

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

**Office of Dispute Resolution
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OSSE
Office of Dispute Resolution
April 12, 2025

Confidential

Parent on behalf of Student¹)	Case Nos. 2025-0013
)	
Petitioner)	Hearing Dates: March 26-27, 2025
)	
v.)	Conducted by Video Conference
)	Date Issued: April 12, 2025
District of Columbia Public Schools)	
)	Terry Michael Banks,
Respondent)	Hearing Officer

HEARING OFFICER DETERMINATION

INTRODUCTION

Petitioner is the parent of an X-year-old student (“Student”) attending School A. On February 7, 2025, Petitioner filed a due process complaint notice (“*Complaint*”) alleging that the District of Columbia Public Schools (“DCPS”) denied Student a free appropriate public education (“FAPE”) by failing to evaluate Student in all areas of suspected disability, failing to provide an appropriate Individualized Education Program (“IEP”), and failing to implement Student’s IEP. On February 5, 2025, DCPS filed *District of Columbia Public Schools’ Response to Administrative Due Process Complaint*, denying that it had denied Student a FAPE in any way.

SUBJECT MATTER JURISDICTION

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

¹ Personally identifiable information is attached in the Appendix and must be removed prior to public distribution.

PROCEDURAL HISTORY

On February 7, 2025, Petitioner filed her *Complaint* alleging that DCPS failed to provide Student a FAPE when it developed an IEP on May 30, 2024. Petitioner asserted that the IEP did not provide support in mathematics, provided an insufficient amount of specialized instruction, and was based on insufficient data. Petitioner also alleged that DCPS denied Student a FAPE by failing to implement Student's IEPs. Petitioner asserted that DCPS failed to provide approximately five hours (31%) of the speech and language services prescribed on Student's IEPs during the 2023-24 and 2024-25 school years. Finally, Petitioner alleged that DCPS denied Student a FAPE by failing comprehensively to evaluate Student in all areas of suspected disability since April 10, 2024. Specifically, Petitioner alleges that a psychological evaluation completed that day by DCPS that day was inadequate because it did not evaluate Student's cognitive, social/emotional, or executive functioning deficits, denied Petitioner's request that it conduct occupational therapy ("OT"), speech and language ("S/L"), and assistive technology ("A/T") evaluations, and denied authorization for an independent psychological evaluation.

On February 7, 2025, DCPS filed its Response in which it denied having denied Student a FAPE in any way. DCPS pleaded, *inter alia*, that Student was timely and comprehensively evaluated in all areas of concern during the 2023-24 school year in a comprehensive bilingual psychological evaluation of Student; Student was determined to have remained eligible for services. The IEP developed on May 30, 2024 relied on various sources of information and was reasonably calculated to enable Student to make appropriate progress considering Student's circumstances. The IEP and placement were appropriate when developed. During the 2023-24 school year, Student did not present with behavior concerns in the school setting. Student's IEP was implemented during the 2023-24 school year, but Student's attendance impacted the consistent delivery of the related services. Despite Student's inconsistent attendance, Student made appropriate progress.

The parties conducted a resolution meeting on February 10, 2025 that did not result in a settlement. A prehearing conference in this case took place by video conference on February 13, 2025 and the *Prehearing Order* was issued that day.

The due process hearing was conducted on March 26-27, 2025 by video conference facilities. The hearing was open to the public at Petitioner's request. Petitioner filed Five-day Disclosures on March 19, 2025, containing a witness list of four witnesses and 48 documents. On March 24, 2025, DCPS filed objections to Petitioner's disclosures. DCPS objected to Petitioner's proposed Exhibits P14-P17, P23, P25-P26, P31-P32, P41-P43, and P-46 on grounds of relevance, lack of authentication, hearsay, statute of limitations, or best evidence. Petitioner's Exhibits P1-P31 and P33-P48 were admitted into evidence.

Respondent also filed Disclosures dated March 19, 2025, containing a witness list of 7 witnesses and 27 documents, but there was no Exhibit R27. Petitioner did not file objections to DCPS' Disclosures. Respondent's Exhibits R1-R26 and R28 were admitted into evidence.

Petitioner presented as witnesses in chronological order: Witness A, Petitioner, and Witness B. Witness A was admitted as an expert in special education and Witness B was admitted as an expert in OT. Respondent presented as witnesses in chronological order: Witness C, Witness D,

Witness E, Witness F, Witness G, Witness H, and Witness J. Witness D, Witness G, and Witness J were admitted as experts in special education. Witness E was admitted as an expert in occupational therapy, Witness F was admitted as an expert in speech and language therapy, and Witness H was admitted as an expert in school psychology. At the conclusion of testimony, the parties' counsel gave closing arguments. The Hearing Officer authorized the parties to submit authorities on which they rely by April 4, 2025. On April 4, 2025, both parties filed citations of authorities on which they rely.

ISSUES

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

1. Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on May 30, 2024. Specifically, Petitioner asserts that the IEP does not provide support in mathematics, provides an insufficient amount of specialized instruction, and was based on insufficient data: (a) DCPS' failure to conduct an occupational therapy evaluation resulted in the student's programming not being informed with regard to his/her executive functioning deficits or potential sensory concerns, and (b) a psychological evaluation conducted on or about April 10, 2024 was not comprehensive because it failed to evaluate the student in the area of social, emotional and behavioral and in the cognitive area.
2. Whether DCPS denied Student a FAPE by failing to implement Student's IEPs. Specifically, Petitioner asserts that DCPS failed to provide approximately five hours (31%) of the speech and language services prescribed on Student's IEPs during the 2023-24 and 2024-25 school years.
3. Whether DCPS denied Student a FAPE by failing comprehensively to evaluate Student in all areas of suspected disability since April 10, 2024. Specifically, Petitioner alleges that a psychological evaluation completed that day by DCPS was inadequate because it did not evaluate Student's cognitive and social/emotional deficits or reevaluate for executive functioning deficits revealed in a March 31, 2022 psychological evaluation. Petitioner also alleges that at an Analysis of Education Data ("AED") meeting on December 16, 2024, DCPS denied Petitioner's request that it conduct occupational therapy ("OT"), speech and language ("S/L"), and assistive technology ("A/T") evaluations and denied authorization for an independent psychological evaluation.

