

District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution
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Parent, on behalf of Student,	)	
Petitioner,	)	
	)	
v.	)	Hearing Officer: Michael Lazan
	)	Hearing Dates: 7/8/26; 9/4/26
	)	Case No. 2026-0084
District of Columbia Public	)	
Schools,	)	
Respondent.	)	
District of Columbia Public	)	
Schools,	)	
Petitioner,	)	
	)	Hearing Officer: Michael Lazan
v.	)	Case No. 2026-0103
	)	
Parent, on behalf of Student,	)	
Respondent.	)	

HEARING OFFICER DETERMINATION

I. Introduction

Pursuant to the Individuals with Disabilities Education Act (“IDEA”), the parent (“Parent”) of an x-year-old child (the “Student”) filed a due process complaint (“Parent Complaint”) against District of Columbia Public Schools (“DCPS”) on May 11, 2026. This complaint was assigned Case No. 2026-0084. Parent filed an amended Parent Complaint on June 9, 2026. There was no objection to the filing of the amended Parent Complaint, and the application to amend the Parent Complaint was granted. DCPS filed a response on May 22, 2026, and did not object to jurisdiction. An amended response was filed on July 14, 2026.

DCPS filed its own due process complaint (“DCPS Complaint”) on June 8, 2026, which was assigned Case No. 2026-0103. Parent filed a response on June 10, 2026, objected to jurisdiction, and, in the same document, moved to dismiss the DCPS Complaint. The two matters were consolidated on July 21, 2026. A resolution meeting was held on August 12, 2026. The matter did not settle.

II. Subject Matter Jurisdiction

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

III. Procedural History

A prehearing conference took place on June 8, 2026, and June 12, 2026, through the Microsoft Teams videoconferencing platform. Parent appeared pro se. Attorney A, Esq., attorney for DCPS, appeared. A prehearing conference order was issued on June 17, 2026, summarizing the rules to be applied in the hearing and identifying the claims in the case. A revised prehearing conference order was issued on consent on September 4, 2026.

By order dated July 21, 2026, the deadline for the issuance of a Hearing Officer Determination (“HOD”) in Case No. 2026-0103 was extended to August 24, 2026, so that both Case No. 2026-0084 and Case No. 2026-0103 would proceed on the same timeline. By order dated August 21, 2026, the deadline for the issuance of this HOD was extended to September 14, 2026.

Parent filed a motion for stay-put relief on May 19, 2026, which was revised on May 27, 2026. DCPS filed opposition to this motion dated May 21, 2026, which was served on May 22, 2026. An evidentiary hearing on the motion was held on July 8, 2026. This motion was granted by order dated August 17, 2026.

DCPS filed a partial motion to dismiss in Case No. 2026-0084 on July 31, 2026, and Parent filed opposition on July 31, 2026. DCPS filed an amended motion to dismiss on August 7, 2026, and Parent filed opposition on August 7, 2026. Parent filed a motion to dismiss the complaint in Case No. 2026-0103 on August 14, 2026, and DCPS filed opposition on August 19, 2026. By an order dated September 2, 2026, DCPS's amended motion to dismiss was granted to the extent that it sought to dismiss Parent's retaliation claim (Claim 7 in the prehearing conference order) but denied in all other respects, and Parent's motion to dismiss the complaint in Case No. 2026-0103 was denied.

The hearing on the motion for stay-put relief was held on July 8, 2026, through the Microsoft Teams videoconferencing platform. This was a closed proceeding. Parent appeared pro se. DCPS was represented by Attorney A, Esq. DCPS moved into evidence exhibits R-1, R-2, R-3, and R-5, and the exhibits were admitted without objection. Parent testified. DCPS presented Witness A, a manager of learning and behavior supports.

The parties appeared on August 10, 2026. The hearing was adjourned at the outset on consent, and the case was reset for September 4, 2026.

The hearing on the merits was held on September 4, 2026, through the Microsoft Teams videoconferencing platform. This was a closed proceeding. Parent again appeared pro se. DCPS was again represented by Attorney A, Esq. Parent moved into evidence exhibits P-1 through P-10. DCPS objected to exhibit P-9 on relevance grounds. This

objection was overruled. Exhibits P-1 through P-10 were admitted. Petitioner sought to admit two supplemental disclosures that were not marked. DCPS objected on the ground that they were not timely filed. This objection was sustained, and the supplemental disclosures were not admitted. DCPS moved into evidence exhibits R-1 through R-21, R-25, R-26, and R-27. Parent stated that she had no objection to these documents. Exhibits R-1 through R-21, R-25, R-26, and R-27 were admitted.

At the hearing on September 4, 2026, Parent testified. DCPS presented as witnesses, in the following order: Witness B, a principal (expert in special education programming and placement); Witness C, a special education teacher (expert in special education programming and placement); Witness D, a speech-language pathologist (expert in speech language pathology); and Witness E, a school psychologist (expert in school-based psychology). At the close of testimony, both sides presented oral closing arguments.

IV. Issues

As identified in the revised prehearing conference order, the Parent Complaint, and the DCPS Complaint, the issues to be determined in these cases are as follows:

- 1. Did DCPS fail to implement the Student's February 20, 2026, Individualized Education Program ("IEP")? If so, did DCPS deny the Student a Free and Appropriate Public Education ("FAPE")?**
- 2. Did DCPS create an IEP for the Student on February 20, 2026, that relied on invalid, outdated, and unreliable data? If so, did DCPS deny the Student a FAPE?**
- 3. Did DCPS improperly restrain the Student between February 2026 and June 2026? If so, did DCPS deny the Student a FAPE?**
- 4. Did DCPS fail to provide Parent with adequate Prior Written Notices from February 2026 to June 2026? If so, did DCPS deny the Student a FAPE?**

5. Did DCPS fail to allow Parent to participate in decision-making regarding the Student’s educational program and placement between February 2026 and June 2026? If so, did DCPS deny the Student a FAPE?

