

**District of Columbia**  
**Office of the State Superintendent of Education**  
Office of Review and Compliance  
Office of Dispute Resolution  
1050 First Street, NE  
Washington, DC 20002  
Tel: 202-698-3819  
Fax: 202-478-2956

OSSE  
Office of Dispute Resolution  
April 14, 2024

**Confidential**

<p>Parent on Behalf of Student, <sup>1</sup></p>  <p>Petitioner,</p>  <p>v.</p>  <p>District of Columbia Public Schools (Local Education Agency “LEA”)</p>  <p>Respondent.</p>  <p>Case # 2024-0016</p>  <p>Date Issued: April 14, 2024</p>	<p>HEARING OFFICER’S DETERMINATION</p>  <p>Hearing Dates: March 26, 2024 March 27, 2024 March 29, 2024</p>  <p>Counsel for Each Party listed in Appendix A</p>  <p><u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u></p>
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<sup>1</sup> 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 with Student's parent in the District of Columbia. The District of Columbia Public Schools (“DCPS” or “Respondent”) is Student's local education agency (“LEA”). Student has been determined eligible for special education pursuant to IDEA with a disability classification of other health impairment (“OHI”). Student attends a DCPS school (“School A”), where Student began attending soon after the start of school year (“SY”) 2023-2024.

On January 30, 2024, Student's parent (“Petitioner”) filed a due process complaint (“DPC”) alleging that DCPS denied Student a free appropriate public education (“FAPE”) by failing to, timely and comprehensively evaluate Student for special education services.

Petitioner seeks as relief that DCPS be ordered to conduct or fund an occupational therapy evaluation, finalize Student’s individualized education program (“IEP”), and an award Student compensatory education services for the denial(s) of FAPE alleged. <sup>2</sup>

### **DCPS’s Response to the Complaint:**

DCPS filed a response to the DPC on February 8, 2024. In its response, DCPS stated, inter alia, the following:

Student is enrolled at School A for SY 2023-2024. Prior to enrollment in DCPS, Student attended a public charter school in the District of Columbia (“School B”) for two years on a virtual-only basis. Student was not attending a physical classroom.

Student began attending School A late, in September 2023. When Student enrolled, Student had a 504 plan which School A implemented immediately. Soon after Student’s enrollment, School A began the multi-tiered systems of support (“MTSS”) process to screen, progress monitor, and data-gather. An analysis of existing data (“AED”) meeting was scheduled for December 13, 2023. Petitioner requested that it be rescheduled due to illness.

On January 17, 2024, shortly before Petitioner filed this DPC, the AED meeting was held. Petitioner and her attorney were both present and participated in the meeting. The team agreed to a comprehensive psychological evaluation, speech-language evaluation, and a functional behavior assessment. DCPS obtained consent from Petitioner to evaluate Student on the same day as the AED meeting, January 17, 2024.

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<sup>2</sup> This is the relief Petitioner sought as of the due process hearing. At the time of the hearing DCPS had granted some of the relief initially requested in Petitioner’s DPC and listed in the PHO.

There were no occupational-therapy related concerns and the occupational therapist, who conducted an observation, reported that “[Student] appeared to demonstrate functional neuromuscular, fine motor, visual motor, sensory processing, and activities of daily living skills required to access [Student’s] education.”

Petitioner, through her attorney, filed this DPC, January 30, 2024, Petitioner was aware that School A had agreed to conduct the requested evaluations.

This complaint is frivolous and the Hearing Officer, within his discretion, and pursuant to his authority under D.C. ACT 20-486, should issue an order that Petitioner’s counsel has filed a frivolous pleading. Recent caselaw continues to confirm that compensatory education cannot be reserved. As such, the relief requested has been satisfied.

**Resolution Meeting and Pre-Hearing Conference:**

Petitioner and DCPS participated in a resolution meeting on February 12, 2024. The parties did not mutually agree to shorten the 30-day resolution period. The DPC was filed on January 30, 2024. The 45-day period began on March 1, 2024, and ended and the Hearing Officer’s Determination (“HOD”) is currently due on April 14, 2024.