FINDINGS OF FACT²

1. Student is an X-year-old student in grade F at School A.³

2. On March 31, 2022, when Student was in grade H at School B, DCPS completed a Speech and Language Re-evaluation.⁴ Spanish was the primary language in Student's home, but s/he and family members also spoke English. In a previous evaluation, Student presented with a 25% delay in communication skills. Records reflected that at the time of this evaluation, Student was "able to use 3-4 word combinations to express a variety of pragmatic functions with 65-70% accuracy given moderate verbal and visual prompting."⁵ Teacher A, Student's teacher, submitted rating scales that revealed that Student never/almost never has difficulty remembering what people said, staying on subject when talking, almost never got upset when people did not understand him/her, sometimes had trouble understanding the meaning of words, had trouble using a variety of vocabulary words, using complete sentences, sounding out words, sometimes had trouble putting words in the right order when writing sentences, often had difficulty following spoken directions, asking for help when needed, and remembering details, always or almost always had trouble paying attention, answering questions people asked, expressing her/his thoughts, and had difficulty describing things to people.⁶

On the Goldman Fristoe Test of Articulation- 3 ("GFTA-3"), Student's score of 95 was in the Average range.⁷ S/he was also average in Hearing, Voice, and Fluency.⁸ The Peabody Picture Vocabulary Test ("PPVT - 5") assesses receptive vocabulary. Student demonstrated Below Average receptive vocabulary skills. The Expressive Vocabulary Test, Third Edition, (EVT-3) assesses expressive vocabulary and word retrieval. Student demonstrated Below Average receptive vocabulary skills. Examiner A suggested that the results on both the PPVT-5 and the EVT-3 should be interpreted with caution as it may not have accurately reflected his/her receptive language abilities as s/he was a bilingual student.⁹ The PLS-5 assesses comprehension of basic vocabulary, concepts, and grammatical markers; it requires children to name common objects, to use concepts that describe objects and express quantity, and to use specific grammatical markers and sentence structures. Student scored in the Below Average range in Auditory Comprehension, Expressive Communication, and in Total Language.¹⁰ Examiner A concluded that Student "presents with vocabulary, and overall language concerns that may adversely impact [his/her] academic performance. [Student's] scores indicate that [s/he] demonstrates difficulty communicating effectively to participate and contribute to classroom discussions due to the severity of [his/her] speech and language impairment." Examiner A recommended that teachers (a) pre-teach vocabulary and pair vocabulary with visuals, (b) emphasize multi-sensory learning for vocabulary,

² The Findings of Fact includes all of the oral and written evidence that I considered material in rendering the decision in this matter. The quotations of oral testimony are from my notes during the hearing, not the transcript.

³ Petitioner's Exhibit ("P:") 1 at page 6. The exhibit number is followed by the exhibit page number then the electronic page number in parentheses, e.g. P1:6 (12).

⁴ P5:1 (52).

⁵ *Id.* at 2 (53).

⁶ *Id.* at 2-3 (53-54).

⁷ *Id.* at 4 (55).

⁸ *Id.* at 4-5 (55-56).

⁹ *Id.* at 5-6 (56-57).

¹⁰ *Id.* at 6-7 (57-58).

(c) shorten and/or modify oral directions, (d) ask Student to repeat or rephrase the directions to ensure understanding, and (e) seat Student near a peer for assistance.¹¹

3. On April 3, 2022, DCPS completed a Comprehensive Psychological Reevaluation. Examiner B's review of records revealed that Student was classified with a Developmental Delay ("DD"), was receiving six hours per week of specialized instruction, two hours per week of speech and language services, and was receiving English Language Learner ("ELL") supports.¹² Teacher A reported that Student was doing "very well." His/her social skills and communication skills were improving; s/he was able to express her/himself and communicate her/his needs. Teacher A did not report any specific learning concerns. Although Student was distractible, s/he was "very responsive to redirection."¹³ Examiner B noted that Student walked with an appropriate gait and indicated no fine or gross motor difficulties.¹⁴

On the Kaufman Assessment Battery for Children ("KABC-II"), Student scored in the Average range on the Nonverbal Index (90).¹⁵ S/he scored in the Below Average range on the Mental Processing Index (79).

Results reveal weaknesses in age-appropriate: Long-term memory and Retrieval, Short-Term Auditory Memory, Working Memory, Visual Memory, and Sequential Reasoning. Results reveal more Average range skills in age-appropriate: Visual Processing, Spatial Relations, Visualization, Inductive and Abstract Reasoning. Given these identified cognitive weaknesses, results indicate that [Student] is likely to need scaffolded supports and specialized instruction in order to make progress toward age-appropriate classroom learning.¹⁶

On the Woodcock Johnson Tests of Achievement ("WJ-IV"), Student scored in the Average range in Broad Reading (92), Broad Mathematics (97), Written Language (101), and Academic Skills (95).¹⁷ Student's attention and executive functioning skills were assessed on the Conners Short Form ("Conners-3S") and the Behavior Rating Inventory of Executive Function ("BRIEF-2"). Petitioner, Teacher A, and Teacher B submitted rating scales for the Conners, but Petitioner did not submit responses on the BRIEF. The scales on the Conners were Inattention, Hyperactivity/Impulsivity, Learning Problems, Executive Functioning, Defiance/Aggression, and Peer Relations. In Inattention, the T-score was Very Elevated for one rater (Teacher A = 80) and Elevated for one rater (Petitioner = 69). In Hyperactivity/Impulsivity, the T-scores were Very Elevated for two raters (Teacher A = 90, Teacher B = 71). In Learning Problems/Executive Functioning (Teacher form only), the T-score was Very Elevated for one rater (Teacher A = 70). In Peer Relations, the T-score was Very Elevated for one rater (Teacher A = 83). Regarding concerns about Student, Petitioner expressed concerns about reading, staying focused, getting bullied, and standing up to others. Neither Teacher A nor Teacher B reported any concerns. "The regular classroom teacher's Conners3 ratings were Very Elevated for Peer Relations, suggesting

¹¹ *Id.* at 7-8 (58-59).

¹² P6:1 (61).

¹³ *Id.* at 4 (64).

¹⁴ *Id.* at 6 (66).

¹⁵ *Id.* at 8 (68).

¹⁶ *Id.* at 9-10 (69-70).

¹⁷ *Id.* at 10-11 (70-71).

that reported behavioral concerns are impacting his/her relationships with peers. Overall, [Student's] Attention and Executive Functioning skills appear more Elevated in the regular classroom setting, as opposed to the small group Special Education setting or at home."¹⁸ On the BRIEF, Teacher B's ratings placed Student Within Normal Limits on the Global Executive Composite ("GEC" = 43), the Behavior Regulation Index ("BRI" = 46), the Emotion Regulation Index ("ERI" = 44), and the Cognitive Regulation Index ("CRI" = 42). Similar to the results on the Conners, Teacher A endorsed concerns for Student in the general education environment: the BRI (72), ERI (69). CRI (69) were all Elevated, and the GEC (72) was Clinically Elevated.¹⁹ Examiner B reached the following general conclusions about Student's performance levels:

