

**District of Columbia**  
**Office of the State Superintendent of Education**

Office of Dispute Resolution  
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<b>Parent, on behalf of Student,<sup>1</sup></b>	)	
<b>Petitioners,</b>	)	
	)	<b>Hearing Dates: 4/3/25, 4/4/25</b>
v.	)	<b>Hearing Officer: Michael Lazan</b>
	)	<b>Case No. 2024-0249</b>
<b>District of Columbia Public Schools,</b>	)	
<b>Respondent.</b>	)	

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**HEARING OFFICER DETERMINATION**

**I. Introduction**

This case involves an X-year-old student (the “Student”) who is currently eligible for services. On December 31, 2024, a due process complaint (“Complaint”) was received by District of Columbia Public Schools (“DCPS” or “Respondent”), pursuant to the Individuals with Disabilities Education Act (“IDEA”). The Complaint was filed by the Student’s parent (“Petitioner”). On January 10, 2025, Respondent filed a response.

**II. Subject Matter Jurisdiction**

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the IDEA, 20 U.S.C. 1400 et seq., its implementing regulations, 34 C.F.R. Sect. 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.

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<sup>1</sup> Personally identifiable information is attached as Appendix A and must be removed prior to public distribution.

### **III. Proceedings**

A resolution meeting was held on January 13, 2025. The parties were unable to resolve the case. A prehearing conference took place by telephone on February 11, 2025. Participating in the prehearing conference were Attorney A, Esq., attorney for Petitioner, and Attorney B, Esq., attorney for DCPS. On February 19, 2025, a prehearing order was issued, summarizing the rules to be applied in the hearing and identifying the issues in the case. This order was corrected on February 20, 2025.

The matter proceeded to hearings on April 3, 2025, and April 4, 2025. The hearings were conducted via the Microsoft Teams videoconferencing platform, without objection. After testimony and evidence, the parties presented oral closing statements on April 4, 2025. A Spanish language interpreter was provided to Petitioner during the entirety of the proceeding.

During the proceeding, Petitioner moved into evidence exhibits P-5 through P-18, P-20 through P-24, P-25 through P-29, P-35, P-36, P-38 through P-41, P-43, and P-45 through P-49. Objections were filed with respect to exhibits P-13, P-16 through P-18, P-20, P-21, P-43, and P-45 through P-48. These objections were overruled. Exhibits P-5 through P-18, P-20 through P-24, P-25 through P-29, P-35, P-36, P-38 through P-41, P-43, and P-45 through P-49 were admitted. DCPS moved into evidence exhibits R1 through R-19, R-23 through R-32, and R-37 through R-39 without objection.

Petitioner presented as witnesses, in the following order: herself and Witness A, an education advocate (expert in special education as it relates to Individualized Education Program (“IEP”) programming). DCPS presented as witnesses: Witness B, a special education teacher (expert in special education); Witness C, a social worker

(expert in school-based social work); Witness D, a special education teacher (expert in special education); Witness E, a special education teacher (expert in special education); and Witness F, a special education coordinator (expert in special education).

#### **IV. Issues**

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

**1. Did DCPS deny the Student a Free Appropriate Public Education (“FAPE”) by failing to evaluate the Student during the 2023-2024 school year?**

Petitioner contended that the Student should have been assessed through a Functional Behavioral Assessment (“FBA”).

**2. Did DCPS deny the Student a FAPE by failing to provide the Student with appropriate IEPs during the 2022-2023, 2023-2024, and 2024-2025 school years?**

Petitioner contended that the Student’s amended April 2023 IEP, November 2023 IEP, and November 2024 IEP: (1) did not provide sufficient behavioral interventions (no Behavior Intervention Plan (“BIP”) and/or insufficient behavioral support service minutes); (2) were not based on updated evaluative data; (3) did not provide for an appropriate post-secondary transition plan; and (4) did not provide for sufficient classroom and statewide-assessment participation and accommodations.

**3. Did DCPS deny the Student a FAPE by failing to implement the Student’s IEPs during the 2022-2023, 2023-2024, and 2024-2025 school years?**

Petitioner contended that the Student did not receive sufficient specialized instruction, speech-language pathology, and behavioral support services.

#### **V. Findings of Fact**

1. The Student is an X-year-old who is eligible for services as a student with autism. The Student arrived in the United States in February 2020, about a month before schools closed in March 2020, due to the COVID-19 global pandemic. The Student arrived at DCPS with documentation indicating that s/he had a diagnosis of Autism Spectrum Disorder. P-7-1.

