence since she had already agreed to the contents of the IEP. However, prior to this meeting, I had already made my three contacts, which are documented in the communication log. Therefore, this meeting was held by the MDT team in her absence, agreed upon, adjourned, and all participants were sent a [Adobe] copy to sign." (Respondent's Exhibit 23)
23. In August 2021, CFSA placed Student in a group home in the District of Columbia. Student has not resided with Student's parent since August 2021. Student has remained in CFSA care and has continued to reside in a group home in the District of Columbia. Since Student has been in CFSA care, Student has been represented in IEP meetings by an educational attorney and/or Student's CFSA social worker. (Witness 2's testimony, Respondent's Exhibit 9, Petitioner's Exhibit 17)
24. In November 2021, a psychiatric evaluation was conducted of Student pursuant to a DC Superior Court order. The psychiatric evaluation report noted, among other things, that Student received special education services under the determination of ASD and that Student was on a certificate track program and functioned academically at a first-grade level. The report also noted that Student is well-liked and had no behavioral problems in school. The report noted the following: "[Student] requires maximum support within the classroom and constant redirection to task." The psychiatric evaluation cites a recent psycho-educational evaluation that stated that Student's cognitive abilities were assessed using the TONI-4. The report noted the following: "On this measure, [Student] obtained an Index score of 69, which falls within the deficient range. This score corresponds to an age equivalent of less than 6 years. [Student's] score places [Student's] cognitive abilities within the very low range and meets criteria for a diagnosis of Intellectual Disability." (Petitioner's Exhibit 17)
25. The evaluating psychiatrist made the following recommendations: "Continue speech and language therapy in school; in addition [Student] needs twice per week outpatient speech and language; the goal is to improve [Student's] expressive language abilities as much possible; [Student's] outpatient speech and language therapist should be experienced in working with adolescents with autism who have limited verbal skills; developing [Student's] speech and language skills is paramount to increase [Student's] functioning...[Student] should continue attending school at [School A] in [Student's] self-

contained classroom; [Student] should continue with special education services as outlined on [Student's] IEP.” (Petitioner's Exhibit 17)

26. On March 9, 2022, School A convened an annual IEP review meeting. Student's parent was not present. Student and Student's educational attorney participated by phone. Student's March 9, 2022, IEP noted the following regarding Student's communication: “[Student's] speech is difficult to understand due to many inconsistent sound deletions, substitutions of sounds in words.” The IEP noted the following regarding assistive technology: “The IEP team determined that [Student] does not require assistive technology device or services in order to access the curriculum.” The IEP included academic goals in math, reading, adaptive/daily living skills, communication/speech, and language. The IEP prescribed the following services: 20 hours per week of specialized instruction outside general education. Speech-language pathology outside general education was reduced from 60 minutes to 30 minutes per month, and DCPS removed behavior support services. The IEP had a post-secondary transition plan. The IEP did not prescribe ESY services and noted the following regarding graduation planning: HS Certificate prior to age 22. (Respondent's Exhibit 9-1, 9-3, 9-10, 9-11)
27. The March 9, 2022, IEP describes how Student's disability affects Student's access to the general education curriculum: “[Student's] disability impacts [Student's] ability to access the general education curriculum because [Student] easily gets distracted and [] needs constant redirecting, prompting guided clear directions, and some one-on-one supports in order to be successful in a self-contained classroom with a small student to teacher ratio. In addition, [Student] requires maximum support from [] teacher, guided instruction, i.e., modeling and practice while performing [] individualized lessons for success.” “[Student's] disability impacts [Student's] ability to access the general education curriculum because [Student] requires maximum support from the teacher, guided and clear instruction, i.e., modeling and practice while performing [Student's] individualized lessons for success.” (Respondent's Exhibits 9)
28. The March 9, 2022, IEP describes how Student's disability affects Student's progress in the general education curriculum: “[Student's] disability affects [Student's] progress to access the general education curriculum with non-disabled peers with success because of [Student's] limited academic skills. Therefore, a small, structured learning environment, such as a self-contained setting coupled with modifications and accommodations, is required, so [Student] can obtain accuracy of [] math/reading goals and objectives by the end of the IEP year.” (Respondent's Exhibits 9-4, 9-5)
29. The March 9, 2022, IEP present level of performance (“PLOP”) for math and baselines cited Student's October/November 2021 BRIGANCE scores. The PLOP stated the following: “Based on the BRIGANCE Comprehensive Inventory of Basic Skills II Mathematics Assessment administered on 10/18/, 11/1, 11/2/2021, observations and classroom assignments, all indicate that [Student] has been assessed and the following was revealed: [Student] can count objects in a set, write numbers up to 20, with minimal prompting, and orally recite numbers up to the number 7.” (Respondent's Exhibits 9-4)

30. The March 9, 2022, IEP had two math goals: Goal (1): By the end of the IEP year, with the use of manipulatives, modeling, and guided instructions, Student will demonstrate the ability to add single digits numbers with regrouping for 75% accuracy in 3/4 opportunities. Objectives: Student will add single-digit numbers with 80% accuracy by the end of the IEP year. The baseline stated: Student has demonstrated the inability to add single-digit numbers with assistance. Goal (2): By the end of the IEP year, with prompting, assistance, and guided instructions, Student will be able to independently count to 25 in sequence with 80% accuracy in 4 out of 5 opportunities. Objectives: With prompting and assistance, Student will be able to count to 23 in 4/5 opportunities independently for 80% accuracy. The baseline stated: [Student] can count objects in a set, write numbers up to 20, and orally recite numbers up to the number 7. (Respondent's Exhibits 9-4, 9-5)
31. The March 9, 2022, IEP PLOP for reading and baselines cited Student's October/November 2021 BRIGANCE scores. The PLOP stated the following: Based on the BRIGANCE Comprehensive Inventory of Basic Skills II Reading Assessment, administered on 10/5, 10/14, and 10/19/2021, classroom assignments and observations all indicate that [Student] has been assessed and the following information was revealed: Visual Discrimination – Forms, Letters, and Words - 9/10, Reading Comprehension Short Passages (Gr. K), Word Recognition (Pre-Primer), and Spelling (Gr. K). On November 3, 2021, [Student] was administered the Lexia-CORE-5 Reading Assessment, [Student] tested into Level 1 (Pre-K). (Respondent's Exhibits 9-5)
32. The March 9, 2022, IEP had two reading goals: (1) By the end of the IEP year, with clear and guided directives, Student will be able to listen to various reading materials and answer basic "wh" questions pertaining to the reading materials just heard in 3 out 4 opportunities for 75% accuracy. Objectives: Student will respond to "wh" questions for 75% accuracy in ¾ opportunities by the end of the IEP year. (2): By the end of the IEP period with manipulatives, promptings, and visual aids, Student will demonstrate the ability to identify the letters of the alphabet up to letter (L) in (3) out of (4) trials for 75% accuracy. Objectives: Student will identify letters of the alphabet up to letter (L) for 75% accuracy by the end of the IEP year. (Respondent's Exhibits 9-5, 9-6, 9-7)
33. The March 9, 2022, IEP's Adaptive/Daily Living Skills PLOP stated the Student has shown the ability to follow simple directives with minimal prompting and assistance when given to Student. [Student] has also demonstrated the ability to follow and adapt to structured routines and schedule. Annual Goal 1: By the end of the IEP year, with guided clear instructions, modeling, and prompts, Student will demonstrate the ability to identify safety signs in 4/5 situations for 80% accuracy. Baseline: Student has demonstrated the inability to identify safety signs in 4/5 situations for 80% accuracy. Objectives: Student will demonstrate the ability to identify safety signs in 4 out of 5 opportunities for 80% accuracy. (Respondent's Exhibits 9-7)
34. The March 9, 2022, IEP's Communications/Speech & Language PLOP noted the following: Student exhibits echolalic behaviors. Student has been working on answering wh questions (what & who). When Student was present for sessions, ■ has been able to answer who and what questions with multiple choice options with 100% accuracy.

[Student] struggles more when presented with visuals but no multiple choice. Compared to the previous quarter, Student is improving slowly. Student will be introduced to when and where questions as well. (Respondent's Exhibits 9-8)

35. The IEP's Communications/Speech & Language section had the following goal: After listening to a speaker's presentation on a grade-level topic and given a model and pictures or photos related to a topic, Student will demonstrate an understanding of the topic by verbally responding to at least (2) on-topic questions in (3 out of 5) opportunities. The goal's baseline stated: [Student] has been working on answering wh questions (what & who). When [Student] was present for sessions, [Student] has been able to answer who and what questions with multiple choice options with 100% accuracy. [Student] struggles more when presented with visuals but no multiple choice. Compared to the previous quarter, [Student] is improving slowly. [Student] will be introduced to when and where questions as well. The goal's objectives stated: 1. [Student] will answer where and when questions with 70% accuracy in 3/4 opportunities. 2. [Student] will answer questions about preference when given a field of 2-3 options and visual support in 3/4 opportunities. 3. Given visuals, [Student] will demonstrate the ability to identify and label safety signs in 4/5 situations for 80% accuracy. (Respondent's Exhibits 9-8, 9-9)

36. The March 9, 2022, IEP's Post-Secondary Transition Plan noted Student's input using the Career Interest Inventory and Casey Life Skills. The transition section covered employment, education and/or training, and independent living skills. The employment section stated the following:

AREA: Post-secondary education and training

Post-Secondary Goal(s): Upon graduation from high school, [Student] will attend a training program to become a Maintenance Helper

MEASURABLE ANNUAL TRANSITION GOALS

Measurable Annual Transition Goal: By the end of the IEP year, with clear guided instruction, [Student] will explore requirements for two (2) vocational training programs that will assist [Student] in becoming a Maintenance Helper for 100% accuracy.	
Baseline: [Student] is unaware of any requirements for any training programs that require Student to become a Maintenance Helper.	Anticipated Date of Achievement: 03/08/2023

TRANSITION SERVICES FOR POST-SECONDARY EDUCATION AND TRAINING

Service	Setting	Time	Projected Begin Date	Projected End Date
Access to computer and internet with teacher support	DCPS Classroom	1 hr. per year	03/09/2022	03/08/2023

(Respondent's Exhibit 9-10, 9-11, 9-12)