Woodcock-Johnson-IV results and a review of school-based achievement data reveal variable results for [Student] School-based measures indicate that [s/he] is performing below grade level standards in reading and math academic skill development. In contrast, WJ-IV results report that [Student] is in the Average range for most areas of Reading, Math and Writing skill development... These results suggest that, due to identified cognitive weaknesses, [s/he] is likely to display weaker below grade level performance on school-based tasks and computer-based assessments. However, [Student] has the potential to display age-appropriate literacy and math skill development in 1-1 testing... Overall similar to Conners3 rating scale results, attention and executive functioning concerns are not significantly endorsed across the raters, therefore, it appears that [Student's] executive functioning skills vary based on the task at hand or the expectation.²⁰

After discussing the criteria, Examiner B concluded that Student met the criteria for eligibility for classification as DD.²¹

[Student] appears to need a targeted intervention to address reading decoding skills, phonics, high-frequency word reading skills, spelling, and reading fluency skills. [S/he] needs direct instruction in these areas and frequent repetition of these learned skills in order to increase [his/her] ability to make progress toward meeting grade level standards. Computer programs that focus on vocabulary development may be helpful in strengthening [Student's] reading skills. Programs that identify deficit skill areas and offer a means of monitoring progress are of particular value. Programs that emphasize verbal reasoning and comprehension would also be helpful. Similarly in the area of Math, emphasis should be placed on increasing [Student's] conceptual math skills (i.e., basic addition and subtraction, telling time, using money, higher order thinking, word problems). To assist [Student] in further developing [her/his] skills within the Math domain, make tasks concrete whenever possible by providing manipulatives, pictures, models, diagrams, and graphs.²²

¹⁸ *Id.* at 12-14 (72-74).

¹⁹ *Id.* at 14-16 (74-76).

²⁰ *Id.* at 19 (79).

²¹ *Id.* at 20 (80).

²² *Id.* at 21 (810).

4. On April 25, 2023, when Student was in grade E at School B, DCPS conducted an IEP Annual Review meeting. S/he was classified DD.²³ In Consideration of Special Factors, the IEP team stated that Student's behaviors did not impede his/her learning or that of others. S/he spoke Spanish at home and participated in an English as a Second Language Program ("ESL"). In Assistive Technology, the team determined that no A/T devices were needed.²⁴ In Mathematics, the Present Levels of Academic Achievement and Functional Performance ("PLOP"), Student was reported to be performing at grade level "with little assistance." The goals addressed the following: (a) addition and subtraction word problems within 100, (b) calculating sums of 3-digit and 2-digit numbers, and (c) rewriting a subtraction problem as an addition equation and solving for the unknown.²⁵ In Reading, the PLOP reported Student's i-Ready and Dibels scores from the previous school year but gave no indication of her/his current performance level. The goals were: (a) after a read-aloud, Student will state three key events chronologically, (b) read aloud using a print tracking strategy at a rate of 18-34 words correct per minute ("WCPM"). (c) sounding out phonemes and then blending to read a list of grade level, one-syllable words, (d) writing a one sentence opinion about a given book s/he has read, and (e) given two or more events, Student will create a three-sentence paragraph.²⁶ In Adaptive/Living Skills ("Adaptive"), the PLOP reported that "This is no longer a concern for [Student]."²⁷ In Communication/Speech and Language ("Communication"), the PLOP was ambivalent about Student's communication skills:

[Student] demonstrates strength in pragmatics, articulation, voice, and fluency. Pragmatically, [s/he] is able to protest, complain, add additional information, initiate greetings, maintain conversation, ask, and answer simple questions, and follow classroom routine. [S/he] also demonstrates the ability to navigate peer communications. [Student] demonstrates emerging ability to answer what questions, who questions, and where questions. When given a sentence starter, [Student] is able to complete a simple sentence. At this time, [Student] presents with vocabulary, and overall language concerns that may adversely impact [his/her] academic performance. [Student's] scores indicate that [s/he] demonstrates difficulty communicating effectively to participate and contribute to classroom discussions.²⁸

The goals were: (a) following 1-2 step directions with spatial and qualitative concepts with minimal verbal prompting, (b) responding to 'WH' questions after reading a story, (c) sequencing 1-3 events from stories with minimal prompting.²⁹

The IEP team prescribed one hour per week of specialized instruction inside general education, 90 minutes per week outside general education, and four hours per month of speech and language pathology ("SLP") services with two of the hours outside general education. The Other Classroom Aids and Services were Preferential seating, Multi-modality approach to instruction,

²³ P8:1 (101).

²⁴ *Id.* at 2 (102).

²⁵ *Id.* at 3-4 (103-4).

²⁶ *Id.* at 4-6 (104-6).

²⁷ *Id.* at 6 (106).

²⁸ *Id.*

²⁹ *Id.* at 6-8 (106-8).

including visuals, repetition and movement, Simplified instructions, Frequent repetitions, and Language expansion models.³⁰

5. On May 25-26, 2023, Student was administered i-Ready assessments in ELA and Math. In ELA, her/his score of 404 reflected grade H level performance (one grade below grade level). Her/his Math score of 406 reflected “Early on Grade Level” performance.³¹

6. For grade C in the 2023-24 school year, Student was enrolled at School B until October 31, 2023.³² In September, Student was administered i-Ready assessments in ELA and Math. In ELA, her/his score of 380 reflected grade H level performance (two grades below grade level). Her/his Math score of 348 also reflected grade H level performance.³³

7. Student was not enrolled at a DCPS school from November 1, 2023 to late January 2024. Student enrolled at School A on January 25, 2024. S/he was absent 15 times during the remainder of the school year.³⁴

8. On January 30, 2024, Student was administered i-Ready assessments in ELA and Math. In ELA, her/his score of 423 reflected grade E level performance (one grade below grade level). Her/his Math score of 381 reflected grade H level performance (two grades below grade level).³⁵

9. On February 7, 2024, DCPS issued Student’s IEP Progress Report for the second reporting period. None of the goals in Mathematics or Reading had been introduced to Student, and the goals in Communication had been “Just Introduced,” because of his/her recent enrollment at School A on January 23, 2024.³⁶

10. On February 22, 2024, when Student was in grade C at School A, the IEP team amended Student’s IEP, *inter alia*, to return Adaptive as an Area of Concern.³⁷ In Mathematics, the PLOP reported that Student’s January 24, 2024 i-Ready assessment reflected a grade H performance level (two grade levels below grade level). The goals were: (a) given a one-step addition or subtraction word problem within 100, Student will calculate the sum or difference by using a problem-solving strategy, and (b) given an addition or subtraction problem within 1,000, s/he will find the sum or difference by using a problem-solving strategy.³⁸ In Reading, the PLOP reported that Student’s January 30, 2024 i-Ready score reflected performance at the grade E level (one grade below grade level). Her/his Dibels score of 338 was “well below grade level.” The goals were: (a) given a list of 10 short or long vowel regularly spelled one-syllable words (i.e. CVC or CVCe), Student will read each word aloud by sounding out each letter with tracking

³⁰ *Id.* at 9 (109).