2. The Student is not fluent in English and cannot express him/herself fluently in English. Testimony of Petitioner; Testimony of Witness D. According to the Assessing Comprehension and Communication in English State to State (“ACCESS”) measure, which tests English language proficiency levels from 1 to 5, the Student scored a 1, meaning that, even with visual and graphic support, the Student knows and uses minimal social and academic English. P-7-2. As a result, the Student often has difficulty understanding what s/he is supposed to do in school and struggles in all academic areas. The Student currently reads, in Spanish, on a kindergarten level and writes at a pre-kindergarten level. P-7-81; Testimony of Petitioner; Testimony of Witness A; Testimony of Witness D.

3. After the Student started at School A, a DCPS school, DCPS evaluated the Student. P-7-1. On January 29, 2021, the Student was found eligible for special education. An initial IEP was written for the Student on February 26, 2021, which recommended 24.5 hours per week of specialized instruction and 120 minutes per month of speech-language pathology, all outside the general education setting. P-6-1.

4. During the 2022-2023 school year, the Student was in a Specific Learning Support (“SLS”) classroom at School A. Testimony of Witness F. The Student did not understand what was going on in the classroom at the time, and doodled a lot. Testimony

of Witness B. The Student was unable to engage with nuances or employ critical analysis and struggled to interpret texts and other media, even when given scaffolds, extra time, peer and teacher guidance, and modified assignments. The Student showed an elementary understanding of interpersonal and intercultural relationships. P-7; Testimony of Petitioner. In math, the Student was unable to demonstrate an understanding of basic mathematical operations and did not complete work, even when attempts were made to translate tasks into Spanish, the Student's native language. In English, the Student was not able to read independently or complete assignments without an intense level of teacher support in Spanish. The Student's grades reflected participation, not performance, given that, among other things, the Student could not write in English. The Student also attended an English Language Learner ("ELL") classroom during this school year. In the ELL class, it was difficult to give the Student the intense, one-on-one support that s/he needed, because the class was large. The Student mostly spent time online. P-7; Testimony of Petitioner; Testimony of Witness A.

5. Still, during the 2022-2023 school year, the Student responded well to adults, appeared to love technology, and did not have any significant behavior issues. Testimony of Witness C.

6. An IEP meeting was held for the Student on November 29, 2022. The Student's behavior was not really discussed at this meeting. The team discussed how the Student was performing academically and socially. The team maintained the same accommodations as the prior IEP because there were no requests for additional accommodations. The team picked basic goals in the transition plan based on what the Student expressed as his/her interest, which was art. Testimony of Witness B; R-8.

7. The November 29, 2022, IEP stated that the Student is a native Spanish speaker who was not yet proficient in the English language and whose limited English proficiency significantly impacted his/her ability to access the curriculum. The IEP said that the Student was unable to complete assignments and that his/her communication skills were inconsistent when processing Spanish and/or English. The IEP said that the Student continued to struggle with basic mathematical concepts related to regrouping, multiplication, and division, and was graded on participation and engagement. This IEP recommended nineteen hours per week of specialized instruction outside general education, with sixty minutes per month of speech-language pathology and fifteen minutes per month of behavioral consultation services. R-8.

8. The November 29, 2022, IEP included a section concerning the Student's transition services for life after graduation. This section indicated that the Student was interested in art and that s/he took the Career Interest Inventory on January 25, 2021, the Casey Life Skills Assessment on November 21, 2021, the Air Self Determination Scale on October 31, 2022, and the Brigance Transition Assessment on January 25, 2021. The plan indicated that these assessments demonstrated that the Student needed further assistance with his/her ability to live independently. The transition services consisted of sixty minutes per year for career exploration and job readiness training, and two hours per year for independent living skills. R-8. The Student's IEP was amended on March 31, 2023, to add extended school year ("ESY") services and to increase the job readiness training to two hours per month. P-9.

9. A speech-language evaluation of the Student was conducted on January 21, 2023. The corresponding report, written on February 16, 2023, indicated that the

testing was conducted in Spanish. This report indicated that teachers said that the Student was “making strides” but that, even in Spanish, the Student’s scored at the 1st percentile or below on the Clinical Evaluations of Language Fundamentals-4th Edition Spanish (“CELF-4 Spanish”). On the Receptive One-Word Picture Vocabulary Test-Spanish Bilingual Edition (“ROWPVT-4 Bilingual”), and the Expressive One-Word Picture Vocabulary Test Spanish-Bilingual Edition (“EOWPVT-4 Bilingual”), the Student scored within normal limits. P-5.