6. Did DCPS place the Student in an inappropriate educational placement in or about May-June 2026? If so, did DCPS deny the Student a FAPE?

8. Did DCPS improperly manipulate the Student’s educational records between February 2026 and June 2026? If so, did DCPS deny the Student a FAPE?

9. Did DCPS fail to appropriately respond to Parent’s Independent Educational Evaluation (“IEE”) request between February 2026 and June 2026? If so, is Parent entitled to an IEE?

10. Did DCPS conduct an appropriate evaluation of the Student?

11. Did Parent fail to appropriately request an IEE for the Student?

Claim 7 of the prehearing conference order, which asked whether DCPS improperly retaliated against Parent from February 2026 to June 2026, was dismissed by Order on Motions to Dismiss dated September 2, 2026.

As relief, Parent seeks: 1) a finding that DCPS’s evaluations of the Student were not appropriate for a Behavior and Education Support (“BES”) placement; 2) an IEE at public expense; 3) a new IEP based on valid data, including the IEE; 4) restoration of stay-put at School B; 5) rescission of the May 4, 2026, Prior Written Notice; 6) correction of all “Aspen” records; 7) compensatory education; and 8) consideration of a nonpublic placement based on valid data.

V. Findings of Fact

Based on the testimony presented on July 8, 2026, and September 4, 2026, the exhibits admitted into evidence, and the pleadings, this Hearing Officers makes the following findings of fact:

1. The Student is an x-year-old who is eligible for special education with a primary disability classification of Specific Learning Disability and a secondary classification of Other Health Impairment. R-2-1.

2. In general education classes, the Student is inconsistently able to follow classroom expectations, displays verbal aggression such as swearing at other students, touches objects on the teacher's desk, squares up to other students, elopes, regularly walks out of the classroom, touches his/her peers and grabs their items and their work, inconsistently responds to redirection, and does not engage in academic work despite the supports in his/her IEP. R-3-2; R-6-1; R-6-2.

3. During the 2024-2025 school year, the Student attended School A. The school administered a Level 1 Functional Behavioral Assessment ("FBA") to address the Student's work avoidance. The assessment identified the Student's behaviors at that time as elopement, poor attention and task initiation, defiance, and verbal disruption, and the function of those behaviors was found to be work avoidance. R-2-25. The resulting Behavior Intervention Plan ("BIP") of February 2, 2025, identified academic work avoidance as the Student's sole problematic behavior. P-9.

4. A comprehensive psychological evaluation of the Student was completed on March 28, 2025, at School A as part of the Student's triennial reevaluation. On the Wechsler Intelligence Scale for Children, Fifth Edition ("WISC-5"), the Student obtained a Full Scale IQ of 94, at the 34th percentile. The Student's other WISC-5 results included a working memory index score at the 5th percentile, a processing speed index at the 18th percentile, a nonverbal index at the 50th percentile, a general ability index at the 53rd percentile, and a cognitive proficiency index at the 7th percentile. On the Woodcock-

Johnson Tests of Achievement, Fourth Edition (“WJ-4”), the Student scored below the 1st percentile in broad reading, letter-word identification, oral reading, and passage comprehension, at the 1st percentile in sentence reading fluency and spelling, at the 2nd percentile in word attack, at the 27th percentile in calculation, at the 14th percentile in applied problems, at the 18th percentile in math facts fluency, at the 4th percentile in broad written language, at the 8th percentile in writing samples and at the 14th percentile in sentence writing fluency. The Student was also administered the Conners 4th Edition-Short Form (“Conners 4S”) and the Behavior Assessment System for Children, Third Edition (“BASC-3”). The Conners ratings, completed by the Student’s second-grade teacher, reported elevated or very elevated concerns for inattention and executive dysfunction, hyperactivity, and schoolwork. The BASC-3 teacher ratings expressed concerns for hyperactivity, learning problems, aggression, conduct problems, and attention problems. R-12.

5. A speech and language evaluation of the Student was completed on March 28, 2025. This evaluation found average voice, fluency, and oral motor skills. The evaluation also found growth in articulation, vocabulary, and receptive and expressive language since a June 8, 2022, evaluation, and left the question of the Student’s eligibility for speech-language services to the IEP team. R-13; Testimony of Witness D.

6. An IEP meeting was held for the Student on April 28, 2025. The resulting IEP prescribed seven hours per week of specialized instruction outside general education (four hours of reading, one hour of written expression, and two hours of mathematics) and two hours per month of behavioral support services outside general education. P-9.

7. The Student began the 2025-2026 school year at School A and attended there from approximately August 25, 2025, to October 31, 2025. P-9. A meeting was held on September 30, 2025, to address the Student's behavior. At the meeting, the IEP team revised the Student's BIP, and Parent expressed interest in determining whether a more restrictive environment was needed for the Student. R-14; P-9.

8. The Student's first-quarter progress report dated November 7, 2025, covering August 25, 2025, through November 3, 2025, reported regression on his/her reading and written expression goals and no progress on the math goals or the behavior goal of identifying distressing emotions and using a learned coping strategy. R-4.