³¹ Respondent’s Exhibit (“R:”) 8 at pages 3 The exhibit number is followed by the exhibit page number then the electronic page number in parentheses, e.g. R8:3 (124).

³² P22:3 (220).

³³ R8:3 (124).

³⁴ P22:4 (221).

³⁵ Respondent’s Exhibit (“R:”) 8 at pages 2-3 The exhibit number is followed by the exhibit page number then the electronic page number in parentheses, e.g. R8:2-3 (123-24).

³⁶ P18:1-3 (195-97).

³⁷ P9:1 (114).

³⁸ *Id.* at 7-8 (120-21).

supports, (b) given a word list of 20 regularly spelled, one-syllable words with consonant digraphs (e.g., ship, bath), initial blends (e.g., slip), and words with the doubling rule (e.g., hill, puff, buzz), Student will verbally sound out each phoneme and then blend to read 16 out of 20 words aloud, with use of a decoding strategy, and (c) after a read aloud of an instructional-level text and when prompted to answer one written question (i.e., who, what, where, when, or why) about a shortened excerpt of the text, Student will underline one key detail that answers the question from a selected section of the text and provide a written response.³⁹ In Adaptive, the PLOP reported that although School B removed as an Area of Concern, School A would monitor his/her ability to turn in homework assignments. The goal was: when entering the classroom and starting her/his morning or afternoon routine, to include a visual reminder, Student will take out the homework folder or worksheet from the backpack and place the homework in the designated receptacle, 80% of the time for two consecutive weeks.⁴⁰ The IEP team maintained the levels of specialized instruction and Other Classroom Aids and Services from the previous IEP, but it eliminated the two hours of SLP inside general education.⁴¹

11. On April 10, 2024, Witness H completed a Comprehensive Bilingual Psychological Reevaluation of Student for DCPS. Student enrolled at School A on January 23, 2024. Student had reached the upper age limit for his/her DD classification; the reevaluation would determine whether Student met local criteria for a student with a Specific Learning Disability (“SLD”) in Reading, Writing, and/or Math and required specialized instruction.⁴² Student’s grades during the 2023-24 school year were not available to Witness H on the Aspen database at the time. For the 2022-23 school year, Student’s fourth term grades were as follows: English Language Arts (“ELA”) – 2 (Approached the Standard), Math, Science, Social Studies, Art, Physical Education, and Spanish – 3 (Meets the Standard), and Music – 4 (Exceeds the Standard).⁴³ Student’s general education teacher gave the following description of Student’s performance at the time:

According to the general education math teacher, [Student] is very sweet, well mannered, and gets along with all students in the class. [S/he] is eager to learn but does not always make the best choices with how to solve a math problem... [Student] has trouble following global directions given to the classroom, so [s/he] needs directions specified directly to her/him. Academic test results indicate that Student has not acquired fundamental decoding skills and was below grade level in Phonics. The Vocabulary score indicates gaps in grade-level word knowledge. Instruction in Phonics is a priority. During UFLI (phonics program) small group instruction, when required to write a dictated sentence, [Student] was able to encode some words if [s/he] was familiar with the sounds of letters within it or the phonics rules associated. [S/he] needed the heart words already written within the sentence and asked multiple times for the words [s/he] had to spell to be repeated.⁴⁴

On the Kaufman Test of Educational Achievement (“KTEA-III”), Student scored in the Lower Extreme range in Spelling (69 – 2nd percentile) and Written Expression (69 – 2nd

³⁹ *Id.* at 9-13 (122-26).

⁴⁰ *Id.* at 15 (128).

⁴¹ *Id.* at 16 (129).

⁴² P7:1-3 (84-86).

⁴³ *Id.* at 3-4 (86-87).

⁴⁴ *Id.* at 8 (91).

percentile), in the Below Average range in Letter & Word Recognition (71 - 3rd percentile) and in Reading Comprehension (76 - 5th percentile), and in the Average range in Math Concepts & Applications (87 - 19th percentile) and Math Computation (106 - 66th percentile).⁴⁵

Witness H concluded that the evaluation data did not indicate that Student meets the criteria for an SLD in Mathematics who requires specialized instruction. “[Student] performed at the 19th percentile for [her/his] skill at solving word problems (KTEA-3 Math Concepts and Applications) and at the 66th percentile for math computation. [Student] performs within the Average range of students [her/his] age. [Her/his] performance is not consistent with a student with a learning disability in math.”⁴⁶ However, she also concluded that the data did indicate that Student met the criteria for SLDs in Reading and Written Expression; s/he is performing below grade level despite receiving reading and writing interventions.⁴⁷

12. On May 30, 2024, DCPS conducted an IEP Annual Review meeting. Student was classified with an SLD.⁴⁸ The Special Considerations information was virtually unchanged from prior IEPs. In Reading, the PLOP reported that Student’s middle of the year (“MOY”) i-Ready score increased 43 points from the beginning of the year (“BOY”), but the overall score reflected a grade E performance level, one grade below grade level. The PLOP reiterated the Dibels score that was “well below grade level.”

According to progress goals, after a read aloud of a 1st grade level informational text, [Student] is able to underline 1 key detail and provide an appropriate written response for 4 out of 5 questions. After a read aloud of shortened excerpts of a 2nd grade level literary text, [Student] is able to underline 1 key detail and provide an appropriate written response for 3 out of 5 questions. Given a list of 10 CVC words, [Student] is able to read 9 out of 10 words. Given a list of 10 CVCe words, [Student] is able to read 1 out of 10 words. Given a word list of 20 words with consonant digraphs and the doubling rule, [Student] is able to read 14 out of 20 words.⁴⁹

The goals were unchanged from the previous IEP.⁵⁰ Written Expression was added as an Area of Concern. The PLOP reported that on the Spelling subtest, Student’s score was at the 2nd percentile. S/he was reported to be below grade level “although [s/he] has been receiving specialized instruction in written expression on [her/his] IEP. When given a writing prompt with a graphic organizer and asked to write 2 facts about a topic, [Student] was not able to write a complete sentence. When asked to provide 2 facts [s/he] was able to tell me verbally.” The goal was: given a prompt to write about a topic and information about the topic (e.g., illustration, video, or passage), with the use of a checklist, graphic organizer, and word bank, Student will write 2-3 sentences to convey facts about the topics.⁵¹ In Communication, the PLOP reported that Student

⁴⁵ *Id.* at 11 (94).

⁴⁶ *Id.* at 12 (95).

⁴⁷ *Id.* at 12-1 (495-97.)

⁴⁸ P10:1 (138).

⁴⁹ *Id.* at 3 (140).

⁵⁰ *Id.* at 3-8 (140-45).