The undersigned impartial hearing officer (“IHO”) conducted a pre-hearing conference on February 20, 2024, and issued a pre-hearing order (“PHO”) on February 22, 2024, and a revised PHO on March 13, 2024, stating, inter alia, the issue to be adjudicated.

**ISSUE:**<sup>3</sup>

The issue adjudicated is:

Did DCPS deny Student a FAPE by failing to timely and comprehensively evaluate Student pursuant to its child-find obligation under IDEA and timely find Student eligible for special education under the disability classification of OHI ?<sup>4</sup>

**DUE PROCESS HEARING:**

The Due Process Hearing was convened on March 26, 2024, and March 27, 2024, with closing arguments made on March 29, 2024. The hearing was conducted via video teleconference on the Microsoft Teams platform.

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<sup>3</sup> At the outset of the due process hearing, the IHO reviewed the single issue to be adjudicated the parties agreed to the issue as stated herein.

<sup>4</sup> Petitioner contends that DCPS was put on notice that Student required an IEP from date of enrollment in DCPS for SY 2023-2024, and DCPS delayed in moving forward in a timely manner to conduct comprehensive evaluations and delayed making a determination of eligibility despite having sufficient data to support Student’s identification under the classification of OHI.

## **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 47 and Respondent's Exhibits 1 through 23 ) that were admitted into the record and are listed in Appendix 2.<sup>5</sup> The witnesses testifying on behalf of each party are listed in Appendix B.<sup>6</sup>

## **SUMMARY OF DECISION:**

Petitioner held the burden of persuasion on the issue adjudicated. Based on the evidence adduced, the IHO concluded that Petitioner sustained the burden of persuasion by a preponderance of the evidence. The IHO granted Petitioner's request for an OT evaluation and authorized Petitioner to seek compensatory education for the denial of FAPE with a subsequent DPC if necessary.

## **FINDINGS OF FACT:**<sup>7</sup>

1. Student resides with Student's parent, Petitioner, in the District of Columbia. DCPS is Student's LEA. Student has been determined eligible for special education pursuant to IDEA with a disability classification of OHI. Student is currently in \_\_\_\_\_grade and attending School A, a DCPS school. (Parent's testimony, Petitioner's Exhibit 12)
2. For \_\_\_\_ and \_\_\_\_\_ grade during SY 2021-2022 and 2022-2023 respectively, Student attended School B, a District of Columbia public charter school that is its own LEA. Student participated exclusively in School B's online program with virtual learning and no in person instruction. (Parent's testimony, Petitioner's Exhibits 9-2,18, 19)
3. On September 6, 2022, School B developed a 504 plan.<sup>8</sup> The plan indicated that attention deficit hyperactivity disorder ("ADHD") is the condition that the 504 plan was designed to address. The plan stated that "ADHD impacts [Student's] concentration, thinking and attention." The 504 plan prescribed accommodations and

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

<sup>6</sup> Petitioners presented four witnesses: (1) Student's mother (Petitioner), (2) an educational advocate who testified as an expert witness, (3) an independent occupational therapist and (4) an independent speech-language pathologist. Respondent presented three witnesses, two of whom testified as expert witnesses: (1) a DCPS school psychologist, (2) a DCPS occupational therapist, and (3) the School A 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.

<sup>7</sup> 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.