37. Student's post-secondary transition plan was developed based on assessments were given pictures of different jobs and figures of job tasks. Student was also provided an

independent living assessment to assess what areas areas need to be worked on with Student. School A transition staff also works closely with RSA to be prepared to find employment for Student. Based upon the assessments and jobs that Student has performed in the classroom, Student needs a job where Student does not have a lot of interaction with people, and Student can know that task and carry it out. Student has been able to perform these types of tasks in the CES classroom. Because of Student's age School A has focused on developing Student's job skills and opportunities to work during summer break. (Witness 5's testimony)

38. On March 15, 2022, DCPS issued a PWN which stated that during a meeting held on March 9, 2022, the IEP team reviewed [Student's] proposed "DRAFT IEP." The team proposed goals, supports, and services that are reflective of [Student's] present levels of academic achievement and functional performance and will continue to push [Student's] progress in all areas of concern for [Student]. Description of each evaluation procedure, assessment, record, or report used as a basis for the proposed or refused action: In developing the IEP, the team utilized a variety of formal and informal assessments. The team utilized data, including, but not limited to, report cards, progress report information, informal observations, teacher input, related service provider input and notes, and input from the family. The team utilized classroom and school-based assessment data, including Lexi-Core-5 Reading Assessment, BRIGANCE Skills Inventory Assessment for Math, Reading & Transition, O Net Interest Profiler Score Report, Casey Life Skills Assessment, and the Post-Secondary Educational Pictorial Assessment.” (Respondent's Exhibit 11)
39. DCPS convened an AED meeting on January 20, 2023. The following assessments were completed/reviewed in addition to the input of Student, Student's teacher(s), Student's CFSA social worker, and Student's attorney/advocate: BRIGANCE Comprehensive Math Inventory of Basic Skills Assessment, BRIGANCE Comprehensive Inventory of Basic Skills II Reading – ELA Assessment, Functional Living Skills Assessment. DCPS issued a PWN stating the following: DCPS proposes to proceed with evaluation for [Student], who will be assessed in the following areas: speech & language, and review the psychological report to determine if additional assessments are needed, which were identified during the AED process. The team determined that [Student] qualifies as a student with a disability who is eligible for special education and related services under IDEA. However, additional assessments were requested by the SLP and the school psychologist, who stated that she would review previous psychological reports and determine if additional assessment(s) were needed. (Respondent's Exhibits 12, 13)
40. On January 27, 2023, Student's CFSA social worker granted DCPS consent to evaluate Student. On February 7, 2023, a DCPS school psychologist completed a triennial psychological evaluation. The psychologist conducted a record review, parent and teacher interviews, and a classroom observation but did not conduct any new assessments of Student. The psychological evaluation stated that “[Student's] evaluation suggests that [Student] is not on grade level in academics. However, [Student] is progressing with the support put in place” and that “[Student] has a history of developmental delays and performing below grade level.” (Respondent's Exhibits 14, 18)

41. As part of the reevaluation process, Student completed a "Student Participant Written Input Form" on February 7, 2023. Student stated that "[Student] likes all of [Student's] classes," that "nothing" can be changed within [Student's] classroom to make it easier for [Student] to learn, that [Student] "received a lot of supports," that [Student] does not need any additional help with skills and that [Student] wants to be a "maintenance helper." (Respondent's Exhibit 17, Petitioner's Exhibit 1 pg. 900).
42. On March 13, 2023, DCPS completed an evaluation report for a speech-language reevaluation of Student conducted on February 27, 2023. The SLP stated in her report: "[Student] was informally assessed and performed within normal limits in fluency skills. [Students] intelligibility was deemed fair to familiar listeners on the word and phrase level and poor on the sentence level during conversational speech. [Student's] teachers report that [Student] is understood 80% of the time with context. When not understood, they ask probing questions to clarify [Student's] intent. (Respondent's Exhibit 22)
43. The SLP administered the following formal assessments: Receptive One-Word Picture Vocabulary Test – 4th Edition (ROWPVT-4) and Expressive One-Word Picture Vocabulary Test, 4th Edition (EOWPVT-4). On the ROWPVT-4 and EOWPVT-4 (receptive and expressive vocabulary), [Student] scored severely below average on the expressive and receptive vocabulary tests. [Student's] performance on these vocabulary tests demonstrated that [Student] mainly uses tier 1 vocabulary. [Student] possesses functional communication vocabulary, which allows [Student] to communicate feelings and basic needs. In the school setting, [Student] will need accommodations and modifications to comprehend and express [self]. (Respondent's Exhibit 22)
44. In her evaluation report the SLP noted: "[Student] has severe deficits in receptive, expressive, and social language skills. [Student] is a verbal communicator who uses functional language and vocabulary to express needs and wants and to navigate [Student's] academic environment. [Student] also depends on communication partners to express needs and wants and to navigate the academic environment. [Student's] oral comprehension appears to include words, phrases, sentences, direct requests, and literal language. [Student] appears to be unable to understand complex questions and conversations, indirect requests, figurative language, same/different, more/less, opposites/synonyms, time, sarcasm, complex emotions, and social cues. [Student] largely relies on the caregivers and adults in [Student's] environment to initiate communication; however, [Student] can express basic needs and ask questions ("what is that?"), when [Student] is motivated. When comparing [Student's] performance during this speech and language assessment to [Student's] performance from 2008, [Student] has made significant gains in all areas of speech and language. Despite this progress, [Student] continues to present with communication deficits. [Student] is meeting classroom expectations with accommodations and modifications. A lack of attendance does not appear to be a factor in [Student's] progress in school and therapy." (Respondent's Exhibit 22)
45. DCPS convened an annual IEP meeting on March 3, 2023. Student was present for this meeting along with Student's CFSA social worker and educational attorney. In response to a request from Student's educational attorney, School A increased Student's speech-

language services from 30 to 90 minutes per month. The team reviewed Student's progress and agreed that Student remained eligible for services. The team determined that a break in services during the summer would not cause Student to regress in critical skills and thus decided that Student did not qualify for ESY. (Respondent's Exhibits 9, 10, 19, 20)

46. On March 9, 2023, DCPS issued a PWN stating the following: "DCPS proposes to implement the IEP developed by the team on 03/03/2023 during an annual IEP review meeting. The IEP developed will be implemented from March 03, 2023, and end on March 01, 2024. During a March 03, 2023 meeting, the IEP team reviewed [Student's] proposed "DRAFT IEP." The team proposed goals, supports, and services that reflect [Student's] present levels of academic achievement and functional performance and will continue to push [Student's] progress in all areas of concern. In developing the IEP, the MDT team utilized a variety of formal and informal assessments. The team utilized data, including, but not limited to, reports and progress card information, informal observations, teacher input, related service provider input and notes, and input from the CFSA Social Worker and the educational attorney. The team utilized classroom and school-based assessment data, including the BRIGANCE Skills Inventory of Basic Skill II for Math, Reading & Transition, O*Net Interest Profiler Score Report, Casey Life Skills, Independent Living Questionnaire, and the Post-Secondary Educational Pictorial Assessment." (Respondent's Exhibit 21)
47. DCPS completed an Evaluation Summary Report and issued a Final Eligibility Determination Report dated March 20, 2023. The report noted Student's initials and Student's continued eligibility under the disability classification of autism. (Respondent's Exhibits 24, 25, 26)
48. On March 21, 2023, DCPS issued a PWN that stated the following: "During the eligibility determination meeting, conducted on March 20, 2023, the team reviewed all formal and informal assessment(s), data collected during the AED, observations, and the state policy definition, as well as the eligibility criteria worksheet, and exclusionary factors and determined that [Student] met all required criteria under the category of Autism. Description of each evaluation procedure, assessment, record, or report used as a basis for the proposed or refused action: In making the determination, the team reviewed a variety of formal and informal assessments including, but not limited to, the following: BRIGANCE Comprehensive Inventory of Reading and Basic Mathematics, speech and language assessments, and classwork. The team reviewed data collected during the AED process and the speech and language assessment. Input provided by the CFSA social worker and educational attorney were central components reviewed and discussed. The team also reviewed observations by classroom teacher(s) and/or instructional aide, service providers, and transition coordinator. Finally, the team used this data to complete relevant eligibility worksheets and made its final determination. Results of this review indicated that [Student] meets criteria as a student with a disability of Autism." (Respondent's Exhibits 26, 26a)
49. On March 31, 2023, the D.C. Superior Court appointed a guardian to oversee Student's affairs, including educational decision-making. Student has reached the age of majority

and is represented in this proceeding by Petitioner, Student's court-appointed guardian. (Guardian's testimony, Petitioner's Exhibit 1 pg. 1593)

50. On April 26, 2023, School A initiated an IEP amendment to change the transition section of Student's IEP to meet OSSE's wording requirements for transition services. (Respondent's Exhibit 28)
51. DCPS held an annual review IEP meeting for Student on May 3, 2023. Student and Student's educational attorney participated by telephone. The IEP developed on May 3, 2023, again noted the following regarding Student's communication: "[Student's] speech is difficult to understand due to many inconsistent sound deletions, substitutions of sounds in words." The IEP noted the following regarding assistive technology: "The IEP team determined that [Student] does not require assistive technology device or services in order to access the curriculum." The IEP included academic goals in math and reading and goals in adaptive/daily living skills, communication/speech, and language. The IEP prescribed the following services: 20 hours per week of specialized instruction and 90 minutes per month of speech-language pathology outside general education. The IEP did not prescribe behavioral support services or ESY. The IEP noted the following regarding graduation planning: H.S. Certificate prior to age 22. (Respondent's Exhibit 30, 31)
52. Student's May 3, 2023, IEP PLOPs for math cites Student's August/September 2022 BRIGANCE scores: "[Student] can count objects and write whole numbers up to 20 independently, orally recite [Student's] numbers up to the number 9, with minimal prompting, count by 10's up to 50, and write numbers in standard form with multiple representation of whole numbers. [Student] demonstrated difficulties, counting by 2's, 3's, and 5's, adding 1 digit and 2 digits numbers with and without regrouping, subtracting 1 digit by 1 digit and 1 digit by 2 digits, place value, counting coins in a group, and describing relationships among coins and the dollar bill. (Respondent's Exhibit 30)
53. The May 3, 2023, IEP has two math goals: (1) By the end of the IEP year, using manipulatives, modeling, and guided instructions, Student will demonstrate the ability to add single-digit numbers with regrouping for 80% accuracy in 4/5 opportunities. Objectives: [Student] will add single digit numbers with 80% accuracy by the end of the IEP year; (2) By the end of the IEP year, with prompting, assistance, and guided instructions, Student will be able to independently count to 35 in sequence with 80% accuracy, in 4 out of 5 opportunities. Objectives: With prompting and assistance, [Student] will be able to count to (35) in 4/5 opportunities independently for 80% accuracy. (Respondent's Exhibit 30)
54. Student's May 3, 2023, IEP PLOPs for reading states: "Based on the BRIGANCE Comprehensive Inventory of Basic Skills II Reading Assessment, administered on 8/30/08/2022, indicate that [Student] has been assessed, and the following information was revealed: Visual Discrimination – Forms, Letters, and Words 10/ 10, Visual Motor Skills 12/12, Reading Comprehension Short Passages (Gr. PreK), Word Recognition (Primer), and Spelling (Gr. K). According to the results of the BRIGANCE testing, [Student] demonstrated the ability to read and write [Student's] first and last name and identity and read some pre-primer words [a, blue, little, my, on, see, and, to] primer words [down, find,

look, one, she, that, we, when, and why], and one grade 1 word[day]. [Student] also demonstrated the ability to recite and write some letters of the alphabet and write the letters in alphabetical order up to the letter (f).” (Respondent’s Exhibit 30)