10. A comprehensive occupational therapy evaluation of the Student was conducted on March 2, 2023, and March 7, 2023. The corresponding report, issued on March 7, 2023, said that the Student is a kind, soft-spoken student whose fine-motor precision, fine-motor integration, fine manual control, and upper-limb coordination were average compared to same-aged peers. The Student scored in the very low range on a motor coordination measure. The evaluator found that the Student presented with difficulties in social participation. The evaluator recommended check-ins to ensure that the Student understood directions, extended time for the Student to complete classroom-based tasks, and a behavioral support consultation to adapt strategies to help the Student develop skills to manage anxiety in school. P-6; Testimony of Witness B.

11. An assistive technology evaluation of the Student was conducted on March 31, 2023. The evaluator concluded that the Student required significant modification to his/her curriculum if the materials were in English. The evaluator suggested a consistently assigned school laptop to enable the Student to type, translate material, and provide modified reading materials, assignments, and dictation. R-4.

12. An amended IEP was written for the Student on March 31, 2023. The amended IEP addressed ESY services and included accommodations such as preferential seating, a location with minimal distractions, small-group testing, schedule flexibility, and extended time. The IEP stated that the Student needed “a small group setting,” where s/he could receive one-on-one “instruction from a teacher or instructional aide,” and that the Student would “benefit from a structured environment of the self-contained class.” P-9.

13. DCPS conducted a bilingual psychological evaluation of the Student on May 26, 2023. According to the corresponding report, dated June 2, 2023, the Student was tested on the Kaufman Assessment Battery for Children, Second Edition (“KABC-II”), Kaufman Test of Educational Achievement, Third Edition (“KTEA-III”), Bateria IV Woodcock-Muñoz Pruebas de aprovechamiento Spanish language achievement test, and the Vineland Adaptive Behavior Scales, Third Edition (Parent) and Vineland Adaptive Behavior Scales, Third Edition (Teacher). The evaluator also conducted a classroom observation and interviewed the Student’s teachers. On KABC-II cognitive testing, the Student scored at the 1st percentile, in the lower extreme range. In English achievement testing, the Student scored at the grade 3.8 level in letter and word recognition but at the pre-kindergarten level in reading comprehension. In math, the Student scored at the first-grade level in computation. The Student was not able to perform calculations that required borrowing or regrouping. The Student’s achievement in spelling placed him/her at the grade 1.5 level. The Student’s written expression in English placed him/her at the K.9 (kindergarten, 9th month) level. This evaluation indicated that the Student could use an increase in behavioral support services. P-7.

14. The Student's IEP progress reports for the 2022-2023 school year indicated that most of his/her goals, but none of his/her academic goals, were introduced during the school year. P-21; P-22; P-23; P-24.

15. The Student continued at School A for the 2023-2024 school year. At about this time, the Office of the State Superintendent of Education ("OSSE") instructed DCPS to remove all consultation services from IEPs if the IEPs provided less than thirty minutes of support per month. Testimony of Witness C.

16. Also at about this time, the Student moved to the Communication & Education Support ("CES") classroom at School A. In this classroom, the day would start with group reading, with everyone in the group reading aloud. The class would "break down" what happened in the story, engage in creating a summary of the story, and then work on math. The Student then went to an ELL class, which was not a special education class, where s/he worked primarily on a computer. Lunch and science or history followed in the afternoon. Testimony of Witness D.

17. The Student had difficulty in the CES classroom because s/he did not understand English well and could not express him/herself in English. As a result, the Student used his/her phone to translate his/her thoughts and needs, used peers to translate material, and required extra time, frequent breaks, and repetition. Testimony of Witness D. An IEP meeting was held for the Student on November 28, 2023. The IEP team discussed the Student's difficulties with understanding classroom materials. Petitioner did not raise behavioral issues and was concerned that the Student would have no skills after graduation. The team decided to keep the accommodations that were in place. Testimony of Witness D; Testimony of Witness A. The November 28, 2023, IEP

contained much of the same language as the earlier IEP in the sections describing the Student's present levels of performance. The IEP indicated that the Student was not able to complete assignments independently and struggled with reading, writing, and math. This IEP recommended an increase of specialized instruction to 21.5 hours per week. Behavioral support services were eliminated, in part because of the instruction from OSSE. R-10; Testimony of Witness C. The transition services section of this IEP recommended one hour per month of career exploration services, one hour per week of independent living services, and one hour per month of job readiness services. The IEP also recommended preferential seating, a location with minimal distractions, individual testing, extended time, a flexible schedule, frequent breaks, and specialized furniture and lighting. R-10. This IEP was amended on April 1, 2024, to add ESY services. P-10.

18. School A held a meeting about the Student on December 7, 2023. During the meeting, staff reviewed the IEP. Petitioner expressed concerns, and DCPS indicated that those concerns would be addressed in the transition goals. Petitioner also sought to increase the hours for speech services, but DCPS did not agree. The meeting concluded with the team agreeing to reconvene in January 2024 to discuss transition services. P-14. Another meeting was held on January 10, 2024. DCPS discussed various workforce development programs, and it was noted that the Student would be unable to start his/her transition programming until s/he completed academic coursework. P-15.