<sup>8</sup> The plan was developed pursuant to Section of 504 of the Rehabilitation Act of 1973 to provide accommodations for Student's diagnosed ADHD.

services including extended time, frequent breaks, bi-weekly behavior counseling/check-ins, reduced classwork, and accommodations for state and district-wide testing. (Petitioner's Exhibit 11)

4. During SY 2022-2023, Student earned the grade "F" in the following subjects: English and language arts (ELA), math, and social studies. At the end SY 2022-2023, School B recommended that Student repeat \_\_\_\_\_ grade. (Parent's testimony, Petitioner's Exhibit 19)
5. Petitioner concluded that Student needed to return to in person learning and decided to enroll Student at School A for SY 2023-2024. Petitioner contacted School A in mid-August 2023. She completed Student's enrollment in September 2023, and Student began attending School A on or about September 5, 2023. Petitioner provided a copy of Student's School B 504 plan to School A along with a letter regarding Student's ADHS diagnosis. (Parent's testimony)
6. At the time of Student's enrollment in School A, Petitioner informed School A of School B's recommendation that Student be retained and provided Student's reports cards from School B. Petitioner informed School A that she believed that Student had not been provided adequate instruction during Student's time at School B resulting in Student being below grade level academically. School A began providing Student accommodations consistent with Student's 504 plan and began academic interventions through School A's multi-tier support system ("MTSS") to make an independent determination of Student's academic performance. The major area concern for School A during the first month of Student's attendance at School A was Student's peer interactions. As a result, School A enrolled Student in a peer support group to help address Student's social interactions. School A also provided Student pull out instruction in reading and math. (Witness 6's testimony)
7. In October 2023, School A convened a parent teacher conference in which the School A staff shared that Student was performing below grade level in math and reading and shared how Student was interacting with peers and teachers. Based upon the information provided Petitioner during this meeting, Petitioner believed that School A would begin action to transition Student from a 504 plan to an IEP. (Parent's testimony)
8. Petitioner worked with Student on the weekly academic packets that School A teachers sent home for Student to complete. Petitioner believes that Student's academic skills have improved slowly since Student has attended School A. However, Student is still not a fluent reader, and struggles with site words, writing and math operations. Student is easily frustrated and does not want to complete homework. Petitioner has received frequent feedback from School A about Student's problematic behaviors with peers. School A staff who have provided Student interventions have communicated with Petitioner about Student's progress. However, Petitioner has not been provided regular and consistent progress reports. School A recently implemented a behavior contract with Student that provides Student short-term and long-term incentives to address Student's behaviors in class and with peers. (Parent's testimony)

9. Student's report card for first quarter of SY 2023-2024, which ended in November 2023, reflected that Student was not meeting grade standard in most of core academic subjects. In the report card, Student's ELA teacher provided a comment that Student was performing well below grade level. Student's math teacher provided a comment that Student was struggling to progress with the \_\_\_\_\_-grade content. (Petitioner's Exhibits 20, 21)
10. Petitioner engaged the services of an attorney, and on November 16, 2023, Petitioner's attorney sent a written request to School A for Student to be evaluated for special education and requested Student's educational records. The following evaluations were requested: a comprehensive psychological evaluation to include an ADHD assessment, speech-language, occupational therapy, and functional behavior assessment ("FBA"). The same day, School A sent Petitioner a letter acknowledging the evaluation request. (Respondent's Exhibits 2, 3)
11. On November 17, 2023, School A sent Petitioner a letter of invitation to an analysis of existing data ("AED") meeting at which School A planned to review with Petitioner the data of Student's academic and social-emotional functioning and determine what assessments would be conducted. The AED meeting was scheduled for December 20, 2023. (Witness 6's testimony, Respondent's Exhibits 5, 6)
12. On December 20, 2023, Petitioner informed School A that she was unable to attend and requested that the AED meeting be postponed. Petitioner provided School A a letter restating her request that the meeting be postponed. (Witness 6's testimony, Respondent's Exhibit 7)
13. An DCPS occupational therapist completed observation and teacher interviews in December 2023 in preparation for the AED meeting. The occupational therapist had Student complete some work samples. Student was able to functionally produce an handwritten piece of work with legible handwriting. Student completed that work with 95% legibility and 100% accuracy for casing, and 77% accuracy for spacing. Student's sentences were legible even though Student had some spacing problems and the letter reversals, which are typical for children of Student's age. During the observation, Student was able to draw diagrams and write numbers. There were no sensory concerns noted during the observation or by Student's teachers. The teachers reported that Student picked fights with peers almost daily and had difficulty with self-starting or task initiation, but these factors did not indicate a need for occupational therapy. (Witness 5's testimony)
14. On January 17, 2024, DCPS convened Student's AED meeting. Petitioner and her attorney participated in the meeting. Petitioner had been waiting on the medical report, and asked School A for time to obtain the report which she sent to School A the day before the January 17, 2024, AED meeting. (Witness 6's testimony)