9. The Student enrolled at School B on November 10, 2025. P-9. The Student refused writing assignments and phonics spelling work, even when offered a scribe or a computer. R-2. The IEP team convened on December 18, 2025, and amended the Student's IEP to increase his/her specialized instruction mandate to fifteen hours per week, with behavioral support services set at four hours per month. R-5; P-9. Twenty hours of specialized instruction was initially discussed, but the team was informed that a twenty-hour mandate could not be proposed at an IEP amendment meeting because twenty hours would equate to a more restrictive environment and require a discussion about a change in placement. P-9.

10. The Student was given an i-Ready reading assessment in January 2026, but the test could not be completed because the Student would not open his/her computer, look at the screen, or listen when the test was read. On an i-Ready math diagnostic given in January 2026, the Student obtained an overall score of 390, corresponding to a first-

grade equivalent, with kindergarten grade-level equivalents in algebra, algebraic thinking, and geometry. R-2.

11. On January 13, 2026, a School B social worker sought consent to order a Level 2 FBA to generate a Level 2 BIP, and Parent declined. R-6. On January 30, 2026, a DCPS staff member physically restrained the Student after s/he squared up in a fighting stance and did not respond to multiple requests to stop. The incident report that was later provided to Parent did not mention the restraint. The staff member who administered the restraint was not trained in the use of restraint and did not attend the DCPS “Safety Care” training, which covers safe physical restraint methods. P-9. The Student received a one-day, out-of-school suspension as a result of the incident on January 30, 2026, and returned to school on February 3, 2026. P-2.

12. The Student’s second-quarter progress report dated February 12, 2026, reported no progress on his/her reading, math, and written expression goals, progress on the goal of identifying distressing emotions and using a learned coping strategy, and no progress on the goal of learning five strategies to remain attentive and engaged. R-4.

13. The IEP team convened for the Student’s annual review on February 20, 2026. The team informed Parent that it would move forward with a recommendation for a more restrictive placement. The team informed Parent that it did not determine location of service but would recommend a BES program. R-3. The resulting IEP prescribed twenty hours per week of specialized instruction outside general education, delivered by a special education teacher, and four hours per month of individual behavioral support services outside general education, delivered by a related service provider. The IEP contained three reading goals, two math goals, and three emotional, social and behavioral

development goals. The IEP listed the positive behavior supports that had been trialed and implemented but had found limited success, including a token economy system, movement breaks, noise-cancelling headphones, minimizing transitions, preferential seating near an adult and away from exits, a calming space, and visual schedules and supports. R-2.

14. A Prior Written Notice dated February 20, 2026, stated that DCPS proposed to change the Student's educational placement to a more restrictive setting, that Parent attended the IEP meeting and stated she was attending under protest, that the IEP team considered a lesser restrictive environment in general education, and that Parent did not consent to the proposed change in placement until she could further review the IEP. R-2. DCPS issued a revised Prior Written Notice on March 11, 2026. R-6. Another Prior Written Notice was dated April 1, 2026. R-7. Another Prior Written Notice dated May 4, 2026, stated that DCPS proposed to change the Student's service location, that his/her IEP could not be fulfilled at School B, and that the location of services decision was an administrative decision that did not require Parent's participation. The May 4, 2026, Prior Written Notice stated that DCPS would administratively pre-enroll the Student at School C on May 15, 2026, if Parent had not enrolled him/her, and that after that date the Student would no longer be able to report to School B. R-8.

15. The BES classroom at School C is self-contained, with a capacity of ten students across three grades. The classes are staffed by a certified special education teacher, a paraprofessional, and a behavior technician who remain with the students all day, including through transitions, specials, and lunch. All specialized instruction is provided within the BES classroom, along with small-group work on IEP goals, weekly

push-in and pull-out behavioral support services from a licensed clinical social worker, and BIP implementation. The BES classroom is recommended for students who have a documented academic deficit and who demonstrate maladaptive behaviors that interfere with their ability to access the curriculum. The BES classroom is a more restrictive environment and a different placement than a general education classroom. Testimony of Witness A. Placement in a BES program is not limited to students with an emotional or behavior disability classification. Students with Attention-Deficit/Hyperactivity Disorder (“ADHD”) can be placed in such programs, and disability classification alone does not dictate the services that a student requires. Testimony of Witness E.

16. The Student remained at School B after his/her February 20, 2026, IEP was developed and continued to attend until the middle of May 2026. R-8-1; Testimony of Witness B; Testimony of Parent. The Student’s progress report dated May 1, 2026, covering January 27, 2026, through April 6, 2026, reported on the goals finalized after the February 20, 2026, IEP meeting. This progress report recorded no progress on each of the reading, math, and written expression goals. R-4.

17. The Student received at least four days of out-of-school suspension during the 2025-2026 school year, including February 2, February 25, February 26, and April 3, 2026. P-9. The Student was informally removed from the classroom on at least fifteen separate occasions during the 2025-2026 school year, and the majority of those removals lasted less than a class period. P-9.

18. In an email dated April 24, 2026, at 4:54 p.m., Parent requested an IEE at public expense pursuant to 34 C.F.R. §300.502, stating that she disagreed with DCPS’s

evaluation and the data used to make decisions about the Student's needs, services, and placement. R-16; P-8.

19. On May 1, 2026, DCPS asked Parent to identify which evaluation she was challenging. Parent responded that the information had already been provided and that she was challenging DCPS's evaluation and the data used to make decisions about the Student's needs, services, and placement. DCPS responded that School B did not evaluate the Student, that s/he had enrolled at School B with an existing evaluation and IEP in place, and that absent identification of the component challenged, DCPS could not determine whether an IEE was warranted for the Student. R-16.