19. The Student's IEP progress reports for the 2023-2024 school year indicated that all academic goals were just introduced during the first reporting period. R-23. The IEP progress reports for the second, third, and fourth reporting periods all indicated that the Student was progressing on academic goals. R-24; R-25; R-26.

20. The Student continued in the CES program at School A during the 2024-2025 school year. An IEP was written for the Student on November 28, 2024, which contained much of the same language as the earlier IEP about the present levels of performance. The IEP indicated that the Student was not able to complete assignments independently and struggled with reading, writing, and math. This IEP recommended the same mandate for specialized instruction as the previous IEP but changed the Student's speech-language pathology mandate to forty-five hours per quarter. The transition services section of this IEP recommended one hour per week for career development, one hour per month for job readiness, and one hour per week for independent living. This IEP also recommended that the Student receive a human scribe, speech-to-text software, a human signer or external assistive technology, a noise buffer or headphones, and preferential seating. P-11.

21. The Student has received his/her mandate of specialized instruction services for the 2023-2024 and 2024-2025 school year at School A. Testimony of Witness D.

## **VI. Conclusions of Law**

The burden of proof in District of Columbia special education cases was established through the District of Columbia Special Education Student Rights Act of 2014. That burden is expressed in statute as the following: "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.” D.C. Code Sect. 38-2571.03(6)(A)(i).

Accordingly, on Issue #2, the burden is on Respondent if Petitioner presents a *prima facie* case. On Issue #1 and Issue #3, the burden of persuasion is on Petitioner.

**1. Did DCPS deny the Student a FAPE by failing to evaluate the Student during the 2023-2024 school year?**

Petitioner contended that the Student should have been assessed through an FBA. The evaluation procedures of the IDEA are designed to allow an IEP team to create an IEP that is tailored to a student’s special educational needs. Failure to follow those procedures may yield an IEP that is not appropriately tailored to the student, denying the student an appropriate education. Z. B. v. District of Columbia, 888 F.3d 515, 522–23 (D.C. Cir. 2018). The Local Educational Agency (“LEA”) must use “a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent.” 34 CFR 300.304(b). A student must be “assessed in all areas related to the suspected disability.” 34 CFR 300.304(c)(4).

An FBA is considered part of an evaluation by the United States Department of Education Office of Special Education Programs (“OSEP”), if the FBA focuses on the educational and behavioral needs of a specific child, the FBA qualifies as an evaluation or reevaluation under Part B and triggers all the accompanying procedural safeguards, including the need to seek parental consent. The Office of Special Education and Rehabilitative Services (“OSERS”) has stated that schools are expected to have properly trained professionals available to conduct FBAs and to formulate and provide positive behavioral interventions and supports, though OSERS is reconsidering its position that an

FBA is an evaluation under the IDEA. Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions, 81 IDELR 138 (OSERS 2022). Courts in the District of Columbia have also found that if a school district fails to recommend appropriate behavioral supports for a student, in particular an FBA, FAPE denial may be found. Courts find that an FBA is required in many cases because the FBA can be essential to address a child’s behavioral difficulties and, as such, can play an integral role in the development of an IEP. Jackson v. District of Columbia, No. CV 19-197 TJK/DAR, at \*2 (D.D.C. June 2, 2020), report and recommendation adopted, No. CV 19-197 (TJK/DAR), 2020 WL 3298538 (D.D.C. June 18, 2020). The District of Columbia Circuit Court of Appeals has stated that the failure to conduct an adequate FBA is a procedural violation that can have substantive effects because it may prevent the IEP team from obtaining necessary information about a student’s behaviors, leading to those behaviors being addressed inadequately or not at all. Z. B., 888 F.3d at 524.

Petitioner argued that the Student needs an FBA. In addition to the testimony of Witness A, Petitioner noted that the Student’s 2023 occupational therapy evaluation supports her view. This evaluation recommended check-ins to ensure that the Student understands directions, extended time for the Student to complete classroom-based tasks, and a behavioral support consultation to adapt strategies to help the Student develop skills to manage anxiety in school. The Student’s psychological evaluation from 2023 also indicated that the Student could use an increase in behavioral support services.

However, these reports did not say that an FBA was required to determine the “function” of the Student’s behavior. Moreover, Petitioner’s claims relating to behavior were undermined by her own testimony, which did not include anything about the

Student's behavior issues in class. Respondent's presentation, on the other hand, included the testimony of a school social worker and the Student's present teacher, both of whom came across credibly, and both of whom firmly asserted that the Student's behavior issues were not significant in the classroom and that the Student's issues related to his/her inability to speak English.