15. School A provided Petitioner a draft AED report at the January 17, 2024, AED meeting. The draft AED report indicated that Student was performing significantly below grade level in math and ELA and that Student struggled with engagement in the classroom and got into arguments with peers frequently if not monitored. (Petitioner's Exhibit 15)
16. During the AED meeting School A reviewed Student's academic strengths and weaknesses, in-school behavior, and the interventions that had been provided to Student at School A. The DCPS occupational therapist participated in the January 17, 2024, AED meeting. During the AED meeting Student's parent raised concerns that Student could be impacted by loud noises and the parent's advocate brought up handwriting concerns. The occupational therapist shared the results of her observation of Student, Student's writing samples and her interviews with teachers. Based on the data collected, the occupational therapist believed that an occupational therapy ("OT") evaluation was not required, but the occupational therapist left the final decision to the team. The team determined that there were no OT concerns that warranted an OT evaluation. (Witness 5's testimony, Respondent's Exhibit 13)
17. The AED meeting notes indicate that the team discussed Student's fine motor an sensory skill in the setting. The notes indicate that the School A occupational therapist observed Student's math class and noted Student's ability to use a small whiteboard and dry erase marker with age-appropriate grasp, draw a tape diagram and write numbers legibly. Student's teachers noted no motor skill or sensory concerns, and that Student's handwriting was legible, but Student struggled with attention and copying from the board. The AED meeting notes also indicate that a meeting participant requested that Student be comprehensively evaluated including speech-language, OT, FBA to obtain an IEP. (Petitioner's Exhibit 15, Respondent's Exhibit 10)
18. On January 17, 2024, School A issued a prior written notice ("PWN") to Petitioner that stated, inter alia: "The team conducted an AED meeting on 1/17/2024 and determined that more information is needed to determine whether [Student] qualifies as a student with a disability who is eligible for special education and related services under IDEA." "The team reviewed data that included, but were not limited to current local and school-based assessment. The team also reviewed observations by DCPS social worker, psychologist, speech-language pathologist and occupational therapist, ELA and math classroom teacher. Finally, in making its determination, the team reviewed input provided by the student and [Parent]. Results of this review indicated the need for additional information, which could only be gained through completion of formal assessments." (Respondent's Exhibit 11)
19. On January 17, 2024, Petitioner provided School A consent to conduct evaluations. (Respondent's Exhibit 9)
20. On January 30, 2024, Petitioner filed her DPC alleging DCPS failed to timely and comprehensively evaluate Student and find Student eligible for special education services pursuant to its child find obligations.

21. DCPS conducted a psychoeducational evaluation, FBA, and speech-language evaluation of Student in February and March 2024. DCPS developed a behavior intervention plan (“BIP”) dated March 1, 2024. DCPS did not conduct a formal OT evaluation. (Witness 5’s testimony, Witness 6’s testimony Respondent’s Exhibits 15, 16, 17, 18, Petitioner’s Exhibit 14)
22. On March 13, 2024, School A convened an eligibility meeting and determined Student eligible for special education with a disability classification of OHI. DCPS provided Petitioner a draft IEP and proposed an IEP meeting date of March 28, 2024. At the time of the due process hearing the parties had not yet convened the IEP meeting. (Witness 6’s testimony, Petitioner’s Exhibits 12, 43, 44)

### 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). Petitioner held the burden of persuasion on the issue adjudicated. 9 The burden of persuasion shall be met by a preponderance of the evidence.