VI. Conclusions of Law

The burden of proof in District of Columbia special education cases was changed in 2014. The law states that “(w)here there is a dispute about the appropriateness of the child's individual educational program or placement, 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 “retain[s] the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the public agency.” D.C. Code § 38-2571.03(6)(A)(i). In all other respects, the party who filed for the due process hearing bears the burden of production and the burden of persuasion. Id.

As a result, DCPS holds the burden of persuasion on Claim 2 and Claim 6, which concern the appropriateness of the February 20, 2026, IEP and of the program DCPS proposed. Parent holds the burden of production on those claims, and the burden of production and the burden of persuasion on Claims 1, 3, 4, 5, 8, and 9. Because DCPS

filed the due process complaint in Case No. 2026-0103, DCPS holds the burden of production and the burden of persuasion on Claim 10 and Claim 11.

1. Did DCPS fail to implement the Student's February 20, 2026, IEP? If so, did DCPS deny the Student a FAPE?

Parent contended that the February 20, 2026, IEP was never implemented, that no provider could be identified to deliver the services in the IEP, that no documentation of implementation exists, that the Student was denied access to School B in May 2026, and that the Student's transportation was terminated. DCPS contended that it implemented the IEP by holding a seat open in a classroom that could deliver the mandated services, and that implementation was prevented by Parent's refusal to enroll the Student.

A failure to implement an IEP denies a FAPE where the failure is material. A material failure occurs when there is more than a minor discrepancy between the services a public agency provides and the services required by the IEP. Van Duyn ex rel. Van Duyn v. Baker School District 5J, 502 F.3d 811, 822 (9th Cir. 2007); Wilson v. District of Columbia, 770 F. Supp. 2d 270, 274-75 (D.D.C. 2011). The inquiry compares the proportion of services required to the services actually delivered and considers the importance of the particular service withheld. Van Duyn, 502 F.3d at 822.

Two distinct periods must be separated. The first period runs from February 20, 2026, to the middle of May 2026, during which time the Student attended School B. The February 20, 2026, IEP required twenty hours per week of specialized instruction outside general education and four hours per month of behavioral support services outside general education. DCPS moved promptly to secure a setting that could deliver the program it had written. The reason the February 20, 2026, IEP was not implemented was that the Student was not produced at the classroom identified to deliver the program. A

parent who declines a program cannot recover for an agency's failure to deliver that program. For the period from February 20, 2026, to May 15, 2026, no material failure to implement attributable to DCPS has been shown.

The second period is different. On May 4, 2026, and again on May 11, 2026, DCPS gave notice that IEP services would terminate at School B on May 15, 2026, that the Student would be administratively enrolled at School C, and that after May 15, 2026, the Student would no longer be able to report to School B. Parent filed her due process complaint on May 11, 2026. DCPS carried out the administrative enrollment, withdrew the Student from School B, rerouted transportation away from School B, and thereafter delivered no specialized instruction and no behavioral support services to the Student for the remainder of the 2025-2026 school year. The last behavioral support session in the record was delivered on May 13, 2026.

The pendency provision operates as an automatic injunction. Honig v. Doe, 484 U.S. 305, 326-27 (1988). This provision took effect when the Parent Complaint was filed on May 11, 2026, and it required DCPS to maintain the Student in the program that the December 2025 amended IEP described, at School B, until this proceeding concluded. DCPS instead removed the Student from the School B program four days after the Parent Complaint was filed, without providing Parent with an opportunity to contest the new location of services. The Student ended up missing about a month of school. Wilson v. District of Columbia, 770 F. Supp. 2d 270 (D.D.C. 2011) (failure to transport the student to three of the four weeks of an extended school year program was a material failure to implement). DCPS argued that Parent could have enrolled the Student at School C. However, School C was not the Student's stay-put placement. DCPS instead put the

Student in the BES program, which Parent disagreed with. This Hearing Officer therefore concludes that DCPS materially failed to implement the Student's operative IEP, denying the Student a FAPE, from May 18, 2026, through the end of the 2025-2026 school year.

2. Did DCPS create an IEP for the Student on February 20, 2026, that relied on invalid, outdated, and unreliable data? If so, did DCPS deny the Student a FAPE?

Parent contended that the February 20, 2026, IEP rested on evaluations that were more than a year old and on behavior data that the Office of the State Superintendent of Education ("OSSE") had found invalid and unreliable. DCPS contended that the Student's IEP team reviewed extensive current academic and behavioral data and that the evaluations remained current within the three-year reevaluation cycle.

An evaluation must use a variety of assessment tools and strategies, and no single measure or assessment may be used as the sole criterion for determining an appropriate educational program. 34 C.F.R. § 300.304(b)(1), (2). In developing an IEP, the team must consider the strengths of the child, the concerns of the parents, the results of the most recent evaluation, and the academic, developmental, and functional needs of the child. 34 C.F.R. § 300.324(a)(1). Where a child's behavior impedes his/her learning or that of others, the team must consider the use of positive behavioral interventions and supports. 34 C.F.R. § 300.324(a)(2)(i).

The data before the February 20, 2026, IEP team was not stale. The team had Dynamic Indicators of Basic Early Literacy Skills ("DIBELS") testing results from January 2026, an i-Ready math diagnostic from January 2026, a record of the Student's refusal of the January 2026 i-Ready reading assessment, three weeks of contemporaneous daily behavior counts, and the direct reports of the general education teachers and the

special education teacher who worked with the Student every day. That data showed the Student to be functioning at a kindergarten level across academic areas, making no progress on his/her IEP goals in either of the first two quarters, and as a child whose aggression, elopement, disruption, and noncompliance occurred multiple times a day in both the general education classroom and the small-group, pull-out setting.