55. Student’s May 3, 2023, IEP has two reading goals: (1): By the end of the IEP year, with assistance and guidance, when given varied types of text(s) to read, Student will identify the main character and setting for (4 out of 5) opportunities for 80% accuracy. Objectives: After reading varied stories on grade level, [Student] will identify the setting and main character(s) from the reading materials in 4/5 trials for 80% accuracy by the end of the IEP year; (2): By the end of the IEP period with manipulatives, promptings, and visual aids, [Student] will demonstrate the ability to identify the letters of the alphabet up to letter (O) in (3) out of (4) trails for 75% accuracy. Objectives: [Student] identify letters of the alphabet up to letter (O) for 75% accuracy by the end of the IEP year. (Respondent’s Exhibit 30)
56. The May 3, 2023, IEP’s Adaptive/Daily Living Skills PLOP cites Student’s AFLS Assessment in January 2023. Annual Goal: By the end of the IEP year, with guided clear instructions, modeling, and prompts, [Student] will demonstrate the ability to identify (5) safety signs in 4/5 situations for 80% accuracy. Baseline: [Student] has demonstrated the to only identify safety sign (Stop) in 4/5 situations for 80% accuracy. Therefore, [Student] will identify (5) for 80% accuracy. [Student] will demonstrate the ability to identify (5) safety signs in (4 out of 5) opportunities for 80% accuracy. (Respondent’s Exhibit 30)
57. The May 3, 2023, IEP’s Communications/Speech & Language PLOP notes that “[Student] exhibits echolalic behaviors. [Student] has been working on answering wh questions (what & who). When Student was present for sessions, Student has been able to answer who and what questions with multiple choice options with 100% accuracy. [Student] struggles more when presented with visuals but no multiple choice. Compared to the previous quarter, Student is improving slowly. Student will be introduced to when and where questions as well.” The Annual Goal was as follows: Student will identify or label 10 functional vocabulary words (to express how someone is feeling) when presented with a structured or unstructured language activity with 70% accuracy given minimal verbal prompts/cues. Baseline: Currently, Student’s case manager/social worker reports that Student is not able to express self when Student encounters pain or is frustrated. Objectives: Student will identify or label 10 functional vocabulary words (to express how someone is feeling) when presented with a structured language activity with 70% accuracy given minimal verbal prompts/cues. (Respondent’s Exhibit 30)
58. The May 3, 2023, IEP’s Post-Secondary Transition Plan notes that "on 02/16/2023 [Student] was administered the Post Secondary Education Assessment and the following information was revealed: [Student] learns best by listening, watching, and doing. The things [Student] wishes [Student] could do better are reading, writing, telling time, numbers, and the use of money. [Student’s] abilities and challenges are as follows: reading store & street signs in the community, reading menus, writing job application forms, reading books & emails, counting money, and the use of a calculator. The transition section covered employment, education and/or training, and independent living skills.” (Respondent’s Exhibit 28)

59. The May 3, 2023, IEP's Post-Secondary Transition Plan also notes that "[Student] was given the Career Interest Inventory Pictorial Version on 2/16/2023. The Interest Inventory revealed the following: Realistic The Doer (1), Investigative The Thinker (1), Artistic The Creator (3), Social The Helper (1), Enterprising The Persuader (2), and the Conventional The Organizer (1). [Student's] highest interests were in the "Artistic The Creator" with a score of (3). [Student] was assessed using the Casey Life Skills on 02/13/2023 on different categories and earned a score for each category between 15, where 5 is the highest. [Student's] score for each domain is as follows: Daily Living 2.06 Self-Care1.28; Relationships & Communication 3.79; Housing & Money Management1.05; Work & Study Life 2.47; Career & Education Planning 2.33; Civic Engagement1.40; Navigating the Child Welfare System 1.20; and Looking Forward 4.14. Looking Forward was the highest category for [Student], with a score of 4.14." (Respondent's Exhibit 28)

60. The employment section of the May 3, 2023, IEP's Post-Secondary Transition Plan is as follows:

Post-Secondary Goal(s): Upon graduation from high school, [Student] will attend a training program to become a Custodian.

MEASURABLE ANNUAL TRANSITION GOALS

Measurable Annual Transition Goal: By the end of the IEP year, with clear guided instruction, [Student] will explore requirements for two (2) vocational training programs that will assist Student in becoming a Custodian for 100% accuracy.

Baseline: [Student] is unaware of any requirements for any training programs that requires [Student] to become a Custodian.	Anticipated Date of Achievement: 03/01/2024
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TRANSITION SERVICES FOR POST-SECONDARY EDUCATION AND TRAINING

Service	Setting	Time	Projected Begin Date	Projected End Date
Vocational Training	DCPS	1 hr per year	03/03/2023	03/01/2024

(Respondent's Exhibit 28)

61. On May 12, 2023, DCPS issued a PWN that stated the following: The team proposed at the May 3, 2023, meeting to amend the current IEP for [Student's] "Transition Services" by writing activities that the student can do on [Student's] own. Explanation of reasons for proposal or refusal of action Under the "Transition Services" section, the following will be changed. Education and Training will be changed from Access to computer and internet with teacher supports to "Vocational Training. Under the Employment Service section, it will be changed from Special Education Teacher(s) & Support Staff to "Career Counseling. Under the Independent Living Services Section, it will be changed from Independent Living Skills Services & Instruction to "Training on Independent Living Skills." Description of each evaluation procedure, assessment, record, or report used as a basis for

the proposed or refused action: The team utilized classroom and school-based assessment data, including the following: BRIGANCE Skills Inventory of Basic Skill II for Math, Reading & Transition, O*Net Interest Profiler Score Report, Casey Life Skills, Independent Living Questionnaire, and the Post-Secondary Educational Pictorial Assessment. (Respondent's Exhibit 29)

62. After the May 12, 2023, PWN was sent, Student's guardian requested that Student graduation planning be changed. The IEP team accepted this request. Student's IEP was amended accordingly as of May 16, 2023. DCPS sent a PWN to Student's guardian on May 17, 2023, stating that "the MDT team proposed to amend the current IEP for [Student] regarding the "Graduation Planning" section via a request made by [Student's guardian]." Student's IEP was "amended to have the Graduation Planning and Projected Exit Category section changed from "H.S. Certificate prior to age 22" to "H.S. Certificate at age 22. This request also affects [Student's] projected graduation date to be changed from [REDACTED] [REDACTED]" (Petitioner's testimony, Respondent's Exhibits, 30, 31, 32)
63. On May 24, 2023, Student's guardian, Petitioner, filed this due process complaint alleging that DCPS denied Student a FAPE. (Petitioner's Exhibit 2)
64. Petitioner engaged an independent SLP to evaluate Student. The SLP conducted her assessment on May 27, 2023, and completed her evaluation report on May 28, 2023. The SLP assessed Student to evaluate receptive and expressive language skills. The evaluation was completed in 95 minutes. Student enthusiastically participated and completed all tasks presented and remained seated throughout the assessment but could not maintain eye contact. The SLP administered the following assessments: Comprehensive Language: Oral and Written Language Scales, Second Edition (OWLS-II). The assessment consists of 2 subtests to measure linguistic skills: Listening Comprehension (LC) and Oral Expressions (OE). (Witness 1's testimony, Petitioner's Exhibit 9)
65. On the OWLS-II, Student scored in the deficient range compared to children of the same chronological age in all three assessment areas: listening comprehension, oral expression, and oral language composite. The SLP also assessed Student's speech production using the Arizona Articulation and Phonology Scale – 4th Revision (Arizona-4) Student scored in the 0.1 percentile rank in the severe range in both areas assessed: word articulation and sentence articulation. (Witness 1's testimony, Petitioner's Exhibit 9)
66. The SLP also engaged in unstructured conversation with Student in addition to formal testing. The evaluation report stated: "Student readily interacted with the evaluator, smiling and giggling, but struggled to engage in discourse with the examiner. [Student] spoke in 1-word utterances and unintelligible phrases & sentences where only 1 or 2 words could be deciphered. Student did not ask questions. Student tried to respond to most yes/no and choice questions, even if inaccurately, by attempting verbal speech paired with rudimentary gestures and pointing skills. Student followed 1-step directions to complete tasks and made unintelligible comments about preferences. Student's speech is highly intelligible (mostly jargon) in connected speech, but in single words, speech is somewhat

more comprehensible, although noticeably in error. Student's speech production is classified as Severe.” (Witness 1’s testimony, Petitioner’s Exhibit 9)