Petitioner also contended that the service trackers from a school social worker in the record support this claim. However, the service trackers from the 2022-2023 school year also suggest that the Student's problems with focus in school were caused by his/her language barrier. In a service tracker from January 2023, for example, the service provider said that she had consulted with three of the Student's teachers, who all agreed that, due to the language barrier, it was very difficult to work with the Student, who was challenged in all academic areas, unable to complete assignments independently, and continued to need a lot of one-on-one support.

Accordingly, this claim must be dismissed.

**2. Did DCPS deny the Student a FAPE by failing to provide the Student with appropriate IEPs during the 2022-2023, 2023-2024, and 2024-2025 school years?**

Petitioner contended that the Student's March 2023 IEP (as amended to include ESY), November 2023 IEP, and November 2024 IEP: (1) did not provide sufficient behavioral interventions (no BIP and/or insufficient behavioral support service minutes); (2) were not based on updated evaluative data; (3) did not provide for an appropriate post-secondary transition plan; and (4) did not provide for sufficient classroom and statewide-assessment participation and accommodations. This Hearing Officer will not consider whether the IEPs in effect during the 2022-2023 school year denied the Student

a FAPE because these IEPs, including the November 2022 IEP, were created more than two years prior to the Complaint filing date. Under the IDEA, a due process complaint is timely only if filed within two years of the date that the parent or district knew or should have known about the action forming the basis for the complaint. 34 CFR 300.507 (a)(2).

In Hendrick Hudson Bd. of Educ. v. Rowley, 458 U.S. 176 (1982), the United States Supreme Court found that an IEP must be “reasonably calculated” to enable the child to receive benefit. In the District of Columbia, this has meant that the IEP should be both comprehensive and specific, and targeted to the Student’s “unique needs.” McKenzie v. Smith, 771 F.2d 1527, 1533 (D.C. Cir. 1985); 34 CFR Sect. 300.324(a)(1)(iv) (the IEP must address the academic, developmental, and functional needs of the child). In 2017, the Supreme Court addressed a split amongst the circuit courts regarding what the IDEA means when it requires school districts to provide an “appropriate” level of education to children with disabilities. Endrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-I, 580 U.S. 386 (2017). The Court held that parents can fairly expect school authorities to offer a “cogent and responsive explanation” for their decisions, but that its ruling “should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of school authorities, to whose expertise and professional judgment deference should be paid.” Id. at 404. However, a student’s “educational program must be appropriately ambitious in light of [his/her] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.” Id. at 402. An IEP that fails to satisfy these statutory directives may be remedied through an IDEA claim to the

extent that the IEP “denies the child an appropriate education.” Z.B. v. District of Columbia, 888 F.3d 515, 519 (D.C. Cir. 2018).

Though the Student is nearing graduation, s/he currently comprehends reading material, in Spanish, on a kindergarten level and does not read English. The record also indicates that the Student does not understand some of the spoken English that is directed at him/her, does not speak English, writes in Spanish only at a pre-kindergarten level, and does not write in English. These language issues should have been addressed in the Student’s IEPs. Under 34 CFR Sect. 300.324(a)(2)(ii), the IEP team must, in the case of a child with limited English proficiency, “consider the language needs of the child as those needs relate to the child’s IEP.”

In 2021, OSEP issued a letter underscoring the importance of providing accommodations to disabled students who are not fluent in English. Letter to Boals, 80 IDELR 24 (OSEP November 15, 2021). OSEP explained that, to ensure that appropriate IEPs are developed for English language learners with disabilities, including English learners with the most significant cognitive disabilities, the IEP team should include participants who have the requisite knowledge or special expertise regarding the student's language needs. OSEP explained that these participants “should help to ensure that appropriate academic and functional goals are developed for the child and the child is provided the necessary special education and related services, supplementary aids and services, program modifications, and supports for school personnel designed to enable the child to advance toward attaining these goals.” Id. at 3.

But no person with special expertise in working with English language learners, like the Student, was present at any of the IEP meetings for the Student, even though the

record suggests that these issues could have been addressed through accommodations or supplemental aids and services. An assistive technology evaluation of the Student was conducted on March 31, 2023. The evaluator concluded that the Student required significant modification to his/her curriculum if the materials were in English and suggested a consistently assigned school laptop to enable the Student to type, translated materials, modified assignments, and dictation.