⁵¹ *Id.* at 9 (145). As described in paragraphs 4 and 10 above, Student’s previous IEPs did not include goals in Written Expression. The April 23, 2023 IEP included two Reading goals, one of which involved writing one sentence, the second involved writing a three-sentence paragraph.

is vocal, communicates her/his wants and needs, demonstrates eagerness to engage in group therapy activities, can independently follow one-step directions related to spatial concepts with 100% accuracy, can follow 2-step directions related to spatial concepts with 60% accuracy with moderate prompting and repetition, can answer wh- questions related to the short stories read to him/her with an average of 66% accuracy with moderate prompting. Given four-scene sequencing cards, Student can sequence and put the cards in order independently. S/he can verbalize events from a story with 80% accuracy with minimum prompting. The first two goals from the April 2023 IEP were repeated. The sequencing goal was replaced with: given pictures, Student will answer inferential based questions (how and why) in response to pictures, short stories, and in conversations.⁵²

The IEP increased Student's specialized instruction inside general education by thirty minutes per week to 90 minutes per week. His/her SLP services were not changed.⁵³

13. On June 10, 2024, DCPS issued Student's IEP Progress Report for the final reporting period of the 2023-24 school year. In Reading, s/he was reported to be Progressing on all three goals. Given a list of ten short or long vowel regularly spelled one syllable words, Student was able to read 6 out of 10 words correctly but was inconsistent with long vowel sounds. Given a word list of 20 regularly spelled, one-syllable words with consonant digraphs (e.g., ship, bath), initial blends, s/e was able to read 18 out of 20 word correctly. After a read aloud of excerpts of a grade level literary text, Student was able to underline a key detail and provide an appropriate written response with 80% accuracy. The Written Expression goal was reported to have been Just Introduced, but Student was able to compose a sentence that conveyed facts on a given topic. In Communication, s/he was reported to be Progressing on two goals, and the third was Just Introduced. Student could answer wh- questions related to the short stories read to him/her with 60% accuracy with moderate prompting,⁵⁴

14. During the 2023-24 school year, Student was absent on March 29, 2024 but received one hour of SLP services on March 28, 2024. S/he was absent on May 23, 2024 but received one hour of services on May 13, 2024. Thus, s/he missed two hours of SLP services (of the two hours per month prescribed on the February 22, 2024 amended IEP) that were not attributable to the provider's absence and were not subsequently made up.⁵⁵

15. On November 13, 2024, when Student was in grade F at School A, DCPS issued Student's IEP Progress Report for the first reporting period of the 2024-25 school year. S/he was reported to be Progressing on all three Reading goals. Given a list of 10 CVC or CVCe words, Student was able to read each word aloud with 80% accuracy. Given a word list of 20 regularly spelled, one-syllable word with consonant digraphs, initial blends, and the doubling rule, Student was able to read 19 out of 20 words aloud. Given a read aloud of a grade E (two grades below) informational text, Student was able to provide the correct written response with 80% accuracy. In Written Expression, Student was reported to be Progressing on his/her goal; given a prompt to write about a topic and information about the topic, s/he was able to write three sentences

⁵² *Id.* at 10-12 (147-49).

⁵³ *Id.* at 14 (151).

⁵⁴ P19:1-4 (199-202)..

⁵⁵ P37:1 (291); P46:7 (386).

independently to convey facts when given a grade E level text. In Communication, s/he was reported to be Progressing the first two goals: Student could independently follow one-step directions related to spatial concepts with 100% accuracy, two-step directions with 75% accuracy with moderate prompting and repetition, and s/he could answer wh- questions related to short stories read to him/her with an average of 64% accuracy with moderate prompting. The goal of answering inferential questions about pictures was again characterized as Just Introduced.⁵⁶

16. On November 14, 2024, Attorney A's legal assistant sent an email enclosing a letter requesting evaluations to be conducted.⁵⁷ The letter, signed by Attorney A, requested that DCPS conduct A/T and OT evaluations.⁵⁸

17. On December 16, 2024, DCPS conducted an Analysis of Existing Data ("AED") meeting.⁵⁹ Petitioner and her representatives expressed concerns about (a) OT and A/T and requested evaluations and (b) the lack of social-emotional and cognitive assessments in the April 2024 Psychological Evaluation. School Psychologist A explained that since social-emotional concerns were not evident at the time of the evaluation, there was no need to assess for social emotional concerns, and cognitive assessments are not required for every evaluation. Witness D, Student's special education teacher, Teacher C, Student's Math and Science teacher, and Teacher D, her/his English teacher reported that Student exhibited no significant behavioral issues, with Teacher D stating "[S/he's one of my more well-behaved students, definitely doesn't affect [him/her] school work at all." Witness D added, "Never had any issues with [him/her]. [S/he] follows directions given by any adult. [S/he] knows how to conduct [him/herself] within a group, a small group and independently completing tasks." Attorney A stated that the request for the additional assessments was based on Student's diagnosis of Attention Deficit Hyperactivity Disorder ("ADHD") and elevated behavior scores on Student's evaluation in 2022. The speech therapist indicated that she did not need to conduct an evaluation to determine that Student continued to require speech services. Petitioner asserted that Student was stuttering. Witness D, Teacher C, and Witness D all denied ever having heard Student stutter. Teacher D stated "I haven't noticed it. I think [s/he] takes a moment to think before [s/he] talks. Probably that's like [his/her] processing time, I think. But I don't ever really hear stuttering."⁶⁰

Witness E, School A's occupational therapist, gave a detailed explanation why further OT testing was unnecessary:

So during the AED meeting held on June 2, 2023, the motor skills were assessed by [OT Therapist A], the school occupational therapist at [School B]. [Student's] classroom teacher, [Teacher E], showed that [Student] is well managed student who engages positively with [her/his] peers and demonstrates growth in [her/his] relationships. [Teacher E] noted that [Student's] challenges are primarily academic in nature and that she has not observed any fine motor occupation therapy related concerns in the classroom. [Petitioner], [Student's] mom, reported that [Student] has no issues with tactile sensations, lights, or watching television. However,

⁵⁶ P20:1-3 (204-6)

⁵⁷ P30:1 (260).

⁵⁸ P36:1 (288).

⁵⁹ P13:1 (168).

⁶⁰ *Id.* at 1-4 (168-71).