67. The independent SLP’s report also noted the following: "Student initiates proper greeting/farewells, responds to simple Wh- questions about familiar activities (even though oftentimes incorrectly) and interacts as best [Student] can, considering profound communicative limitations, with both peers and adults. Voice quality is clear. Vocal pitch/tone is unusual, characterized by audible tension. Intensity/loudness is adequate. Resonance/nasality is hypernasal. Speech-fluency skills are disfluent with a bit of a stutter. Student is significantly challenged when expressing self. Student speaks using single words and unintelligible phrases and sentences and demonstrates dramatic difficulty in all four categories of linguistic structure (language structure) that are used to determine a student's linguistic strengths and weaknesses, including lexical/semantic (vocabulary), syntactic (grammar), supralinguistic (linguistic factors that convey a message such as punctuation, intonation), and pragmatic (functional and social characteristics of language/using language to interact with others) impacting [Student’s] overall intelligibility within the academic setting.” (Witness 1’s testimony, Petitioner’s Exhibit 9)
68. The independent SLP concluded that although Student is grossly intelligible in single words, in connected speech, Student presents with severe-profound phonological error patterns, which are causing Student's speech to be noticeably in error if not unintelligible. She noted the following: “[Student's] academic performance is remarkably impacted, and [Student] is socially affected/at risk by [Student's] present speech articulatory patterns because they have not been effectively, consistently, and formally addressed.” Based on the evaluation, the independent SLP made the following conclusions and recommendations about Student: Student should be reconsidered for an augmentative system and evaluated for wax in ears and possible high-frequency hearing loss. (Witness 1’s testimony, Petitioner’s Exhibit 9)
69. Petitioner engaged an educational consultant to review Student’s education records, to testify and to prepare a compensatory education proposal. The stated purpose of the consultant's proposal was to assess whether compensatory services for June 2021 through June 2023 are warranted. She concluded that Student is entitled to compensatory services for SY 2020-2021, SY 2021-2022 SY, and 2022-2023.⁸ The consultant opined that

⁸ The compensatory education proposal presumed that Student had been denied FAPE in the following ways: 1) failure to develop and implement appropriate IEP dated March 9, 2022; 2) failure to develop and implement appropriate IEP dated May 3, 2023; 3) failure to provide meaningful adaptive/ daily living skills for SY 2021-22 and SY 2022-23; 4) failure to provide appropriate speech and language services with appropriate goals, service delivery, and measurable data (baseline, PLOP, progress monitoring, service logs) by failing to timely, accurately, and comprehensively evaluate student for appropriate speech services by no later than May 1, 2021; 5) failure to evaluate and identify appropriate program for student’s intellectual disability; 6) failure to provide student with appropriate AT by evaluating no later than May 1, 2021; 7) failure to provide ESY services for 2022 and 2023; 8) failure to provide student with an appropriate and meaningful transition plan and transition supports for SY 2021-22 and SY 2022-23; 9) failure to consider student's entire educational record; 10) failure to provide a full-time IEP in an appropriate private placement for SY 2021-22 and SY 2022-23; 11) failure to provide a FAPE by not timely, accurately, and comprehensively providing a comprehensive psycho educational evaluation by no

Student had not made meaningful academic progress and should receive specialized instruction along with behavior support services (ABA or similar), speech and language services, and vocational training in a special education private placement until the age of 25, have an IEP that addresses Student's needs and should receive the compensatory services. She recommended the following evaluations: neuropsychological, speech and language, assistive technology, occupational therapy, and transition assessment. She recommended the following compensatory services: Academic Tutoring in Reading: 200 hours, 100 hours of explicit written expression, 100 hours of math tutoring, 108 hours of speech and language pathology, and 150 hours of independent vocational support. She also recommended a nonpublic placement and that Student's LRE be in a special education private school until age 25. (Witness 3's testimony, Petitioner's Exhibit 20)

CONCLUSIONS OF LAW:

Pursuant to IDEA §1415 (f)(3)(E)(i), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education ("FAPE").

Pursuant to IDEA §1415 (f)(3)(E)(ii), in matters alleging a procedural violation, a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE, or caused the child a deprivation of educational benefits. An IDEA claim is viable only if [DCPS'] procedural violations affected the student's substantive rights." *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

34 C.F.R. § 300.17 provides:

A free appropriate public education or FAPE means special education and related services that--
(a) Are provided at public expense, under public supervision and direction, and without charge;
(b) Meet the standards of the SEA, including the requirements of this part; (c), Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324

Pursuant to 5A DCMR 3053.6, the burden of proof is the responsibility of the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). Respondent held the burden of persuasion on issues #1 and #2 after Petitioner presented a prima facie case on some subparts of those two issues. Petitioner held the burden of persuasion on issues #3, #4, and #5.⁹ The burden of

later than May 1, 2021; 12) failure to revise Student's IEP based on lack of meaningful progress for SY 2021-22 and SY 2022-23; 13) failure to provide meaningful independent vocational support for SY 2021-22 and SY 2022-23; 14) failure to provide ABA or any other behavior support service for SY 2021-2022 and SY 2022-2023; 15) failure to provide attendance interventions for SY 2021-2022 and SY 2022-2023; 16) failure to provide specialized instruction for the time allotted on the IEP for SY 2021-2022 and SY 2022-2023.

⁹ DC Code § 38-2571.03 (6) provides:

(A) 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:

persuasion shall be met by a preponderance of the evidence. The normal standard is a preponderance of the evidence. See, e.g., *N.G. V. District of Columbia* 556 f. Sup. 2d (D.D.C. 2008) see also 20 U.S.C. §1451 (i)(2)(C)(iii).

ISSUE 1: Did DCPS deny Student a FAPE because the IEP dated March 9, 2022, was not reasonably calculated to allow Student to make appropriate progress (a) in all areas; (b) in adaptive/daily living skills; (c) in speech and language; (d) with behavioral and emotional needs; (e) because it failed to identify and evaluate and program for Student's intellectual disability; (f) because it failed to provide Student appropriate AT; (g) because it failed to provide ESY; (h) because it failed to provide an appropriate transition plan; (i) because it failed to consider Student's full educational record; and (j) because it failed to provide a full-time IEP in an appropriate private placement ?

ISSUE 2: Did DCPS deny Student a FAPE because the IEP dated May 3, 2023, was not reasonably calculated to allow Student to make appropriate progress (a) in all areas; (b) in adaptive/daily living skills; (c) in speech and language; (d) because it failed to identify and evaluate and program for Student's intellectual disability; (e) because it failed to provide Student appropriate AT; (f) because it failed to provide ESY; (g) because it failed to provide an appropriate transition plan; (h) because it failed to consider Student's full educational record; and (i) because failed to provide a full-time IEP in an appropriate private placement ?

Conclusion: Respondent did not sustain the burden of persuasion by a preponderance that Student's DCPS IEPs dated March 9, 2022, and May 3, 2023, were reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances. The IHO concluded that Petitioner met a prima facie case as to both IEPs that was not overcome by the evidence presented by Respondent in the following areas: math, reading, adaptive/daily living skills, and speech and language, and because the IEPs did not provide Student appropriate AT.

Respondent did not sustain the burden of persuasion by a preponderance that Student's DCPS IEPs dated March 9, 2022, and May 3, 2023, were reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances. The IHO concluded that neither IEP was reasonably calculated to enable Student to make appropriate progress in math, reading, adaptive/daily living skills, and speech and language. In addition, the IEPs were deficient because they did not provide Student AT.

(i) 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.

(ii) Where a party seeks tuition reimbursement for unilateral placement, the party seeking reimbursement shall bear the burden of production and the burden of persuasion on the appropriateness of the unilateral placement, provided that the hearing officer shall have the authority to bifurcate a hearing regarding a unilateral placement; provided further, that if the hearing officer determines that the program offered by the public agency is appropriate, it is not necessary to inquire into the appropriateness of the unilateral placement.

(B) This paragraph shall apply to special education due process hearings resulting from complaints filed after July 1, 2016.

The Individuals with Disabilities Education Act ("IDEA") was enacted to ensure that all disabled students receive a "free appropriate public education." 20 U.S.C. § 1400(d)(1)(A). "Commonly referred to by its acronym 'FAPE,' a free appropriate public education is defined as 'special education and related services that' are 'provided at public expense, under public supervision ...;' and that 'meet the standards of the State educational agency;' as well as 'conform[] with [each disabled student's] individualized education program.'" *Charles H. v. District of Columbia*, 2021 WL 2946127 (D.D.C. June 16, 2021) (quoting 20 U.S.C. § 1401(9)) (alterations in original). "Special education" is defined as "specially designed instruction, at no cost to parents, [that] meet[s] the unique needs of a child with a disability." 20 U.S.C. § 1401(29). "Related services," on the other hand, are defined as "such developmental, corrective, and other supportive services ... as may be required to assist a child with a disability to benefit from special education." *Id.* § 1401(26)(A).

"Under [the] IDEA and its implementing regulations, students with disabilities ... are entitled to receive [a] FAPE through an Individualized Education Program (or IEP)." *Charles H.*, 2021 WL 2946127 (quoting 20 U.S.C. § 1401(9)(D)). An IEP is a written document that lays out how the student will obtain measurable annual goals and that mandates specific special education and related services that the student must receive. 20 U.S.C. § 1414(d)(1)(A)(i). It is created for each student by a special "IEP Team," consisting of the child's parents, at least one regular-education teacher, at least one special-education teacher, and other specified educational experts. *Id.* § 1414(d)(1)(B). An IEP is the main tool for ensuring that a student is provided a FAPE. See *Charles H.*, 2021 WL 2946127 (quoting *Lofton v. District of Columbia*, 7 F. Supp. 3d 117, 123 (D.D.C. 2013)). " (*Robles v. District of Columbia* 81 IDELR 183 D.D.C. August 26, 2022)

In *Board of Education v. Rowley*, the United States Supreme Court set forth a two-part inquiry for determining whether a school district has satisfied the FAPE requirement. First, the state must have "complied with the procedures set forth in the Act." *Rowley*, 458 U.S. at 206. Second, the IEP that is developed must be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206-07. To be appropriate under 34 C.F.R. § 300.324, the IEP must consider the (i) strengths of the child; (ii) concerns of the parents; (iii) results of the initial or most recent evaluation; and (iv) academic, developmental, and functional needs of the child.

The second substantive prong of the *Rowley* inquiry is whether the IEP developed was reasonably calculated to enable Student to make progress appropriate in light of Student's individual circumstances. In *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.* RE-1, 137 S. Ct. 988 (2017), the U.S. Supreme Court elaborated on the "educational benefits" requirement pronounced in *Rowley*: To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. . . . Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. . . . When a child is fully integrated into the regular classroom, as the Act prefers, what that typically means is providing a level of instruction reasonably calculated to permit advancement through the general curriculum. . . . If that is not a reasonable prospect for a child, his IEP need not aim for grade-level advancement. But his educational program must be appropriately ambitious in light of his 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. *Endrew F.*, supra, 137 S. Ct. at 999–1000 (citations omitted).