Moreover, the Student's psychological and speech and language evaluations were current. A reevaluation must occur at least once every three years unless the parent and the public agency agree that one is unnecessary, and must occur more frequently if the child's needs or the parent or a teacher warrant it. 34 C.F.R. § 300.303(a), (b)(2). A March 2025 evaluation of the Student was within that three-year cycle in February 2026. Parent is correct that those evaluations describe the Student as he/she presented before some of the behaviors that emerged during the 2025-2026 school year. But the team also had considerable information about the Student's behaviors during the 2025-2026 school year from current classroom data, including a wide variety of positive behavior supports that were trialed with only limited success, such as allowing verbal instead of written output, chunking information into steps, decreasing external stimuli, fidgets, flexible seating, gaining attention before directions, if/then and first/next/then language, minimizing transitions in and out of the classroom, modifications to the amount of work product, movement breaks, noise-cancelling headphones, pairing with preferred adults or peers, and a token economy system.

The OSSE Letter of Decision on this matter is not evidence to the contrary. OSSE found that DCPS failed to maintain valid and reliable discipline data, meaning that removals of the Student from the classroom were not consistently logged in his/her

behavior tracker and that the disciplinary spreadsheet given to Parent was incomplete.

But there is nothing in the record to suggest that these discrepancies had any impact on the Student or on Parent's ability to participate in the IEP process.

It is also noted that Parent declined an assessment that would have refined the behavioral data. In January 2026, a school social worker sought consent for a Level 2 FBA to generate a Level 2 BIP, but Parent declined. Claim 2 must be dismissed.

3. Did DCPS improperly restrain the Student between February 2026 and June 2026? If so, did DCPS deny the Student a FAPE?

Parent contended that the Student was physically restrained by an untrained staff member, that the restraint was not documented, and that restraint is not a service in the Student's IEP and cannot substitute for the behavior supports that the IEP required. DCPS contended that the staff member acted to protect herself from an assault and that no restraint occurred within the period pleaded.

District of Columbia regulation permits physical restraint only in emergency circumstances to protect the child or another person from imminent serious physical harm after less intrusive interventions have failed or been determined inappropriate. Restraint may not be used as a means of discipline. 5-A DCMR § 3044.7. Restraint may be applied only by personnel trained and certified in the appropriate techniques, and the agency must maintain copies of the training certifications. 5-A DCMR § 3044.5. A written report describing the incident must be placed in the child's record and sent to the child's parent within one business day. 5-A DCMR § 3046.

The restraint of the Student on January 30, 2026, was administered by a staff member who had not completed the training that covers safe physical restraint, and the incident report DCPS provided to Parent made no mention of the restraint at all. This was

violative of 5-A DCMR § 3044.5 and 5-A DCMR § 3046. But a violation of the District's restraint requirements can be deemed a procedural violation. Beckwith v. District of Columbia, 208 F. Supp. 3d 34, 45 (D.D.C. 2016). Improper use of restraint denies a student a FAPE only if it impedes the student's right to a FAPE, significantly impedes a parent's opportunity to participate in the decision-making process, or causes a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); Lesesne v. District of Columbia, 447 F.3d 828, 834 (D.C. Cir. 2006).

The incident involving restraint of the Student did not deprive him/her of educational benefit. The Student was suspended for one day and returned to school on February 3, 2026. No evidence connects the incident to any loss of instruction beyond that day, to any regression, or to any change in the Student's program. Beckwith is directly on point. The student there was physically restrained on at least six occasions, and the court nonetheless agreed with the hearing officer that there was insufficient evidence that the instructional time lost while the student was being restrained deprived her of educational benefits. 208 F. Supp. 3d at 45.

Additionally, the failure to document the restraint of the Student did not significantly impede Parent's opportunity to participate. This is the ground on which Beckwith found a denial of FAPE, and the contrast of that case with the record here is instructive. In Beckwith, the school restrained the student at least six times over a school year, never once convened the meeting that its policy required, sent written reports only when the parent's counsel insisted, and left the parent to learn of the restraints from the child after she came home. The court held: "[a]lthough a single violation of DCPS guidelines would certainly not have 'significantly impeded' Ms. Beckwith's rights,

DCPS's repeated violations of its own restraint policy throughout the 2014–15 school year did." 208 F. Supp. 3d at 46. In this case, the Student was restrained once, and Parent was sent one incomplete incident report.

It is also noted that Claim 3 as pleaded and as memorialized in the prehearing order reaches restraint "between February, 2026 and June, 2026." The only restraint in this record occurred on January 30, 2026, outside that period. No restraint of the Student between February and June 2026 was established. Claim 3 must be dismissed.

4. Did DCPS fail to provide Parent with adequate Prior Written Notices from February 2026 to June 2026? If so, did DCPS deny the Student a FAPE?

Parent contended that the February 20, 2026, Prior Written Notice misrepresented her position and omitted her written statement, and that the notices contained errors. DCPS contended that it issued a notice at every juncture, that it revised the February notice at Parent's request, and that the notices contained everything the regulation requires.

A Prior Written Notice must be given a reasonable time before the agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of a child or the provision of a FAPE. 34 C.F.R. § 300.503(a). The notice must include a description of the action proposed or refused, an explanation of why the agency proposes or refuses to take the action, a description of each evaluation procedure, assessment, record or report the agency used as a basis for the action, a statement that parents have protection under the procedural safeguards, a description of other options the team considered and the reasons those options were rejected, and a description of other factors relevant to the proposal or refusal. 34 C.F.R. § 300.503(b).