[Student] occasionally covers [his/her] ears when [s/he] hears fireworks and requests to lower the volume of loud noise. Currently, [Student] is able to tolerate loud sounds such as fire drills, loudspeaker announcements and activities in the gym without displaying any signs of aversion within the educational environment. Additionally, [Petitioner] noted that [Student's] handwriting is adequate and [s/he] excels in math regarding self-skills. [Student] is independent in feeding, dressing, and toileting. Presently, in addition to those skills, [Student] is also able to tie [his/her] shoes which is a great skill. Based on the information presented, the school multidisciplinary [team determined] that comprehensive evaluation was not warranted as motor skills did not appear to impact [Student's] access to the general education curriculum. Additionally, no concerns related to occupational therapy were identified in [Student's] most recent comprehensive bilingual psychological evaluation completed April 10, 2024 by [Witness H]. Now I'm going move to the observation, so [Student] demonstrates function on [unintelligible] skills, including range of motion, muscle strength and endurance, which are necessary to access class materials and participate in curriculum-based activities. [S/he] can follow step-to-step directives and [s/he] can transition between activities within the school environment independently, and without any challenges. [Student] has an established right-hand preference and writes with [unintelligible] grasp with close web space on the writing utensils... It may affect [her/his] writing speed and efficiency. To address this, I provided the classroom teachers with three different [unintelligible] groups, texture, triangular, and ergonomic for a trial... [Student] can copy the upper and the lower-case letters of the alphabet and can copy three to four short sentences from near point visual models, and in a timely manner given minimal useful letter line alignment of hanging letters, GJPQ and Y. [Her/his] work sample exceeds good letter formation, sufficient spacing between letters and words and baseline orientation, demonstrating appropriate visual model skills and visual perceptual skills. Visual perception is the ability to interpret and understand visual information such as letters and the accuracy forming them on the paper and visual model is the ability to coordinate eyesight with hand movements, which is crucial for copy letters, writing on the line, and maintain letter formation. However, when I ask [Student] to write the letters of the alphabet from memory, [Student] experienced difficulties. [S/he] had reversed upper case letters B and J and wrote only 19 out of 26 letters... for lower case letters, [s/he] wrote 21 out of 26 letters, displaying consistent casing, sizing, and letter line alignment, which suggests memory deficits. Regarding motor coordination, [Student] shows the ability to independently orient scissors in [his/her] hand and maintain times up graphs while counting along complex lines with less than one eighth inch deviation. Additionally, [s/he] manages school self-care skills, such as clothing management, toileting, personal hygiene, tying shoes, and self-feeding... So overall, [Student] has a lot of strengths, [s/he's] a pleasant, cooperative student, we've got a good motivation towards learning, [s/he's] independent with school by self-care skills, [s/he's] able to follow multi-step directions, [s/he] displays functional fine motor skills, [s/he] can copy up to three sentences from [unintelligible] visual, more than neatly and eligibly. [S/he] has functioned on neuro muscular skills, such as range of motion, muscle strength, muscle endurance to access classroom [unintelligible] and participate in curriculum-based activities... [S/he's] also able to sustain

attention in both busy and quiet environments when properly engaged. So based on my screener, [Student] currently, does not show any deficits in sensory integration, fine motor skills, visual motor skills, visual perceptual skills that would hinder [his/her] access to the general educational setting.⁶¹

The multidisciplinary team (“MDT”) determined that no additional assessments were necessary to determine (a) whether Student continues to have a disability, (b) Student’s educational needs, and (c) whether Student continues to need special education and related services.⁶²

18. On December 20, 2024, Witness A, Petitioner’s Educational Consultant, sent a letter to Witness J, School A’s LEA Representative, dissenting from the MDT’s determination that no further assessments of Student were necessary for the triennial review. The letter faulted DCPS’ April 2024 Psychological Evaluation for failing to assess social/emotional and cognitive deficits. Witness A also reiterated the need for an A/T evaluation and added requests for OT and S/L evaluations. Witness A also requested an additional 1.5 hours of specialized instruction outside general education in mathematics and a mathematics goal.⁶³

19. On the September 11, 2024 BOY i-Ready Reading Assessment, Student’s score of 451 reflected performance at the grade E level, two grades below her/his position in grade F. On the MOY assessment on January 23, 2025, s/he scored 499, at a grade C level, one grade below grade level. The 48-point increase exceeded typical annual growth by fifteen points. On an assessment on February 7, 2025, s/he scored 400, at the grade H level, three grades below grade level.⁶⁴ On the Math assessment on September 12, 2024, Student’s score of 403 placed him/her at the grade E level. On January 15, 2025, s/he scored 426, at a grade C level. The 23-point increase was seven points short of typical annual growth.⁶⁵

20. On March 14, 2025, Witness A developed a Compensatory Education Proposal for Student.⁶⁶ The denials of FAPE for which compensation was proposed were (a) a failure to implement Student’s IEP from March 2024 to December 2024 by failing to provide her/him with the entirety of her/his Speech and language related services. (b) a failure to provide the student with an appropriate IEP, (no Math goals and an additional 1.5 hours per week of specialized instruction in Math were required), and (c) a failure to evaluate Student comprehensively in April 2024. The periods of harm were (a) March 2024 to December 2024 for the failure to implement the IEP, (b) May 30, 2024 to March 27, 2025 for the inappropriate IEP, and (c) April 10, 2024 to March 27, 2025 for the inadequate psychological evaluation and refusal to conduct the evaluations requested at the December 2024 AED meeting. The harm suffered by Student was:

[Student] has not made meaningful progress towards any of [her/his] academic or related services following because [his/her] IEP does not provide support in the area of math, did not contain sufficient specialized instruction in the area of reading

⁶¹ *Id.* at 5-7 (172-74).

⁶² P22:17 (234).

⁶³ P45:1 (378); P44:1-2 (375-76).

⁶⁴ R25:1 (237).

⁶⁵ R26:1 (239).

⁶⁶ P46:1 (380).

and math, and was not based on sufficient evaluative data. B. Speech and Language Therapy has been inconsistent since being put in place.⁶⁷

Where would Student be but for the denial of FAPE?

It is my professional opinion that if the services outlined in [Student's] Individualized Education Plan were to have been implemented with fidelity in addition to increased specialized instruction in the area of mathematics using a research-based intervention program, [s/he] would have been able to make at least one year's worth of academic and behavioral progress towards [his/her] IEP goals.⁶⁸

As compensation for the denials of FAPE, Witness A proposed (a) an independent evaluation ("IEE") to assess Student's cognitive and social-emotional deficits, (b) that DCPS conduct a Speech and Language Reevaluation, (c) five hours of make-up services in SLP by June 2025, and (d) a revised IEP to include an additional 1.5 hours per week of specialized instruction and goals in mathematics.⁶⁹

21. During the 2024-25 school year, Student was absent on September 6, 2024 but received an hour of services on both September 12 and 26, 2024. S/he was absent on November 20, 2024 but received one hour of services on November 21, 2024. Thus, s/he missed one hour of SLP services (of the two hours per month prescribed on the May 2024 IEP) that were not attributable to the service provider's absence and were not subsequently made up.⁷⁰

22. Witness A is Petitioner's educational advocate. She opined that Witness H's April 2024 Psychological Evaluation was incomplete because it failed to assess Student's cognitive and social-emotional deficits. She noted that records she reviewed indicated that Student was performing below average in Reading and the 2022 Psychological Reevaluation revealed cognitive weaknesses. Witness A opined that Student's Average scores in mathematics on the KTEA did not allay her concerns because her/his i-Ready scores were below grade level; Student's mathematics goals should not have been removed from his/her IEP when s/he transferred to School A from School B. With respect to her Compensatory Education Proposal, Witness A testified that DCPS deprived Student of 300 minutes of prescribes SLP services, 30% of the total amount s/he should have received. When asked what Student actually lost as a result of the denials of FAPE, she replied that Student did not progress. "In my professional opinion, [s/he] would have been able to make a year's growth." On cross examination, Witness A conceded that s/he had never observed Student in class.⁷¹

23. Petitioner testified that Student is very good in math but struggles with math problems and reading. Petitioner testified that she requested the OT evaluation due to sensory

⁶⁷ *Id.* at 7 (386).