Pursuant to *Schaefer v. Weast*, 554 F.3d 470 (U.S. App. 2009), the Hearing Officer must “focus on the adequacy of the IEP at the time it was created, and ask if it was reasonably calculated at that time to enable the student to receive educational benefits.”

The key inquiry regarding an IEP's substantive adequacy is whether taking account of what the school knew or reasonably should have known of a student's needs at the time, the IEP offered was reasonably calculated to enable the specific student's progress....“Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.” *Z.B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018) citing *Endrew F.*, supra, 137 S. Ct. 988.

Pursuant to 34 C.F.R. § 300.324 (b) (1) Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team— (i) Reviews the child’s IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and (ii) Revises the IEP, as appropriate, to address— (A) Any lack of expected progress toward the annual goals described in § 300.320(a)(2), and in the general education curriculum, if appropriate; (B) The results of any reevaluation conducted under § 300.303; (C) Information about the child provided to, or by, the parents, as described under § 300.305(a)(2); (D) The child’s anticipated needs; or (E) Other matters.

Pursuant to 34 C.F.R. § 300.323, at the beginning of each school year, each public agency must have an IEP effect for each child with a disability within its jurisdiction. The legal standard under the IDEA is that DCPS “must place the student in a setting that is capable of fulfilling the student’s IEP.” *Johnson v. Dist. of Columbia*, 962 F. Supp. 2d 263, 267 (D.D.C. 2013). *See also O.O. ex rel. Pabo v. Dist. of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008) (placement must be in a school that can fulfill the student's IEP requirements).

Removing a child with disabilities "from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes cannot be achieved satisfactorily." 34 C.F.R. § 300.550; 34 C.F.R. §300.114 see also 20 U.S.C. § (a)(5)(A) (a disabled child is to participate in the same activities as non-disabled children to the "maximum extent appropriate"); *Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006)

“The IDEA requires that children with disabilities receive education in the regular classroom whenever possible” *Z.B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018) citing *Endrew F.*, supra, 137 S. Ct. at 999 (quoting *Rowley*, 458 U.S. at 202)

Petitioner asserted virtually the same allegations against DCPS regarding both the IEPs at issue. Petitioner asserted that the March 9, 2022, IEP and the May 3, 2023, IEP were not reasonably calculated to allow Student to make appropriate progress (a) in all areas; ¹⁰ (b) in adaptive/daily

¹⁰ As noted previously, the IHO interpreted this claim to apply to the following areas included in Student's IEP: academics (math/reading), adaptive/daily living skills, communication/speech and language, and transition services. Because these areas, other than academics, are addressed separately, there is a discussion of academics but no separate

living skills; (c) in speech-language; (d) with behavioral and emotional needs;¹¹ (e) because it failed to identify and evaluate and program for Student's intellectual disability; (f) because it failed to provide Student appropriate assistive technology ("AT"); (g) because it failed to provide ESY; (h) because it failed to provide an appropriate transition plan; (i) because it failed to consider Student's full educational record; and (j) because it failed to provide a full-time IEP in an appropriate private placement.

Academics: Math and Reading:

Student's March 9, 2022, and May 3, 2023, IEP included academic goals in math and reading. The IEP prescribed the following services: 20 hours per week of specialized instruction outside general education to implement the academic and other goals in the IEP.

The March 9, 2022, IEP PLOP for math and baselines cited Student's October/November 2021 BRIGANCE scores from October and November 2021, from four months prior to when the IEP was developed. The PLOP also noted that observations revealed that Student could count objects in a set, write numbers up to 20 with minimal prompting, and orally recite numbers up to 7.

The March 9, 2022, IEP had two math goals:

Goal (1): By the end of the IEP year, Student will demonstrate the ability to add single-digit numbers with regrouping for 75% accuracy in 3/4 opportunities. Objectives: Student will add single-digit numbers with 80% accuracy by the end of the IEP year. The baseline stated: Student has demonstrated the inability to add single-digit numbers with assistance.

Goal (2): By the end of the IEP year, Student will be able to independently count to 25 in sequence with 80% accuracy in 4 out of 5 opportunities. Objectives: With prompting and assistance, Student will be able to count to 23 in 4/5 opportunities independently for 80% accuracy. The baseline stated: [Student] can count objects in a set, write numbers up to 20, and orally recite numbers up to the number 7.

The March 9, 2022, IEP PLOP for reading cited Student's October/November 2021 BRIGANCE scores, administered four months prior to when the IEP was developed, revealed, among other things, that Student's reading comprehension of short passages and spelling was on kindergarten level.

The March 9, 2022, IEP had two reading goals:

(1) By the end of the IEP year, Student will be able to listen to various reading materials and answer basic "wh" questions for 75% accuracy. Objectives: Student will respond to "wh" questions for 75% accuracy in 3/4 opportunities by the end of the IEP year.

(2): By the end of the IEP period with manipulatives, promptings, and visual aids, Student will demonstrate the ability to identify the letters of the alphabet up to letter (L) in (3) out of (4) trials for 75% accuracy.

discussion of "all areas."

¹¹ Behavioral and emotional needs is the single area alleged for the March 9, 2022, IEP that was not alleged for the May 3, 2023, IEP. The IHO has, nonetheless, addressed that area of concern as to both IEPs.

Objectives: Student will identify letters of the alphabet up to letter (L) for 75% accuracy by the end of the IEP year.

Student's May 3, 2023, IEP PLOP for math cites Student's August/September 2022 BRIGANCE scores, administered eight months prior to the when the IEP was developed, noted, among other things, that Student could count objects and write whole numbers up to 20 independently, orally recite numbers up to 9, with minimal prompting, count by 10's up to 50, and write numbers in standard form with multiple representations of whole numbers. Student demonstrated difficulties counting by 2's, 3's, and 5's, adding 1 digit and 2-digit numbers with and without regrouping, subtracting 1-digit by 1-digit and 1-digit by 2-digits, place value, counting coins in a group, and describing relationships among coins and the dollar bill.

The May 3, 2023, IEP has two math goals:

(1) By the end of the IEP year, Student will demonstrate the ability to add single-digit numbers with regrouping for 80% accuracy in 4/5 opportunities. Objectives: Student will add single-digit numbers with 80% accuracy by the end of the IEP year;

(2) By the end of the IEP year, Student will be able to independently count to 35 in sequence with 80% accuracy in 4 out of 5 opportunities. Objectives: With prompting and assistance, Student will be able to count to (35) in 4/5 opportunities independently for 80% accuracy. (Respondent's Exhibit 30)

Student's May 3, 2023, IEP PLOPs for reading states: Based on the BRIGANCE Comprehensive Inventory of Basic Skills II Reading Assessment, administered on 8/30/08/2022, administered eight months before the IEP was developed, indicated that Student's reading comprehension of short passages was on the pre-kindergarten level.

Student's May 3, 2023, IEP has two reading goals:

(1): By the end of the IEP year, when given varied types of text(s) to read, Student will identify the main character and setting for (4 out of 5) opportunities for 80% accuracy. Objectives: After reading varied stories on grade level, Student will identify the setting and main character(s) from the reading materials in 4/5 trials for 80% accuracy by the end of the IEP year;

(2): By the end of the IEP period, Student will demonstrate the ability to identify the letters of the alphabet up to letter (O) in (3) out of (4) trials for 75% accuracy. Objectives: Student identify letters of the alphabet up to letter (O) for 75% accuracy by the end of the IEP year.

Petitioner expert witness testified about several flaws in the academic sections of math and reading in the Student's two DCPS IEPs at issue. She pointed out the PLOPs included assessments that were administered four to eight months before the IEPs were developed and, therefore, likely did not reflect Student current functioning when the IEPs were developed. She pointed out that the statements in the IEPs about how Student's disability affects Student access and progress in the curriculum and the math goals were copied between the two IEPs.

She pointed out that the PLOPs in Student's May 3, 2023, IEP were not adequately updated to reflect Student's progress or lack thereof, except that Student's reading comprehension scores fell from kindergarten level to pre-kindergarten. This witness also testified that the academic goals in some instances were above Student's noted abilities as reflected in the PLOPs and that the objective of the goals in some instances was simply a restatement of the goal. In one instance, the objective surpassed the targeted achievement percentage that Student was to achieve under the goal.

The expert witness also testified that the IEP goal in reading was a listening goal rather than requiring that Student engage in reading. This witness credibly testified that the math and reading goals in both IEPs were beyond Student's ability compared to the PLOPs. As a result, Petitioner's expert witness opined that the IEP's academic goals were not reasonably calculated to allow Student to make appropriate progress. This testimony about the academic goals was unrefuted. DCPS witnesses did not specifically address the academic goals in the IEP to counter the deficiencies pointed out by this expert witness. The IHO concludes that regarding math and reading goals, the March 2022 and May 2023 IEPs were not reasonably calculated to allow Student to make appropriate progress.

Adaptive/daily living skills

The March 9, 2022, IEP's Adaptive/Daily Living Skills PLOP stated the Student has shown the ability to follow simple directives with minimal prompting and assistance. Student also demonstrated the ability to follow and adapt to structured routines and schedules. This area of the IEP had a single goal:

Annual Goal 1: By the end of the IEP year, Student will demonstrate the ability to identify safety signs in 4/5 situations for 80% accuracy. Baseline: Student has demonstrated the inability to identify safety signs in 4/5 situations for 80% accuracy. Objectives: Student will demonstrate the ability to identify safety signs in 4 out of 5 opportunities for 80% accuracy.

The May 3, 2023, IEP's Adaptive/Daily Living Skills PLOP cites Student's AFLS Assessment in January 2023. This area had a single goal:

Annual Goal: By the end of the IEP year, Student will demonstrate the ability to identify (5) safety signs in 4/5 situations for 80% accuracy. Baseline: Student has demonstrated the to only identify safety sign (Stop) in 4/5 situations for 80% accuracy. Therefore, [Student] will identify (5) for 80% accuracy. Student will demonstrate the ability to identify (5) safety signs in (4 out of 5) opportunities for 80% accuracy.