DCPS met that standard. It issued a Prior Written Notice on December 19, 2025, for the IEP amendment, on February 20, 2026, for the change in educational placement, on March 11, 2026, in a revised form, on April 1, 2026, for the refusal to add transportation accommodations, on May 4, 2026, and again on May 11, 2026, for the change in service location, and on July 23, 2026, concerning extended school year services. Each notice described the action, explained the reasons, listed the records relied upon, and identified the options considered and rejected. Far from omitting Parent's position, the March 11, 2026, notice reproduced her written statement in full, including her statement that she was attending under protest, that her attendance was not an agreement, and that she did not consent to any change in placement. That notice also identified Parent's requested edits.

The notices are not perfect. The May 4, 2026, notice named the wrong school in the paragraph identifying the school required to furnish the Procedural Safeguards Notice. But this error did not concern the substance of what DCPS was proposing, and under 34 C.F.R. § 300.513(a)(2), there is no evidence that this procedural imperfection impeded the Student's right to a FAPE, significantly impeded Parent's opportunity to participate, or deprived the Student of educational benefit. Claim 4 must be dismissed.

5. Did DCPS fail to allow Parent to participate in decision-making regarding the Student's educational program and placement between February 2026 and June 2026? If so, did DCPS deny the Student a FAPE?

Parent contended that DCPS changed the Student's placement without allowing Parent to participate in the process. DCPS contended that Parent participated fully in the development of the Student's IEP, that the selection of the location of services is an

administrative decision reserved to the agency, and that Parent refused every transition meeting that DCPS offered.

The parent of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a FAPE to the child. 34 C.F.R. § 300.501(b)(1). More specifically, “[e]ach public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent’s child.” 34 C.F.R. § 300.501(c)(1). The placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 C.F.R. § 300.116(a)(1).

The decision that changed this Student’s educational placement was made on February 20, 2026, at an IEP meeting that Parent attended. The IEP developed that day increased specialized instruction to twenty hours per week outside general education, which moved the Student from a general education classroom with a small-group pull-out into a self-contained special education setting. The team discussed a more restrictive environment, went over the Student’s goals, and recommended a behavior program for the Student.

The IEP team told Parent that it does not determine the location of services. Parent stated that she was attending under protest, that she would not agree to anything that day because she needed to review the documents, and that she did not consent to any change in placement that was not supported by documented data and full implementation

of the current IEP. The team told Parent it would move forward with the recommendation and document her disagreement in the Prior Written Notice, which it did.

The regulations entitle a parent to be a member of the group that decides educational placement, but do not require the team to agree with the parent. The record here shows that Parent's participation was meaningful rather than merely formal. Parent obtained a revised Prior Written Notice that reproduced her written statement in full, together with the five corrections she asked for, and she was given the meeting notes reflecting what she said. After the February 20, 2026, IEP meeting, DCPS identified the BES classroom at School C in a location of services letter dated March 16, 2026. That location choice belongs to the public agency. A parent's right to participate in developing an educational placement does not carry with it a right to select the building, and a transfer from one school to another is a change in educational placement only where the new setting would itself work a fundamental change in, or elimination of, a basic element of the education program. Lunceford v. District of Columbia Board of Education, 745 F.2d 1577, 1582 (D.C. Cir. 1984).

Then on June 29, 2026, DCPS issued a letter designating School D as the Student's location of special education services for the 2026-2027 school year, on the ground that School D is the feeder school for the BES program. Parent contended that this represented a second change of placement made without her consent, but DCPS's designation of School D was not a change of placement. School D was identified as another building for the program that the February 20, 2026, IEP team had already recommended, and the character of the Student's program was not altered by the School D designation. Lunceford, 745 F.2d at 1582.

Parenthetically, after the IEP meeting, DCPS did more to give Parent the right to participate. After DCPS issued the location of services letter, it offered Parent transition meetings at which the Student's goals, present levels, and transportation would have been discussed. Parent declined, stating that she had filed a complaint with OSSE and would not consent to a transition meeting until OSSE completed its findings.

This Hearing Officer concludes that DCPS afforded Parent the opportunity to participate in decision-making regarding the Student's educational program and placement. Claim 5 must be denied.

6. Did DCPS place the Student in an inappropriate educational placement in or about May-June, 2026? If so, did DCPS deny the Student a FAPE?

Parent contended that the BES program is designed for students whose needs are different from the Student's needs. Parent underscored that the Student's classifications are Specific Learning Disability and Other Health Impairment rather than an emotional or behavioral disability, that neither the IEP nor any evaluation named the BES program, and that the Student needs a program designed for children with learning disabilities. DCPS contended that it selected the BES program because the Student has a documented academic deficit, accompanied by maladaptive behaviors that prevent him/her from accessing the curriculum, which is precisely the student profile that the program serves.

A FAPE consists of educational instruction specially designed to meet the unique needs of a child, supported by such services as are necessary to permit the child to benefit from the instruction. Board of Education v. Rowley, 458 U.S. 176, 188-89 (1982). The IDEA does not require a public agency to maximize the potential of a child with a disability, and it does not permit the reviewing authority to substitute its own notions of sound educational policy for those of the school authorities it reviews. Id. at 198, 206. To

meet its substantive obligation, a public agency must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

Endrew F. ex rel. Joseph F. v. Douglas County School District RE-1, 580 U.S. 386, 399 (2017). Deference to school authorities rests on the application of expertise and the exercise of judgment, and it is earned rather than assumed. A reviewing authority "may fairly expect those authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances." Id. at 404.