The Student's IEPs did not include these modifications. The March 31, 2023, IEP, as amended with ESY services, did not include any accommodations or supplemental aids to address the Student's language issues. The IEP merely stated that the Student needed "a small group setting," where s/he could receive one-on-one "instruction from a teacher or instructional aide," and that the Student would "benefit from a structured environment of the self-contained class." But the IEP did not require an aide. The November 2023 IEP was similarly deficient, including only accommodations like preferential seating, a location with minimal distractions, small-group testing, schedule flexibility, and extended time. Again, the IEP contained nothing to address the Student's language issues. And while the November 2024 IEP did include a reference to the use of "Human Scribe, Speech to Text, Human Signer or External Assistive Technology on ELA Assessments," there was no testimony regarding the use of these accommodations, and there is nothing in the IEP or in the record to explain how these accommodations might have helped the Student's issues with English.

Respondent argued that Petitioner assented to this IEP. However, Petitioner, who does not speak English and is not an educator, was not in a position to make judgments about the appropriateness of the program for the Student. A parent's assent to an IEP

does not necessarily inoculate the school district from liability. Letter to Lipsett, 52 IDELR Sect. 47 (OSEP 2008). Respondent also argued that Petitioner failed to show how the Student was impacted by the alleged failure and that the Student has made progress, per the 2023-2024 and 2024-2025 IEP progress reports. But Andrew F. requires more than minor progress for an IEP to pass muster under the IDEA. Osseo Area Schools, Independent School District No. 279 v. A.J.T., 96 F.4th 1062, 124 LRP 9021 (8th Cir. Mar. 21, 2024) (although the student made some progress while in the district, the overall progress was de minimis). The testimony of the Student's teacher, Witness D, made it clear that the Student's IEPs did not result in any meaningful progress while the Student has been at School A. When asked directly how the Student was performing, Witness D did not mention any progress and instead answered that it was difficult to gauge the Student's progress because of the language barrier. Witness D also did not mention the use of any accommodations or supplemental aids and services in the classroom, except for the Student's own cellphone, which the Student used to translate Spanish into English so that s/he could communicate with teachers and peers. This Hearing Officer agrees with Petitioner that the Student's IEPs were deficient because they did not include sufficient classroom accommodations.

Although, as found previously, the Student did not need an FBA, this Hearing Officer agrees with Petitioner that the three subject IEPs inappropriately discontinued the Student's behavioral support services. While Witness C and other witnesses did say that the Student never bothered other students, Witness C also said that a main reason that the Student's behavioral support services were discontinued was that OSSE directed DCPS to eliminate IEP requirements for behavior consultations of less than thirty minutes per

month, which is a form of predetermination. Deal v. Hamilton Cnty. Bd. of Educ., 392 F.3d 840, 846 (6th Cir. 2004) (FAPE violation where IEP team indicated its policy prevented it from considering a program other than the one in which it had invested). Moreover, as Petitioner pointed out, the DCPS occupational therapy evaluation indicated that the Student needed behavioral support consultation services to adapt strategies to help the Student develop skills to manage anxiety in school, and the DCPS psychological evaluation from 2023 indicated that the Student could use an increase in behavioral support services. This Hearing Officer accordingly agrees that the Student should have continued to receive a behavioral support consultation in his/her amended March 2023 IEP, November 2023 IEP, and November 2024 IEP.

Petitioner also contended that the transition plans in the amended March 2023 IEP, November 2023 IEP, and November 2024 IEPs were deficient. The IDEA, at 20 USC Sects. 1400-1482, defines transition services as a “coordinated set of activities for a child with a disability” that “is designed to be a results-oriented process” focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

The severity of a student’s disability does not excuse a school district from the obligation to design and implement transition services. OSEP has stressed that measurable postsecondary employment goals must be included in IEPs of applicable students, even if those students have severe medical conditions and developmental needs.

Letter to Heath, 54 IDELR 171 (OSEP 2009); Gibson v. Forest Hills Sch. Dist. Bd. of Educ., No. 1:11-cv-329, 2014 WL 533392, at \*6 (S.D. Ohio Feb. 11, 2014) (student was entitled to transition services regardless of whether s/he was likely to achieve independence or attain competitive employment.).

“Instruction” is one of the four transition services mentioned in 34 CFR 300.43 (a)(2), together with related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

The Student is aware of his/her need to learn to speak and read English in order to successfully transition to the outside world. Indeed, the March 31, 2023, IEP transition plan said that the Student him/herself indicated that s/he needs help with reading and writing in English. The Student has not improved in reading and writing since then, but none of the transition plans referenced any language services. Instead, since the Student likes art, all three transition plans focused on the Student’s interest in art. The plans all mentioned asking the Student to identify two art-related career options for post-secondary training. However, witnesses were unable to state what art-related career options might be available for a student in the District of Columbia who writes on a pre-kindergarten level and does not speak English.