The same expert witness testified that the IEP's adaptive and daily living skill goal was focused solely on Student being able to recognize safety signs and, in one instance, a stop sign. Although there was testimony by the DCPS witnesses about the various areas of instruction available to Student in the School A CES classroom and in the activities that Student participates in at School A, details of this instruction are not listed in Student's IEPs. The evidence demonstrates that at Student's group home and school, Student can perform daily living tasks such as eating, dressing, hygiene. Still, the adaptive and daily living section of Student's IEP is lacking. Because the IEP in the area of adaptive and daily living skills noted a single goal related to safety signs and did not include any other areas of adaptive and daily living that are supposedly embedded in the CES program, the IHO credits this expert's testimony regarding the deficiency of the IEPs in this regard and finds that testimony convincing. The IHO concludes that regarding adaptive and daily living goals, the March 2022 and May 2023 IEPs were not reasonably calculated to allow Student to make appropriate progress.

Speech-language

Student's March 9, 2022, IEP speech-language pathology outside general education was reduced from 60 minutes to 30 minutes per month. In response to a request from Student's educational attorney, School A increased Student's speech-language services from 30 to 90 minutes per month in the May 3, 2023, IEP.

The March 9, 2022, IEP's Communications/Speech & Language PLOP noted the following: Student exhibits echolalic behaviors. Student has been working on answering wh questions (what & who). When Student was present for sessions, Student was able to answer who and what questions with multiple choice options with 100% accuracy. Student struggles more when presented with visuals but no multiple choice. Compared to the previous quarter, Student is improving slowly. Student will be introduced to when and where questions as well.

The IEP's Communications/Speech & Language section had the following goal: After listening to a speaker's presentation on a grade-level topic and given a model and pictures or photos related to a topic, Student will demonstrate an understanding of the topic by verbally responding to at least (2) on-topic questions in (3 out of 5) opportunities.

The goals baseline stated: Student has been working on answering wh questions (what & who). When Student was present for sessions, Student has been able to answer who and what questions with multiple choice options with 100% accuracy. Student struggles more when presented with visuals but no multiple choice. Compared to the previous quarter, Student is improving slowly. Student will be introduced to when and where questions as well. The goal's objectives stated: 1. Student will answer where and when questions with 70% accuracy in 3/4 opportunities. 2. Student will answer questions about preference when given a field of 2-3 options and visual support in 3/4 opportunities. 3. Given visuals, Student will demonstrate the ability to identify and label safety signs in 4/5 situations for 80% accuracy. (Respondent's Exhibits 9-8, 9-9)

The May 3, 2023, IEP's Communications/Speech & Language PLOP is the same as in the prior IEP. The Annual Goal was as follows: Student will identify or label 10 functional vocabulary words (to express how someone is feeling) when presented with a structured or unstructured language activity with 70% accuracy given minimal verbal prompts/cues. Baseline: Currently, Student's case manager/social worker reports that [Student] is not able to express self when Student encounters pain or is frustrated. Objectives: Student will identify or label 10 functional vocabulary words (to express how someone is feeling) when presented with a structured language activity with 70% accuracy given minimal verbal prompts/cues.

There was credible unrefuted testimony from Petitioner's expert witness regarding regarding the inappropriateness of the IEP's speech-language goals and the insufficiency of the services in the first IEP of 30 minutes per month of speech-language services. Petitioner's expert SLP witness opined that Student needs an articulation goal on the IEP. She also disagreed with the AT statement in Student's IEP that Student did not need AT. She credibly testified that the PLOPs were not appropriately written, and there was insufficient data or numbers to indicate Student's ability to demonstrate skills. Also, the inadequate PLOP was repeated in the May 2023 IEP.

She opined that the IEP goals are poorly written. She also testified that the single goal was an objective rather than a goal, and the goals were unmeasurable. She pointed out that there is one goal, yet Student has three areas of need, including articulation and sound production. She opined that the March 2022 IEP that reduced speech-language services from 60 minutes to 30 minutes per month was an inappropriate reduction given Student's level of speech and language impairment. There was no expert testimony by a DCPS speech-language pathologist to counter or refute Petitioner's witness testimony in this regard. The IHO concludes that regarding speech-language, the March 2022 and May 2023 IEPs were not reasonably calculated to allow Student to make appropriate progress. Although Petitioner's expert SLP testified that because of missing data in Student's educational record, including service trackers, she could not attest that Student was

provided all services, there were no IEP implementation issues raised by Petitioner's due process complaint.

Behavioral and Emotional Needs:

On March 25, 2020, DCPS issued a PWN stating that, among other things, that Student continued to be eligible for special education services under the disability classification of autism and that Student no longer required social-emotional support services.

The evidence demonstrates that soon after Student began attending School A, DCPS schools migrated to a virtual learning platform due to the COVID-19 pandemic. Student did not do well with virtual learning. However, once in-person learning resumed, Student began attending the CES classroom daily and began to engage with the classroom staff and related service providers. DCPS's witnesses credibly testified that Student has become more comfortable and engaged than when Student first arrived at School A and has made progress in the CES classroom. Student's social skills have improved as Student has gained familiarity with the staff and the CES classroom and School A routines. Student also interacts with nondisabled peers in the cafeteria and other school-wide activities, which is beneficial to Student for communication and socializing modeling. The evidence demonstrates that Student does not display behavior difficulties at school that warrant behavior support services.

There was testimony that Student has begun to display frustration and behaviors in the group home setting. However, there is no indication that the behaviors have been displayed at school. In addition, the testimony indicated that Student's frustration derives from Student's desire but inability to communicate with others effectively. Because there is no evidence that Student's in-school behaviors have been disruptive or problematic since the discontinuation of behavior support services, the IHO concludes there was insufficient evidence to conclude that Student's IEPs at issue are/were deficient because they did not prescribe behavior support services to address any behavior or emotional needs.

Intellectual disability:

Petitioner alleges that DCPS failed to program for Student's intellectual disability. Petitioner's expert witness testified that neither of Student's IEPs at issue specifically mention Student's intellectual disability. However, this witness acknowledged that it was not clear to her that ID was not considered in the IEP.

On the other hand, DCPS witnesses testified that that Student's ID was considered. The evidence demonstrates that in 2008, DCPS evaluated Student, found Student eligible under the autism classification, and developed an initial IEP. Student's March 1, 2019, Richmond, Virginia, IEP noted that Student's evaluation results fell in the very low range (Pre-K). The social evaluation fell in the extremely low range (standard score 56). Student's low functioning is noted in Student's educational record and is reflected in the PLOPs and goals developed and placed in Student's DCPS IEPs.

Although there was credible testimony that Student's IEPs were deficient because of insufficient and/or inappropriate academic and other goals, the fact that Student's ID is not mentioned in the IEP does not support a finding that Student's low cognitive functioning was not considered in designing those goals and prescribing the services. The goals reflected Student's significant deficits in academic and cognitive functioning. Consequently, the IHO concludes that the evidence does not support a finding that Student's IEPs were deficient because they failed to identify and evaluate and program for Student's intellectual disability.

Assistive technology (“AT”);

Student’s February 9, 2015, DCPS IEP prescribed AT for communication with the following statement: “An AAC (Augmentative Alternative Communication) Device dynamic display with voice output (iPad with proloquo2go) has been given to Student.” The IEP noted that the AAC device helps Student ask and answer questions, ask for help, comment, request, and use social language in the classroom. This device also provides an auditory output of a vocal model for language.

Student's March 9, 2022, noted the following regarding assistive technology: "The IEP team determined that [Student] does not require assistive technology device or services in order to access the curriculum." Similarly, Student’s May 3, 2023, IEP had the same statement.

However, as pointed out in the discussion below regarding DCPS's alleged failure to conduct an AT evaluation, although Student was prescribed an AT device before leaving DCPS to attend school in Richmond, Virginia, Student's Richmond, Virginia IEP, and the DCPS eligibility report prepared upon Student's return to DCPS noted that an IEP team was to determine if Student need an AT device. This determination was apparently never made.

Had School A thoroughly reviewed Student's prior DCPS IEP, it would have been apparent that Student's communication deficits warranted an AT device. Based on this evidence alone, not to mention the expert testimony that Petitioner's witness offered to support Student's need for an AT device, DCPS should have, as soon as Student returned to DCPS, either provided Student an AT evaluation or provided Student the same or a similar device that was prescribed in Student's DCPS IEP when Student left DCPS.

Although there was testimony from the DCPS witness that all students in the CES classroom have access to tablets, there is insufficient evidence that Student uses the tablet or has been trained to use the tablet and any communication software that might be on the tablet. There was no testimony in the regard beyond statements that teachers or staff assist all students with the use of the devices and software. DCPS's failure to either evaluate or provide Student with an AT device was a denial of FAPE.

Extended School Year (“ESY”)

Petitioner asserts that Student's IEPs should have prescribed ESY. The evidence demonstrates that when Student first returned to DCPS in 2019, Student's DCPS IEP prescribed ESY. On July 14, 2020, DCPS issued a PWN confirming Student's parent refused to make Student available for ESY summer services

prescribed by Student's IEP. DCPS eventually determined that Student was no longer in need of ESY and ultimately removed ESY services from Student's IEP. Based on the DCPS witness' credible testimony, the evidence demonstrates that when Student reached the age of majority, Student needed summer employment to focus on and assist in developing Student's long-term employment skills. School A's transition coordinator credibly testified that she arranged summer employment for Student, including employment for the summer of 2023. Although the summer employment did not pan out as planned, and Student was instead assigned to a virtual summer program, School A was not made aware that the Student's employment was not in person so that it could be corrected. As testified by the DCPS witness, ESY is principally to address and prevent a student's skill regression. There was scant evidence that Student's skills regressed during absences from formal school instruction.

Although Petitioner's expert witness testified about the need for ESY, her opinion was based solely on Student's functional level and her experience that students at that functional level typically are provided ESY services. Her testimony was not based on any personal knowledge of Student. On the other hand, the DCPS witness had co-taught in Student's classroom, worked closely with Student, participated in arranging Student's transition services, and testified that at Student's age, the appropriate focus for Student is employment.