Parent's central argument rested on a premise that the record does not support. Placement in a BES classroom, or any classroom, does not turn on a student's disability classification. The BES program is recommended for students with a documented academic deficit who demonstrate maladaptive behaviors that interfere with their ability to access the curriculum, and disability classification alone does not determine what services or program changes a child may need. By February 2026, the Student was functioning at or near the kindergarten level in every academic area, with no progress on any academic IEP goal during the first two quarters of the school year. Many supports to address the Student's behavior had been tried in a less restrictive setting, including a token economy system, movement breaks, noise cancelling headphones, preferential seating, and a calming space. The Student responded by blocking classroom exits, pushing and hitting other children, yelling and screaming during instruction, and cursing at a special education teacher who was attempting to engage him/her in work. This Student clearly needs a change to a more restrictive setting that emphasizes behavioral concerns, which is what the BES program provides. The record establishes that the BES

classroom provides behavioral support services from a licensed clinical social worker, implements the BIP, and is staffed throughout the day by a behavior technician, so it can deliver those services and supports as well.

Parent suggested that the Student would not receive appropriate instruction to address his/her reading issues in the BES classroom. The record does reflect issues with the Student's reading and writing. On the WJ-4 administered on March 28, 2025, he/she scored at the 27th percentile in calculation, 18th percentile in math facts fluency, and 14th percentile in applied problems, but below the 1st percentile in broad reading, letter-word identification, passage comprehension, and oral reading, at the 1st percentile in sentence reading fluency, and at the 2nd percentile in word attack. In reading, the Student scored well below grade level on every DIBELS subtest given in January 2026, and the January 2026 i-Ready reading assessment could not be completed at all.

Though the BES program focuses on addressing students' behavior issues, the record does not suggest that it is a program where the academic instruction itself is about behavior. The Student's IEP accordingly contained goals in reading and writing, which would be implemented by a certified special education teacher in a small-group environment with similar peers. Nothing in the record suggests that a certified special education teacher cannot implement reading and writing goals in an IEP or address the Student's reading and writing issues in a BES classroom, where the Student would receive small-group instruction. Claim 6 must be denied.

8. Did DCPS improperly manipulate the Student's educational records between February 2026 and June 2026? If so, did DCPS deny the Student a FAPE?

Parent contended that DCPS's records did not accurately reflect what happened to the Student and asked that the records be corrected. DCPS contended that this claim

stated no cause of action under the IDEA and that it had already addressed any records deficiency.

There is no evidence of manipulation. What the record shows is inaccuracy. OSSE found that some removals of the Student from the classroom were not logged in his/her behavior tracker. OSSE also found that an incident on October 6, 2025, was logged but not categorized as a removal, although the Student was kept in the school's office for two hours, and that there was no entry at all for October 7, 2025, when the Student was out of the classroom for approximately three-and-one-half hours. School staff acknowledged at least four other removals that were never logged. Three removals from recess were not logged. The disciplinary spreadsheet that DCPS gave to Parent therefore did not accurately reflect all the times that the Student was removed from the classroom.

OSSE therefore concluded that DCPS had not complied with 34 C.F.R. § 300.211 and separately concluded that DCPS had not complied with 34 C.F.R. §§ 300.501(a) and 300.613 because DCPS did not give Parent access to the requested October 6, 2025, camera footage and did not timely produce one incident report.

However, these violations do not necessarily amount to a denial of FAPE. As stated previously, to prove FAPE denial, a parent must show that the deficiency impeded a student's right to a FAPE, significantly impeded the parent's opportunity to participate, or deprived the student of educational benefit. 34 C.F.R. § 300.513(a)(2). The record suggests that the Student lost no instruction as a result of the logging failures, and Parent did not explain why participation in the February 20, 2026, meeting was compromised by

the imperfectly logged records, the lack of access to some of the documents, or by the lack of access to camera footage. Claim 8 must be dismissed.

9. Did DCPS fail to appropriately respond to Parent’s IEE request between February 2026 and June 2026? If so, is Parent entitled to an IEE?

10. Did DCPS conduct an appropriate evaluation of the Student?

11. Did Parent fail to appropriately request an IEE for the Student?

Claims 9, 10, and 11 are addressed together. Claim 11 asks whether Parent’s request for an IEE was an appropriate request. Claim 9 asks whether DCPS responded appropriately to that request. Claim 10 asks whether the evaluations of the Student that DCPS conducted were appropriate.

A parent has the right to an IEE at public expense if the parent disagrees with an evaluation obtained by a public agency. 34 C.F.R. § 300.502(b)(1). If the parent requests an IEE, “the public agency must, without unnecessary delay, either file a due process complaint to request a hearing to show that its evaluation is appropriate; or ensure that an independent educational evaluation is provided at public expense.” 34 C.F.R. § 300.502(b)(2). The agency “may ask for the parent’s reason why he or she objects to the public evaluation,” but it “may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.” 34 C.F.R. § 300.502(b)(4).

Parent’s April 24, 2026, email invoked 34 C.F.R. § 300.502; stated that she disagreed with DCPS’s evaluation and the data used to make decisions about the Student’s needs, services, and placement; identified the OSSE findings on discipline data, records access, and restraint documentation as the grounds for her disagreement; and

asked for a list of qualified IEE evaluators. DCPS contended that Parent never identified the evaluation she was challenging and that her request was therefore not a request that the regulation recognizes.

While a school district may ask parents for the reasons behind their IEE request, nothing in the regulation requires parents to name a component, identify a defect, or explain the disagreement beyond the basic request. If a school district insists that the parent tell it about the particulars of the IEE request, the school district violates federal regulation. 34 C.F.R. § 300.502(b)(4) states in full: “If a parent requests an independent educational evaluation, the public agency may ask for the parent’s reason why he or she objects to the public evaluation. However, the public agency *may not require the parent to provide an explanation* and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.”