⁶⁸ *Id.* at 7-8 (386-7).

⁶⁹ *Id.* at 8 (387).

⁷⁰ P37:1 (291); P46:7 (386).

⁷¹ Testimony of Witness A.

concerns; Student likes to work in small groups. Petitioner also stated that Student cannot hold a pencil correctly. Petitioner was concerned about Student's speech because s/he stutters.⁷²

24. Witness B was Petitioner's OT expert witness. She opined that DCPS should have agreed to conduct an OT evaluation at the December 2024 AED meeting because of reports indicating that Student is distracted in class and had low scores in motor components: hyperactivity, executive functioning, an inattention, all of which could be attributed to sensory factors. When asked what Student's work samples reveal, Witness B replied: sentence length errors, letter sizing, neatness, and a failure to finish sentences. On cross-examination, Witness B conceded that she had never observed, evaluated, or had a conversation with Student.⁷³

25. Witness C was Student's grade C teacher at School A. Witness C characterized Student as sweet and respectful. In terms of academic performance, Student was above average. Her/his strengths were fluency, one-step word problems, and grasping grade C concepts. Student grasped math concepts easily. Witness C agreed with the decision not to include math goals on Student's IEP because s/he only needed support with two-step word problems. "I never had to pull [him/her] into a small group. [S/he] was making appropriate progress in math." On cross-examination, Witness C conceded that Student's 2023-24 i-Ready score was two grades below grade level. On redirect testimony, she testified that "based on my memory, s/he performed at grade level at the end of year" 2023-24.⁷⁴

26. Witness D was Student's special education teacher at School A. Student was assigned to Witness D's caseload upon her/his reenrollment in DCPS in January 2024. Witness D characterized Student as "wonderful, respectful, very affectionate, can see excitement in [his/her] eyes, eager to participate." Witness D characterized Student's performance as having done well considering that s/he was out of the country and out of school for several months. When asked why the Progress Report in February 2024 indicated that goals had not been introduced, Witness D testified that Student had only recently reenrolled in DCPS. Thereafter, Student did not make much progress in decoding, but s/he did begin to improve with instruction. Witness D testified that Student is "making great progress" this year. S/he already grew one grade level in reading, surpassing typical annual growth on the MOY i-Ready Reading assessment. Witness D testified that Diagnostic 2 was an accurate reflection of her/his progress in Reading. Witness D opined that the progress Student is making indicates that the level of support s/he is receiving is appropriate.⁷⁵

27. Witness E was DCPS' OT expert witness. She testified that in light of Petitioner's request for an OT evaluation, she reviewed Student's psychological evaluations, observed him/her in class, and interviewed his/her teacher. The observation revealed that Student could follow two-step directions, tie his/her shoes, cut-out simple shapes with scissors without difficulty, copy sentences legibly, wrote 19 of 26 letter properly, exhibited no sensory issues, his/her pencil grip required only Tier 1 support (routinely available to all general education students), and s/he was not wearing her/his prescription eyeglasses ("can't align or form letters if eyesight is poor"). She testified that no OT concerns were raised during the 2023-24 school year. At the AED meeting in April 2023, Petitioner had no concerns about Student's fine motor skills and Student was reported

⁷² Petitioner's testimony.

⁷³ Testimony of Witness B.

⁷⁴ Testimony of Witness C.

⁷⁵ Testimony of Witness D.

to be able to complete activities of daily living (self-care, feeding, etc.) independently. Witness E opined that Student did not require an OT evaluation because s/he was able to access the curriculum within the school environment. When asked for the circumstances that would warrant evaluation, Witness E cited difficulty writing, following multi-step directions, difficulty cutting with scissors as examples. When asked on redirect if Student exhibited executive functioning deficits, Witness E replied, “[Student] was able to organize, plan, initiate, and complete tasks without any dysregulation.”⁷⁶

28. Witness F was DCPS’ SLP expert witness. Student was added to her caseload at School upon Student’ reenrollment at School A in January 2024. Student was shy at first, but once s/he became reacclimated, s/he was very vocal and made progress. S/he mastered one goal and made progress on two others. Due to about ten absences, Witness F attempted to make-up missed sessions. Student made progress in 2023-24 following two-step directions, following directions, answering short story questions, and advocating for herself. S/he continues to make progress this year: s/he is more vocal, advocates for him/herself, and responds appropriately. Petitioner has never expressed concern about Student’s SLP progress or services. Witness F opined that Student did not require further SLP assessment; s/he was evaluated in 2022 and his/her need for services had been established.⁷⁷

29. Witness G, currently assigned to another DCPS school, was the Special Education Coordinator at School A during the 2023-24 school year. She opined that the data indicated that Student was making sufficient progress in math for it to be removed from her/his IEP. There is no requirement that all goals must be mastered before such a decision is made. Petitioner did not object to any aspect of the May 30, 2024 IEP at the IEP meeting.⁷⁸

30. Witness H was the school psychologist who conducted the April 10, 2024 Bilingual Psychological Reevaluation. When she observed Student in class, Student was organized, prepared, attended properly, had an organized approach to tasks, exhibited no disciplinary issues, no distractions, and interacted with others appropriately. Witness H observed no executive functioning deficits or cognitive concerns. She selected which assessments to administer based on the referral from the MDT at the AED meeting. The MDT requested testing in Written Expression, Reading, and Math. She did not administer a cognitive assessment because an assessment was conducted in 2022 that found Student to be largely Average in cognitive domains but with some weaknesses. She testified that because cognitive capability is relatively stable, the agency policy is not to routinely repeat cognitive assessments. In addition, cognitive tests lose their validity if given often because the student becomes familiar with the testing problems. Witness H testified that there was nothing to indicate that Student was not in the average range of cognitive ability; there were no red flags, no head injuries, and no reports of memory issues. With respect to Student’s performance in math, she noted that Student’s 2022-23 fourth term grade in Math was Proficient. “This is not consistent with a disability in Math.” She opined that no IEP goals were warranted based on Student’s KTEA scores and his/her Proficient grade in Math. Student was not assessed in social-emotional or executive functioning domains because neither Petitioner nor the MDT had expressed concerns in those areas. Additional assessments

⁷⁶ Testimony of Witness E.