Although Student had ESY in previous IEPs, the evidence does not demonstrate significant regression in any skill. The one area of possible regression that Petitioner's witness pointed out was the change in a goal. However, again, she did not have any direct contact with Student or communicate with any of the teachers to determine if regression was the reason for the change in the goal or some other reason. Consequently, the IHO concludes that there is insufficient evidence to conclude that either of Student's IEPs at issue were/are deficient because they did not prescribe ESY services.

Transition plan

Petitioner asserts that Student's IEPs lacked appropriate transition plans. Petitioner expert witness testified that DCPS has crafted a wholly inadequate post-secondary transition plan that will not prepare Student adequately when Student leaves School A. Additionally, she testified that DCPS has failed to provide Student with an adequate functional assessment to determine present levels of functional skills and subsequent planning. She principally stated that the targeted employment is unrealistic because Student cannot read and has not been given adequate assistance in finding out what resources are available.

The evidence demonstrates that Student's post-secondary transition plan was developed based on assessments that provided Student with pictures of different jobs and figures of job tasks. Student was also provided an independent living assessment to assess what areas need to be worked on with Student. School A transition staff also work closely with RSA to prepare Student to find long-term employment. Based upon the assessments and jobs that Student has performed in the classroom, Student's needs a job where Student has less interaction with people, and Student can know that task and carry it out. Student has been able to perform these types of tasks in the CES classroom. Because of Student's age, School A has focused on developing Student's job skills and opportunities to work during summer break. As part of the reevaluation process, Student completed a "Student Participant Written Input Form" on February 7, 2023, and Student stated that Student wants to be a "maintenance helper."

Although Petitioner's expert witness testified that Student's responses to these assessments indicated that Student has little clue and insight regarding employment, the testimony of the DCPS

transition coordinator was far more credible regarding Student's interests and the appropriateness of the transition plan. As pointed out previously, Petitioner's expert witness had never met or observed Student or spoken with any of Student's teacher or service providers. The evidence supports a finding that Student had sufficient input in developing the transition plans in the IEPs at issue and that Student has been and is being provided sufficient transition support under the IEP. Consequently, the IHO concludes that there is insufficient evidence to conclude that either of Student's IEPs at issue were/are deficient because of inadequate transition plans.

Educational record

Petitioner asserts that Student's IEPs at issue were not based upon Student's full educational record. No testimony was offered in this regard, save the issue of Student's former use of AT. That issue was addressed in other areas already discussed. Consequently, the IHO concludes that there was insufficient evidence that either of Student's IEPs at issue were/are deficient because Student's full education record was not considered.

Private placement

Petitioner asserts that Student's IEPs at issue should have prescribed, and that Student's current LRE is, a non-public placement. Currently, Student's IEP prescribes an LRE of 20 hours per week of specialized instruction and 90 minutes per month of speech-language services outside general education. Student's IEP is currently implemented in School A's CES classroom. Petitioner asserts that Student has made insufficient progress in the CES classroom and at School A and that Student's current case manager allegedly stated that School A has nothing more to offer Student. Petitioner offered no alternative placement that had accepted Student because allegedly there is no referral from DCPS for any school to consider Student's admission.

The evidence demonstrates, based on the credible testimony from DCPS witnesses, Student has made significant progress since Student began attending School A. Student has become more comfortable and engaged and has made progress in the CES classroom. Student's social skills have improved as Student has gained familiarity with the staff and the CES classroom and School A routines. Student also interacts with nondisabled peers in the cafeteria and other school-wide activities, which is helpful for Student for communication and socializing modeling. IDEA's mandate is whenever possible, students be educated in the least restrictive environment. The IHO concludes there is insufficient that Student's IEPs at issue are/were deficient because they did not prescribe an LRE in a full-time non-public placement.

Prior to Student's guardian's request that Student's date of exit be changed, Student would have exited School A at the end of SY 2022-2023. Efforts had been made for Student to transition to another program offered by DCPS at another DCPS school ("School D"). However, for undetermined reasons, Student was not accepted to that program.

Although the IHO credits Petitioner's testimony that Student's case manager stated to her that there was nothing else that School A had to offer Student, the IHO is not convinced that Student cannot be served appropriately at School A when appropriate IEP is developed, especially given the testimony of the new School A administrator who, prior to her assignment at School A, administered the program at School D that Student had applied to and was expected to attend. That

witness credibly testified about the expanded employment and transition opportunities currently available at School A and that Student will have an opportunity to participate. However, the fact that Student's current case manager stated that School A has nothing more to offer Student causes the IHO concern.

Because prior to the request from Petitioner's guardian that Student not exit School A, the plan was to allow Student to leave School A and transfer to another DCPS program at School D, the IHO concludes that it is appropriate for an IEP team to consider whether Student's educational placement or location of services should be changed, up to and including consideration of a non-public placement. Therefore, the IHO in the order below directs DCPS to convene an IEP team/placement meeting with an appropriate OSSE staff to determine whether Student needs a non-public placement.

ISSUE 3: Did DCPS deny Student a FAPE by failing to timely evaluate Student for assistive technology by no later than May 1, 2021?

Conclusion: Petitioner sustained the burden of proof by a preponderance of the evidence that DCPS failed to timely evaluate Student for assistive technology by no later than May 1, 2021?

34 C.F.R. § 300.303(a) makes it clear that "A local education agency ("LEA") shall ensure that a reevaluation of each child with a disability is conducted...if the child's parents or teacher requests a reevaluation." and that the reevaluation must be conducted at least once every three years.

Students are also entitled to a reevaluation of their disability upon a parental request, provided that no reevaluation occurs "more frequently than once a year," though a requested reevaluation must occur "at least once every 3 years." 34 C.F.R. § 300.303(a)(2); see *Cartwright v. Dist. of Columbia*, 267 F. Supp. 2d 83, 87 (D.D.C. 2003) ("DCPS' failure to comply with [the parent's] request clearly violates the language of [34 C.F.R. § 300.303].").

Pursuant to 34 C.F.R. § 300.304 (c), a school district must ensure that a student has been appropriately evaluated in all areas of suspected disability. D.C. law requires that "a full and individual evaluation is conducted for each child being considered for special education and related services." D.C. Mun. Regs. Title. 5E, § 3005.1 (2006). "Qualified evaluators [are to] administer tests and other assessment procedures as may be needed to produce the data required" for the MDT to make its determinations. D.C. Mun. Regs. Title. 5E § 3005.5 (2006).

Generally, when a child has been evaluated for special education eligibility, and the appropriateness of the agency's evaluation is at issue, the hearing officer must consider whether the agency adequately gathered functional, developmental, and academic information about the child's needs to determine the content of the IEP in all areas of suspected disability and that the evaluation was sufficiently comprehensive to identify all of the child's needs. 20 U.S.C. §§ 1412(a)(6)(B), 1414(b)(1–3); 34 C.F.R. §300.304(b)(1–3), (c)(4, 6).

Pursuant to 34 C.F.R. § 300.305 (a) As part of an initial evaluation (if appropriate) and as part of any reevaluation, the IEP Team and other qualified professionals, as appropriate, must— (1) Review existing evaluation data on the child, including— (i) Evaluations and information provided

by the parents of the child; (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and (iii) Observations by teachers and related services providers; and (2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine— (i)(A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or (B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child; (ii) The present levels of academic achievement and related developmental needs of the child; (iii)(A) Whether the child needs special education and related services; or (B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and (iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

The evaluators shall utilize "a variety of assessment tools and strategies [to] gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum ... that may assist in determining whether the child is a child with a disability." D.C. Mun. Regs. Title 5E § 3005.9(b).

All areas "related to the suspected disability" should be assessed, including academic performance, health, vision, hearing, social and emotional status, general intelligence (including cognitive ability and adaptive behavior), communicative status, and motor abilities. D.C. Mun. Regs. Title. 5E § 3005.9(g). The evaluations must be "sufficiently comprehensive to identify all of the child's special education and services needs." D.C. Mun. Regs. Title 5E § 3005.9(h) (2007).

Petitioner asserts that DCPS denied Student a FAPE by failing to timely evaluate for assistive technology. DCPS asserts that AT has never been an area of concern for Student, nor have there been any requests for an assistive technology evaluation by any IEP team members, including Student and Student's advocates. However, the evidence belies this assertion. When Student left DCPS in 2018, Student IEP prescribed an AT device.

The evidence demonstrates that Student's February 9, 2015, DCPS IEP prescribed AT for communication with the following statement: An AAC (Augmentative Alternative Communication) Device dynamic display with voice output (iPad with proloquo2go) has been given to Student. Student has difficulty forming developmental consonant sounds in words, impacting Student's intelligibility. This AAC device helps Student ask and answer questions, ask for help, comment, request, and use social language in the classroom. This device also provides an auditory output of a vocal model for language. The IEP noted the specific device and software that Student was provided.

In 2018, Student left DCPS and began attending school in Richmond, Virginia, where Student was reevaluated during the summer of 2018. The Richmond, Virginia School District developed an IEP for Student dated January 2019. Student's March 1, 2019, Richmond, Virginia IEP noted the following regarding an AAC device: "in the District of Columbia, Student used an AAC device with voice output. The team will discuss if this is still a necessity for Student to communicate effectively." The evidence does not reflect that an IEP team ever discussed and decided whether Student still needed the AAC device.

When Student returned to DCPS in December 2019, DCPS proposed to provide Student comparable services under the Richmond, Virginia IEP. DCPS convened an AED meeting on January 13, 2020, and later placed Student in the School A CES classroom. On March 25, 2020, School A convened an eligibility determination meeting and reviewed, among other things, the evaluation data from the Richmond, Virginia School District. DCPS's eligibility determination report noted the Richmond, Virginia IEP comment about AT: "in the District of Columbia, Student used an AAC device with voice output. The team will discuss if this is still a necessity for Student to communicate effectively."

There is no evidence that an IEP team at School A ever discussed and decided whether Student still needed the AAC device that Student was provided when Student previously attended a DCPS school. Nor was there any effort by a team to assess if Student needed or would have benefitted from an AT device. Although there was no specific request by Student's parent or any other team member for such an assessment, the IHO concludes that given the fact that Student's prior IEPs prescribed an AT device and the fact that DCPS made note of the device in its eligibility report without any disposition of the noted concern, DCPS had a duty to evaluate Student in this noted area of concern and failed to do so. There was sufficient testimony from Petitioner and her witnesses that Student has demonstrated significant distress, albeit out of school, because of Student's inability to communicate with others. This factor augments the level of harm to Student. Because DCPS failed in this regard, the IHO concludes that DCPS' failure to assess Student for the need for an AT device was a denial of a FAPE.