After DCPS received Parent’s request for an IEE, it acknowledged receipt within the hour. On May 1, 2026, DCPS asked which evaluation was being challenged. Parent answered the same morning that she was challenging DCPS’s evaluation. DCPS responded that School B had not evaluated the Student, that the Student had arrived with an existing evaluation and IEP in place, and that absent identification of the component being challenged, DCPS could not determine whether an IEE was warranted. DCPS therefore made the explanation a condition of its response, in violation of 34 C.F.R. § 300.502(b)(4).

It is relevant to point out that 34 C.F.R. § 300.502(b)(4) contains two rules with which a school district must comply in responding to an IEE request. First, the public

agency may not require the parent to provide details or an explanation. Second, the public agency may not unreasonably delay either funding the evaluation or filing a due process complaint. The consequence of the second prohibition is settled. When an agency materially delays a response to an IEE request, a parent may obtain the evaluation at public expense. Harris v. District of Columbia, 561 F. Supp. 2d 63, 69 (D.D.C. 2008); Horne v. Potomac Preparatory P.C.S., 209 F. Supp. 3d 146, 155-56 (D.D.C. 2016); Jefferson County Board of Education v. Lolita S., 977 F. Supp. 2d 1091, 1126-27 (N.D. Ala. 2013), *aff'd*, 581 F. App'x 760 (11th Cir. 2014). The same consequence should follow when a school district conditions the IEE on an explanation and then refuses to proceed because no explanation is provided. As one District of Columbia court stated: “The IDEA does not require a parent to do more than request an IEE. In fact, the law prohibits schools from requiring an explanation from parents.” Horne, 209 F. Supp. 3d at 155; Moonsammy v. Banks, No. 23 Civ. 10491 (PAE), 2024 WL 4277521, at *16 (S.D.N.Y. Sept. 23, 2024) (once a parent requests an evaluation at public expense, the burden shifts to the agency, and the agency must either fund the evaluation or defend its own evaluation).

Accordingly, in Lolita S., the school district argued that the parent’s request was void because it was pro forma, did not identify the proposed evaluator, and did not identify the specific disagreement with the evaluation. The court rejected the argument, holding that “no support exists for them in the statute itself or interpreting case law,” that “[t]he statute and supporting regulation only require the parent to communicate a request,” and that the regulation “specifically provides that ‘the public agency may not require the parent to provide an explanation.’” 977 F. Supp. 2d at 1126-27. The court

found that the school district's failure to follow the procedure the regulation prescribes required it to pay for the evaluation, notwithstanding the hearing officer's conclusion that the board had met its programmatic obligations to the student. Id. at 1127. To rule otherwise would allow a school district to require an explanation that the regulation forbids it to require, decline to act until it receives such an explanation, and then defend the result by litigating the quality of its own evaluation. Accordingly, Parent is entitled to an IEE at public expense, and it is unnecessary to consider whether DCPS's evaluations were appropriate (Claim 10) or whether its due process complaint was filed in time.

RELIEF

When a student is denied a FAPE, the statute directs the court to "grant such relief as [it] determines is appropriate." School Committee of the Town of Burlington v. Department of Education, Massachusetts, 471 U.S. 359, 369 (1985). Hearing officers have the same broad remedial discretion as courts in fashioning relief under the IDEA. Forest Grove School District v. T.A., 557 U.S. 230, 243 n.11 (2009).

This Hearing Officer has already addressed Parent's right to an IEE. Parent is also seeking a compensatory education award. Compensatory education is an equitable remedy. An award must be based on a qualitative, fact-intensive inquiry, tailored to the unique needs of the disabled student, and must aim to place the disabled child in the same position they would have occupied but for the school district's violations of the IDEA. Reid ex rel. Reid v. District of Columbia, 401 F.3d 516, 518, 524 (D.C. Cir. 2005); Branham v. Government of the District of Columbia, 427 F.3d 7, 9 (D.C. Cir. 2005). A mechanical hour-for-hour formula is not permitted. Reid, 401 F.3d at 523. At the same time, where a violation is established, the fact-finder must fashion an appropriate award

and may not decline to do so because the record is imperfect. B.D. v. District of Columbia, 817 F.3d 792, 799 (D.C. Cir. 2016).

Under the Student's December 2025 amended IEP, which was operative during stay-put, s/he was entitled to fifteen hours per week of specialized instruction outside general education and four hours per month of behavioral support services outside general education. The last behavioral support session in the record was delivered on May 13, 2026, and no specialized instruction and no behavioral support services were delivered after that date. Under the circumstances, this Hearing Officer will award the Student fifty hours of compensatory education in the form of tutoring, to be provided by a qualified provider at a reasonable and customary rate.

Petitioner argued that the Student should attend a non-public placement, and that I should invalidate the February 20 2026 IEP. However, I have found that the school district's program and placement were appropriate. No other relief was mentioned by Petitioner during closing argument.

VII. Order

As a result of the foregoing:

1. DCPS shall provide the Student with fifty hours of tutoring, to be provided by a qualified provider at a reasonable and customary rate in the community;
2. Parent is awarded an Independent Educational Evaluation of the Student at public expense;
3. All other requests for relief are denied.

Hearing Officer Determination
Michael Lazan, Hearing Officer
Case # 2026-0084; 2026-0103

Dated: September 14, 2026

Michael Lazan
Impartial Hearing Officer

cc: Office of Dispute Resolution
Parent pro se
Attorney A, Esq.

VIII. Notice of Appeal Rights

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. § 1415(i)(2)(A).

Dated: September 14, 2026

Michael Lazan
Impartial Hearing Officer