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<sup>9</sup> 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:

(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



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 by failing to timely and comprehensively evaluate Student pursuant to its child-find obligation under IDEA and timely find Student eligible for special education under the disability classification of OHI ?

**Conclusion:** Petitioner sustained the burden of persuasion by a preponderance of the evidence that DCPS denied Student a FAPE by failing to timely evaluate and find Student eligible for special education.

IDEA guarantees children the right to receive a free, individually appropriate, public education. 20 U.S.C. § 1400(d)(1)(A). A free individually appropriate public education or a FAPE "consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child 'to benefit' from the instruction." See *Board of Educ. Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 188-89 (1982). District of Columbia municipal regulations have placed the burden on the local educational agencies to "ensure that procedures are implemented to identify, locate, and evaluate all children with disabilities residing in the District who are in need of special education and related services, including children with disabilities attending private schools, regardless of the nature or severity of their disabilities." 5-A DCMR § 3003.

IDEA's regulations define a child with a disability as follows: Child with a disability means a child evaluated in accordance with 34 CFR §§ 300.304 through 300.311 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services. 34 C.F.R. § 300.8(a)(1).

Alleged Child Find Violation:

IDEA requires local education agencies to identify and evaluate all students suspected of having disabilities to determine their eligibility for special education services: All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services. 20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111(a)(1)(i).

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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 public agency's child find obligation is an affirmative one. *Lincoln County Sch. Dist. A. A.*, 39 IDELR 185 (D. Or. 2003). *Wise vs. Ohio Dept of Education*, 80 F.3d. 177, 181 (6th Cir. 1996); *Robertson County School System vs. King*, 24 IDELR 1036 (6th Cir. 1996) (affirmative obligation on states and local school districts-not parents-to identify, locate and evaluate all children, including migrants and the homeless, with disabilities residing within the jurisdiction who have disabilities and are in need of special education or related services.)

Petitioner asserts that because Student had a 504 plan when Student arrived at School A, and Petitioner informed School A that Student's former school, School B, recommended that Student be retained, that School A should have immediately evaluated Student for special education eligibility, upon Student's enrollment in DCPS, based upon its child find obligation. However, the evidence belies that assertion.

The evidence demonstrates that Petitioner enrolled Student in DCPS for SY 2023-2024 and Student began attending School A on or about September 5, 2023. At the time of enrollment, Petitioner shared with School A the 504 plan that had been developed for Student by School B. She also shared that School B had recommended that Student be retained in \_\_\_\_\_ grade. She also shared that Student had received online instruction from School B and that Petitioner believed and shared with School A that Student was not making adequate academic progress because the instruction provided to Student by School B was inadequate.

As DCPS's witness credibly testified, given Petitioner comments that Student had not been provided appropriate instruction, it was reasonable for School A to move forward with its own determination of Student's academic abilities before proceeding with an evaluation of Student for special education eligibility.<sup>10</sup> Based upon this evidence the IHO concludes that School A was not obligated to have immediately moved forward with evaluating Student upon enrollment in School A based on its child find obligation.

The evidence demonstrates that School A provided Student intervention to address both Student's academic deficits and Student's behavior with peers. As noted by the credible testimony of the DCPS's witnesses, and supported by Petitioner's testimony, Student made some progress as result of the interventions. Although Petitioner may have left a parent teacher conference in October 2023 with the impression that School A was moving forward with developing and IEP for Student, that impression was not supported any other evidence. However, Student's first quarter report card which was issued in late November 2023, indicates, that Student was still operating significantly below grade level and the interventions that were being provided Student were insufficient. Nonetheless, prior to this data being available to School A in late November 2023, Petitioner, through her attorney, made a formal request that School A evaluate Student for special education eligibility. The IHO concludes that DCPS was not obligated to evaluate Student prior to Petitioner's request and referral for evaluation.

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<sup>10</sup> Pursuant to 5-A DCMR § 3010.2, the IEP team may not determine that the child is a child with a disability if the determinant factor for that eligibility determination is: (a) Lack of appropriate instruction in reading, including the essential components of reading instruction; (b) Lack of appropriate instruction in math; or (c) Limited English proficiency.