ISSUE 4: Did DCPS deny Student a FAPE by failing to timely, accurately, and comprehensively evaluate Student for speech services by no later than May 1, 2021?

Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence that DCPS failed to timely, accurately, and comprehensively evaluate Student for speech-language services by no later than May 1, 2021?

IDEA requires that a Student be evaluated at least every three years to determine and address a student's areas of need. As previously noted, Pursuant to 34 C.F.R. § 300.305 (a) As part of an initial evaluation (if appropriate) and as part of any reevaluation, the IEP Team and other qualified professionals, as appropriate, must— (1) Review existing evaluation data on the child, including— (i) Evaluations and information provided by the parents of the child; (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and (iii) Observations by teachers and related services providers; and (2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine— (i)(A) Whether the child is a child with a disability... and the educational needs of the child; or (B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child; (ii) The present levels of academic achievement and related developmental needs of the child; (iii)(A) Whether the child needs special education and related services; or (B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and (iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

The evidence demonstrates that Student was first determined eligible for special education services by DCPS in 2008. DCPS conducted, among others, a comprehensive speech-language evaluation in September 2008. There is no evidence that DCPS conducted another formal speech-language evaluation of Student until February 2023. There is also no evidence that a speech-language evaluation was conducted by the Richmond, Virginia, School district when it evaluated Student in the summer of 2018 while Student was attending. However, there is no evidence that anyone ever requested a formal speech-language evaluation before DCPS conducted the February 2023 evaluation.

Petitioner asserts that DCPS should have conducted a formal speech-language evaluation before May 1, 2021. However, no evidence supported a finding that DCPS should have conducted a formal speech-language evaluation before it conducted one in February 2023. Petitioner's expert witness in speech-language did not provide testimony as to this claim. Although she testified that she reviewed Student's educational records and found that many of the service trackers and resulting data in Student's IEP were missing, she provided no direct testimony regarding whether DCPS timely, appropriately, or comprehensively evaluated Student for speech-language services.

Although Student's other expert witness testified about evaluations that were and were not conducted, that expert witness was not qualified to testify regarding speech-language to address whether DCPS timely, appropriately, or comprehensively evaluated Student for speech-language services.

As noted above, in evaluating a student, evaluators shall utilize "a variety of assessment tools and strategies [to] gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum ... that may assist in determining whether the child is a child with a disability." D.C. Mun. Regs. Title 5E § 3005.9(b). There is no requirement as to the type of evaluation that needs to be conducted when a student is reevaluated.

Absent any evidence other than testimony that service records and data were missing or unavailable for Petitioner's expert witness to review, the IHO cannot conclude that DCPS failed to provide Student consistent speech-language services under Student's IEP and that related service providers failed to assess Student's speech-needs and progress during the time Student received speech-language services under Student's IEP. Consequently, the IHO concludes that Petitioner did not sustain the burden of persuasion by a preponderance of the evidence that DCPS failed to timely, appropriately, or comprehensively evaluate Student for speech-language services.

ISSUE 5: Did DCPS deny Student a FAPE by failing to timely, accurately, and comprehensively provide a psycho-educational evaluation by no later than May 1, 2021?

Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence that DCPS failed to timely, accurately, and comprehensively provide Student a psycho-educational evaluation by no later than May 1, 2021?

As previously noted, Student was first determined eligible for special education services by DCPS in 2008 with a disability classification of autism. DCPS conducted, among others, a psychological

evaluation in July 2008. The evidence demonstrates that DCPS was aware of Student's low cognitive functioning based upon its 2008 psycho-educational evaluation and as demonstrated in the IEPs developed by DCPS before Student left to attend school in Richmond, Virginia. Student's autism diagnosis was documented in prior evaluations and confirmed in Student's evaluation conducted in Richmond, Virginia. Student's academic functioning was measured using the BREGANCE in Richmond, Virginia, and since Student returned to DCPS.

The court-ordered psychiatric evaluation conducted in 2021 indicates that a then-recent psycho-educational evaluation had been conducted. The psychiatric evaluation notes the following regarding Student's cognitive and academic functioning. "Student was on a certificate track program and functioned academically at a first-grade level." "[Student] requires maximum support within the classroom and constant redirection to task." The psychiatric evaluation cites a recent psycho-educational evaluation that stated that Student's cognitive abilities were assessed using the TONI-4. The report noted, "On this measure, [Student] obtained an Index score of 69, which falls within the deficient range. This score corresponds to an age equivalent of less than 6 years. [Student's] score places [Student's] cognitive abilities within the very low range and meets criteria for a diagnosis of Intellectual Disability."

Although it is not clear from that record that this psychiatric evaluation was ever provided to DCPS, there was no apparent question regarding Student's cognitive and or academic functioning that would have warranted DCPS to conduct a psycho-educational, as Petitioner asserts, by no later than May 1, 2021. When Student was due for a reevaluation in 2023, DCPS conducted a triennial psychological evaluation.

Petitioner presented a witness qualified as an expert in special education who reviewed Student's educational records and spoke with the independent SLP who evaluated Student and to Student's guardian. She described the BRIGANCE that DCPS conducted as a screener rather than a full evaluation and suggested other assessment tools that could have been conducted that are more comprehensive. Although the DCPS did not conduct the specific assessments that Petitioner's expert witness testified could have been conducted, the type of assessments that are conducted is generally left to the evaluator. Petitioner's expert witness did not have any greater expertise than the DCPS psychologist, who also testified as an expert witness. The DCPS witness noted that Student's low cognitive abilities were well documented and that the assessments DCPS used were appropriate. Unlike the DCPS witnesses, Petitioner's expert witness had never met or observed Student or spoken to any of Student's DCPS teachers or related service providers.

The DCPS witnesses convincingly testified that DCPS was aware of Student's cognitive functioning based on prior evaluations and adequately assessed Student's academic functioning based upon the assessments that DCPS conducted, including the BREGANCE. Although Petitioner's expert witness testified that the BREGANCE is a screener assessment rather than a comprehensive assessment tool, her testimony regarding the appropriateness of the DCPS evaluations was insufficient. Consequently, the IHO concludes Petitioner did not sustain the burden of persuasion by a preponderance of the evidence on this issue.

However, because the evidence did not reflect that either the psychiatric evaluation that was presented during the hearing or the psycho-educational evaluation that is referenced in the

psychiatric evaluation was ever provided to and reviewed by DCPS, the IHO directs that DCPS authorize Petitioner to obtain an independent psycho-educational evaluation.

Remedy:

A hearing officer may award appropriate equitable relief when there has been an actionable violation of IDEA. *See* 20 U.S.C. § 1415(f)(3)(E)(ii)(II); *Eley v. District of Columbia*, 2012 WL 3656471, 11 (D.D.C. Aug. 24, 2012) (citing *Branham v. District of Columbia*, 427 F.3d at 11–12.)

Under the theory of compensatory education, "courts and hearing officers may award educational services to be provided prospectively to compensate for a past deficient program. The inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid*, 401 F.3d 522 & 524. To aid the court or hearing officer's fact-specific inquiry, "the parties must have some opportunity to present evidence regarding [the student's] specific educational deficits resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits." *Id.* at 526.

When a hearing officer finds denial of FAPE, he has "broad discretion to fashion an appropriate remedy, which can go beyond prospectively providing a FAPE, and can include compensatory education.... [A]n award of compensatory education must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *B.D. v. District of Columbia*, 817 F.3d 792, 797-98 (D.C. Cir. 2016) (internal quotations and citations omitted.)

The IHO has found the following denials of FAPE: failure to evaluate appropriately, and failure to provide Student appropriate IEPs because the IEPs were not reasonably calculated to enable Student to make appropriate progress in the areas of math, reading, adaptive/daily living skills, and speech and language. In addition, the IEPs were deficient because they did not provide Student AT.

Petitioner's expert witness requested compensatory services for violations that were not proved. Thus, the IHO has reduced the requested amount accordingly to account for violations referenced in the proposal that were not proved. The IHO concludes that there was sufficient evidence to support to award of some of the compensatory services that were requested and that the services awarded in the order below are calculated to provide the Student educational benefit that likely would have accrued from special education services DCPS should have supplied in the first place.

The IHO finds that there is no basis in evidence for granting the following requested relief:

- Student's eligibility be extended at least through age 25;
- Award Student non-public educational placement, including transportation;
- Order that Student's IEP include appropriate related services including, but not limited to, speech-language and behavioral support.
- Order that Student's IEP include extended school year ("ESY");
- For compensatory education to be used through age 25;

- Funding to cover the cost of additional special education programming to meet Student's transition needs, such as vocational and workforce development opportunities, such as applications, test preparation, career exploration, and internship and apprenticeship opportunities; a laptop, combined with a wireless connection to complete homework and online courses and to search for employment opportunities.

ORDER:

1. DCPS shall, within 15 business days of the date of this order, provide Petitioner authorization to obtain the following independent evaluations/assessments at the DCPS/OSSE prescribed rates: psycho-educational, assistive technology, vocational, assistive technology. If Petitioner is unable to obtain any of these evaluations independently, Petitioner may request that, in lieu of independent evaluations, DCPS conduct the requested evaluation(s)/assessment(s).
2. DCPS shall, within 15 business days of its receipt of any or all the independent evaluations listed above, convene an IEP team meeting to review the evaluation(s) and update Student's IEP as appropriate. Petitioner has the discretion to request that the DCPS await completion of all the evaluations prior to convening the IEP team meeting to review the evaluation(s).
3. DCPS shall, within 15 business days of the date of this order, provide Petitioner authorization to obtain the following compensatory services: 100 hours of independent tutoring and 25 hours of independent speech and language pathology.
4. DCPS shall, within 30 calendar days of the issuance of the order, convene an IEP team/placement meeting with an appropriate OSSE representative to review Student's placement and consider whether Student needs a non-public placement.
5. All other relief requested by Petitioner is denied.

APPEAL PROCESS:

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have ninety (90) days from the date of the decision of the Hearing Officer to file a civil action with respect to the issues presented at the due process hearing in a District Court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2).

/S/ *Coles B. Ruff*

Coles B. Ruff, Esq.
Independent Hearing Officer
Date: September 1, 2023