The November 2024 plan went further, asking the Student to develop a resume and complete a job application. But DCPS witnesses could not explain how this Student could develop a resume and complete a job application, given his/her lack of language skills. Most of the language in the three transition plans is vague, boilerplate, or both, such as “[the Student] will receive training on independent living skills.” DCPS’s main

defense was that Petitioner agreed with the plans. But even if that were a relevant consideration, given Letter to Lipsett, there is nothing in the record, as noted earlier, to indicate that Petitioner, who is not an educator and does not speak English, fully understood what happened at these IEP meetings. This Hearing Officer agrees with Petitioner that the Student's transition services plans were deficient.

Finally, Petitioner argued that the Student's IEPs were not based on updated data. Here, this Hearing Officer cannot agree. DCPS evaluated the Student in the spring of 2023 through a speech-language evaluation, an occupational therapy evaluation, an assistive technology evaluation, and a comprehensive psychological evaluation. Petitioner argued that the present levels sections of the IEPs did not necessarily reflect all the points raised in these evaluations, but the record indicates that DCPS was aware of, and did review, these evaluations when drafting the Student's IEPs.

DCPS denied the Student a FAPE for the 2023-2024 and 2024-2025 school years by failing to provide the Student with sufficient classroom accommodations, failing to provide behavioral support services, and failing to provide the Student with an appropriate transition plan.

**3. Did DCPS deny the Student a FAPE by failing to implement the Student's IEPs during the 2022-2023, 2023-2024, and 2024-2025 school years?**

Petitioner contended that the Student did not receive sufficient specialized instruction, speech-language pathology, and behavioral support services.

"Failure to implement" claims may be brought if a school district cannot materially implement an IEP. Turner v. District of Columbia, 952 F. Supp. 2d 31, 40-41 (D.D.C. 2013). A parent "must show more than a *de minimis* failure to implement elements of the IEP, and, instead, must demonstrate that the school board or other

authorities failed to implement substantial or significant provisions of the IEP.”

Beckwith v. District of Columbia, 208 F. Supp. 3d 34, 39 (D.D.C. 2016) (citing to Houston Indep. Sch. Dist. v. Bobby R., 200 F.3d 341, 349 (5th Cir. 2000); Savoy v. District of Columbia, 844 F. Supp. 2d 23 (D.D.C. 2012) (holding no failure to implement where the district’s school setting provided ten minutes less of specialized instruction per day than was required by the IEP). This approach affords schools some flexibility in implementing IEPs, but it still holds those schools accountable for material failures. Houston Independent Sch. Dist. v. Bobby R., 200 F.3d 341, 349 (5th Cir. 2000); Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811, 822 (9th Cir. 2007) (“A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and [those] required by the child’s IEP.”); see also S.S. ex rel. Shank v. Howard Rd. Acad., 585 F. Supp. 2d 56, 67–68 (D.D.C. 2008); Wilson v. District of Columbia, 770 F. Supp. 2d 270, 274 (D.D.C. 2011).

### **Specialized Instruction**

Petitioner contended that the Student did not receive his/her mandate of specialized instruction during the 2022-2023, 2023-2024, and 2024-2025 school years, but Petitioner did not clearly address this claim during closing argument. Petitioner also did not present any testimony or evidence in support of this claim, which, in any event, was rebutted by the testimony of Witness B, Witness C, and Witness D, who showed that the Student’s specialized instruction was indeed offered and provided to the Student during the school years in question.

### **Speech-Language Pathology**

Petitioner relied on service trackers and a chart created by Witness A. P-47. The Student was recommended to receive one hour of speech-language pathology per month during the 2022-2023 school year, and that mandate increased to two hours per month in the November 2023 IEP. The November 2024 IEP then considerably increased the Student's speech-language pathology mandate, to forty-five hours per quarter.

This Hearing Officer will not consider "failure to implement" claims prior to January 2023 because those claims accrued more than two years prior to the Complaint filing date and are barred by the two-year statute of limitations. 34 CFR 300.507(a)(2). However, from January 2023 to June 2023, the Student did not receive all his/her mandated speech-language pathology. Witness A stated that the Student did not receive services in February 2023, April 2023, and June 2023. The Student did receive 100 minutes of services in January 2023 and seventy-five minutes of services in March 2023, but only thirty minutes of services in May 2023. This Hearing Officer agrees that the Student was denied a FAPE when s/he was not provided with his/her mandate of speech-language pathology for four of six consecutive months during the 2022-2023 school year.

Witness A also argued that the Student did not receive speech-language pathology during the 2023-2024 or 2024-2025 school years. Petitioner's chart indicated that she was not in possession of any service trackers for speech-language pathology during the 2023-2024 and 2024-2025 school years. However, there was no clear testimony to establish that these trackers did not exist, or that the services themselves were not provided. As a result, this Hearing Officer was not persuaded by Petitioner's position on this issue with respect to the 2023-2024 and 2024-2025 school years.