### Alleged Failure to Timely Evaluate and Determine Eligibility

The District of Columbia regulations impose strict timelines once a child is referred for evaluation for services: An LEA shall: (a) Make and document reasonable efforts, as defined in this chapter, to obtain parental consent within thirty (30) days from the date on which the child is referred for an initial evaluation, and begin such efforts no later than ten (10) business days from the referral date; and (b) Evaluate and make an eligibility determination for a student who may have a disability and who may require special education services within sixty (60) days from the date that the student's parent or guardian provides consent for the evaluation. 5-A DCMR § 3005.4.

The evidence demonstrates that Petitioner requested that Student be evaluated on November 16, 2023. DCPS should have, pursuant to the DCMR, made reasonable efforts to obtain consent to evaluate Student within 10 days thereafter. DCPS sent an invitation to an AED meeting to Petitioner on the same day it received the evaluation request. However, the invitation to the meeting did not include a request for consent to evaluate and the date offered for the AED meeting, December 20, 2023, was beyond the required 30 days that DCPS had to obtain the consent to evaluate.

Although Petitioner requested that the AED meeting be rescheduled, DCPS failed to obtain consent to proceed with evaluating Student and did not obtain consent until the AED meeting was finally held on January 17, 2024. Although the DCPS's witness explained that the purpose of the AED meeting was to review data regarding Student's academic performance and behavior to determine what if any evaluations were warranted, DCPS was not compelled to wait for the AED meeting to obtain consent to evaluate. Had DCPS sought Petitioner's consent in a timely matter, the consent would have presumably been provided by December 16, 2023. DCPS would have then had 60 days to evaluate Student and determine Student's eligibility or ineligibility, which would have been on or about February 16, 2023.

Although DCPS began the evaluation process promptly after obtaining the consent in February and March 2024, this delay resulted in Student's eligibility determination being delayed by approximately 30 days. From the date of eligibility, DCPS would have been required develop an IEP within 30 days or on about March 16, 2024.<sup>11</sup> As of the date of the due process hearing, an IEP had yet to be developed. Although DCPS offered to convene an IEP meeting on March 28, 2024, that date was beyond the time that an IEP should have been developed had DCPS met its February 16, 2023, deadline.

Because Student has been determined eligible for special education and that determination was delayed, Student has not been provided special education services for at least a month. The IHO concludes that the delay in determining Student's eligibility and thus delaying providing Student an IEP and special education services was more than a procedural violation and resulted in a denial of a FAPE to Student.

### Alleged Failure to Evaluate Comprehensively

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<sup>11</sup> 34 CFR §§ 300.323(c)

Pursuant to 34 CFR § 300.15 Evaluation means procedures used in accordance with §§ 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. (Authority: 20 U.S.C. 1414(a) (c))

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."

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 5A § 3006.7(a).

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 5A § 3006.7(f).

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).

The evidence demonstrates that School A acknowledged Petitioner's request for initial evaluations on November 16, 2023. Petitioner requested that School A conduct the following evaluations: a comprehensive psychological evaluation to include an ADHD assessment, speech-language, occupational therapy, and FBA. DCPS conducted a comprehensive psychological evaluation, a speech-language evaluation, and an FBA. DCPS did not conduct a formal OT evaluation.

Petitioner alleges that DCPS failed to comprehensively evaluate Student by not conducting a formal OT evaluation and failing to conduct an appropriate speech-language evaluation. However, the evidence does not support a violation.

On January 30, 2024, Petitioner filed her DPC prior to the date in February 2024, as discussed above, that the IHO concluded DCPS should have evaluated Student and determined eligibility, but following the AED meeting at which DCPS determined that it would move forward with formal evaluations and what evaluations would be conducted.