### **Behavioral Support Services**

The Student was recommended to receive fifteen minutes of behavior consultation services per month during the 2022-2023 school year, but s/he was not recommended for behavioral support services during the 2023-2024 and 2024-2025 school years.

Claims prior to January 2023 cannot be considered because of the applicable two-year statute of limitations. 34 CFR 300.507(a)(2). The chart created by Witness A indicated that in January 2023, the Student received more behavior support services (forty-five minutes) than the fifteen-minute mandate, and that in each of February 2023, March 2023, and May 2023, the Student received the required fifteen minutes of services. While behavior support services were not provided during two months, the Student actually received the total minutes of services that the IEP required, due to the additional services that were provided in January 2023. Therefore, this Hearing Officer does not find that the lack of behavioral support services in April 2023 and June 2023 is material enough to be considered as a basis for FAPE denial.

In sum, this Hearing Officer finds that DCPS denied the Student a FAPE by failing to provide the Student with regular speech-language pathology from January 2023 to June 2023.

### **RELIEF**

Petitioner requests for the Student: 1) an FBA and an IEP reflecting such FBA; 2) the provision of appropriate behavioral support services and/or development of a BIP; 3) appropriate academic goals and an appropriate post-secondary transition plan that aligns with the Student's transition assessments; and 4) compensatory education consisting of 300 hours of tutoring and ten hours of counseling.

When school districts deny students a FAPE, courts have wide discretion to ensure that students receive a FAPE going forward. As the Supreme Court stated, the statute directs the Court to “grant such relief as [it] determines is appropriate.” School Committee of the Town of Burlington v. Dep’t of Education, Massachusetts, 471 U.S. 359, 371 (1985). The ordinary meaning of these words confers broad discretion on a hearing officer, since the type of relief is not further specified, except that it must be “appropriate.” Hearing officers may award “educational services to be provided prospectively to compensate for a past deficient program.” Reid v. District of Columbia, 401 F.3d 516, 521-23 (D.C. Cir. 2005). The 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. Id., 401 F.3d at 524; see also Friendship Edison Public Charter School v. Nesbitt, 532 F. Supp. 2d 121, 125 (D.D.C. 2008) (compensatory award must be based on a “qualitative, fact-intensive” inquiry used to craft an award “tailored to the unique needs of the disabled student”). A petitioner need not “have a perfect case” to be entitled to a compensatory education award. Stanton v. District of Columbia, 680 F. Supp. 201 (D.D.C. 2011).

Regarding the compensatory education plan proposed by Petitioner’s Witness A, DCPS argued that Witness A did not know or even speak to the Student. However, DCPS did not present any authority to explain why it was necessary for Witness A to converse with the Student, or why such a conversation should be a determining factor when a hearing officer awards compensatory education relief. DCPS also argued that the Student did not suffer any harm as a result of the FAPE denial. However, the Student has made little to no progress in school over the past two school years. For example, in 2021,

the Student's reading was on a kindergarten level, and according to the November 2024 IEP, the Student's reading skills remain on a kindergarten level. In 2021, the Student's score in math calculation on the Woodcock-Johnson-IV Tests of Achievement was at the 0.1 percentile of test takers in his/her age group, according to the Student's November 2022 IEP. This score is still on the Student's November 2024 IEP, suggesting that s/he is still at a very low level in math. Finally, regarding the request for 300 hours of tutoring, by this Hearing Officer's calculation, the Student appears to have been effectively denied an appropriate education for over 300 full school days. This Hearing Officer therefore finds the tutoring proposal to be modest and reasonable.

This Hearing Officer also agrees that the Student needs a new, comprehensive transition services plan. However, this Hearing Officer will deny the remainder of the requests for relief because the request for an FBA, the request for a BIP, and the request for compensatory counseling do not correspond to any of the FAPE denials found herein.

## **VII. Order**

As a result of the foregoing:

1. Respondent shall pay for 300 hours of tutoring for the Student, to be provided by a certified special education teacher, at a usual and customary rate in the community;
2. Respondent shall write a new, comprehensive transition services plan for the Student within thirty days of the issuance of this Hearing Officer Determination;
3. All other requests for relief are denied.

Dated: April 11, 2025

Hearing Officer Determination  
Michael Lazan, Hearing Officer  
Case # 2024-0249

Michael Lazan  
Impartial Hearing Officer

cc: Office of Dispute Resolution  
Attorney A, Esq.  
Attorney B, 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 USC Sect. 1415(i).

Dated: April 11, 2025

Michael Lazan  
Impartial Hearing Officer