The IHO must generally evaluate any alleged violation as of the date the Petitioner's DPC was filed, and as of that date, January 30, 2024, DCPS's timeline for evaluating Student and determining eligibility had not yet expired. Nonetheless, as discussed above, the IHO has concluded that as of the date of the due process hearing, it was clear that Student's eligibility

determination and the resulting development of Student's IEP was at least delayed by approximately a month due to DCPS's failure to act promptly to evaluate Student.

Petitioner alleges that DCPS failed to comprehensively evaluate Student by not conducting an OT evaluation and failing to conduct an appropriate speech-language evaluation. However, the evidence does not support that a finding of a denial of a FAPE in this regard.

At the January 17, 2024, AED meeting, Student's parent raised concerns that Student could be impacted by loud noises and the parent's advocate brought up handwriting concerns. The occupational therapist shared the results of her observation of Student, Student's writing samples and her interviews with teachers. Based on the data collected, the occupational therapist left the final decision to the team and the team determined that there were no OT concerns that warranted an OT evaluation.

The evidence demonstrates that DCPS considered and assessed in the area of occupational therapy. The DCPS occupational therapist completed observation and teacher interviews in December 2023 in preparation for the AED meeting and participated in the January 13, 2024, AED meeting. The occupational therapist had Student complete some work samples. Student was able to produce legible handwriting. The evidence supports a finding that there were no significant factors to warrant an OT evaluation. Although Petitioner presented a witness who testified that Student warranted a formal OT evaluation, that witness had never met or assessed Student, unlike the DCPS witness. The IHO found the DCPS' witnesses testimony far more credible as to whether a formal OT evaluation was warranted and concludes there was no denial of FAPE to Student by DCPS not conducting a formal OT evaluation.

DCPS conducted a formal speech-language evaluation. Although Petitioner put forth a expert witness who testified that in conducting the speech-language evaluation, DCPS should have administered additional assessment tools in the area of speech-language, however, a claim regarding the appropriateness of DCPS speech-language evaluation is pre-mature. At the time the due process complaint was filed, DCPS had yet to complete the speech-language evaluation. Consequently, the IHO concludes that Petitioner would need to file a new due process complaint to assert that claim.

Petitioner did not meet her burden of proving that DCPS denied Student a FAPE by failing to conduct an OT evaluation, or failing to comprehensively evaluate Student in the area of speech-language. Consequently, the IHO concludes that DCPS was not obligated to conduct a formal OT evaluation. Nonetheless, because the IHO found a denial of FAPE, Petitioner's requested relief of an independent OT evaluation ("IEE") is included in the order below as a component of the relief granted.

**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.) The IHO has concluded that School A denied Student a FAPE in failing to timely evaluate Student and determine eligibility.

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.)

Petitioner has requested the compensatory education included in her educational advocate's proposal. Petitioner's educational advocate asserted inappropriately that Student should have been provided special education services from the start of SY 2023-2024. In addition, DCPS has yet to finalize an IEP for Student from which to gauge the amount and type of special education services that Student missed as result of the approximate one-month delay in Student being found eligible for special education services. Consequently, in the order below, IHO directs DCPS to fund an IEE and grants Petitioner authorization to pursue compensatory services after Student's IEP is finalized.

**ORDER:**

1. DCPS shall, within fifteen (15) business days of the date of this order, provide Petitioner authorization to obtain an IEE for an occupational therapy evaluation at the OSSE prescribed rate.
2. DCPS shall, within fifteen (15) school days of the date of this order, convene an IEP meeting, to develop and finalize an IEP for Student and discuss and determine compensatory education for the one-month delay in evaluating Student and determining Student's eligibility. Petitioner shall have the right to pursue in a subsequent due process complaint any compensatory education that Student might be due because of the approximate one-month delay noted above if the parties are unable to reach an agreement in that regard.
3. 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*

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**Coles B. Ruff, Esq.**  
**Impartial Hearing Officer**  
**Date: April 14, 2023**

Copies to:      Counsel for Petitioner  
                    Counsel for LEA  
                    ODR [\[hearing.office@dc.gov\]](mailto:hearing.office@dc.gov)