⁷⁷ Testimony of Witness F.

⁷⁸ Testimony of Witness G.

were unnecessary because the necessary questions had been answered: (a) eligibility for continued specialized instruction, and (b) the areas of need – Reading and Writing. Witness H testified that Student’s attendance was a factor; s/he was absent 24 times during the 2023-24 school year up to the date of the evaluation. She characterized Student’s absenteeism as chronic because it exceeded 10%. Witness H opined that absences are a primary factor in poor performance and have a disproportionately more harmful effect on children with disabilities who fall behind in lower grades. When I asked her to reconcile Student’s Average Math scores on the KTEA with the below grade level scores on the i-Ready, s/he explained that the KETA she administered was one-on-one and bilingual. “I’m not sure how the i-Ready was administered, which is why we test individually. I feel confident those results are real.”⁷⁹

31. Witness J was School A’s LEA Representative and Teacher Coach. When asked how Student was performing this year, Witness J said s/he was thriving, making progress in all areas, and showing no signs of regression. She testified that Witness C’s testimony that Student was performing at grade level is supported by grades on homework assignments and classroom assignments based on grade level curriculum and instructional level. She noted that Student had already improved a full year on his/her MOY i-Ready Reading assessment. “Once [s/he’s] given instruction, [s/he] responds.” She opined that Student did not require additional supports; Student was progressing and Witness J did not want to provide unnecessary “crutches” for issues that Student is capable of figuring out on his/her own. Witness J opined that there were no behavior concerns, no concerns that Student needs A/T, no indication of regression, and s/he was making progress. The only concern was her/his not wearing her/his glasses.⁸⁰

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, and this Hearing Officer’s own legal research, the Conclusions of Law of this Hearing Officer are as follows: The burden of proof in District of Columbia special education cases was changed by the local legislature 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. The burden of persuasion shall be met by a preponderance of the evidence.⁸¹

⁷⁹ Testimony of Witness H.

⁸⁰ Testimony of Witness J.

⁸¹ D.C. Code § 38-2571.03(6)(A)(i).

One of the issues in this case involves the alleged failure of DCPS to provide an appropriate IEP. Under District of Columbia law, DCPS bears the burden of persuasion as to this issue. Petitioner bears the burden as to all other issues.⁸²

Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on May 30, 2024. Specifically, Petitioner asserts that the IEP does not provide support in mathematics, provides an insufficient amount of specialized instruction, and was based on insufficient data: (a) DCPS’ failure to conduct an occupational therapy evaluation resulted in the student’s programming not being informed with regard to his/her executive functioning deficits or potential sensory concerns, and (b) a psychological evaluation conducted on or about April 10, 2024 was not comprehensive because it failed to evaluate the student in the area of social, emotional and behavioral and in the cognitive area.

The Supreme Court’s first opportunity to interpret the predecessor to IDEA, The Education of the Handicapped Act (“EHA”), came in *Board of Education of the Hendrick Hudson Central School District v. Rowley*.⁸³ The Court noted that the EHA did not require that states “maximize the potential of handicapped children ‘commensurate with the opportunity provided to other children.’”⁸⁴ Rather, the Court ruled that “Implicit in the congressional purpose of providing access to a ‘free appropriate public education’ is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child...”⁸⁵ Insofar as a State is required to provide a handicapped child with a ‘free appropriate public education,’ we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction... In addition, the IEP, and therefore the personalized instruction should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public school system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.”⁸⁶

More recently, the Court considered the case of an autistic child under IDEA who, unlike the student in *Rowley* was not in a general education setting.⁸⁷ The Tenth Circuit had denied relief, interpreting *Rowley* “to mean that a child’s IEP is adequate as long as it is calculated to confer an ‘educational benefit [that is] merely... more than *de minimis*.”⁸⁸ The Court rejected the Tenth Circuit’s interpretation of the state’s obligation under IDEA. Even if it is not reasonable to expect a child to achieve grade level performance,

... [h]is 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

⁸² *Schaffer v. Weast*, 546 U.S. 49 (2005).

⁸³ 458 U.S. 176, 187 (1982).

⁸⁴ *Id.* at 189-90, 200

⁸⁵ *Id.* at 200.

⁸⁶ *Id.* at 203-04.

⁸⁷ *Endrew F. ex rel. Joseph F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (2017).

⁸⁸ *Id.* at 997.

should have the chance to meet challenging objectives... It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom, but is satisfied with barely more than *de minimis* progress for those who cannot.⁸⁹

In *Endrew*, the Supreme Court held that an IEP must be designed to produce more than minimal progress in a student's performance from year to year:

When all is said and done, a student offered an educational program providing 'merely more than *de minimis*' progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to 'sitting idly... awaiting the time when they were old enough to drop out...' The IDEA demands more. The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."⁹⁰

Petitioner has alleged a number of deficiencies in Student's May 30, 2024 IEP. I will address them individually.

The IEP does not provide support in mathematics

Student's math story begins at School B. On her/his April 2023 IEP, the PLOP reported that s/he was performing at grade level in math "with minimal assistance." On her/his final report card for 2022-23, Student earned a grade of 3 in Math, meaning s/he met the grade level standard in Math. At the time, s/he was receiving only 2.5 hours per week of specialized instruction, 90 minutes of which were outside general education. On the EOY i-Ready assessment on May 25, 2023, Student scored at the "Early on Grade Level."

Student's next few months were quite different. Upon returning to School B for the 2023-24 school year, Student's BOY i-Ready Math score on September 12, 2023 dropped 58 points from May, two grade levels. At the end of October, Student was withdrawn from DCPS. There was no testimony as to the reason for the withdrawal. There was only a leading question by Petitioner's attorney indicating that the family was in El Salvador. Student reenrolled in DCPS in late December and was assigned to School A as of January 25, 2024. The January MOY i-Ready Math assessment was administered five days later and Student again performed two grades below grade level.

Consequently, when the IEP team amended the IEP on February 22, 2024, it was aware from the February 7th Progress Report that Student's goals had been Just Introduced due to Student's recent reenrollment. Therefore, the IEP maintained Math goals and the level of specialized instruction.

Two months later, Witness H conducted the KTEA on which Student scored in the Average range on the two Mathematics subtests. This led to Witness H's conclusion in the evaluation that

⁸⁹ *Id.* at 1000-01 (citations omitted).

⁹⁰ 137 S.Ct. at 1000-01.

Student did not have a learning disability in math. As Witness H testified, neither Student's Proficient grade Math in 2022-23 nor her/his KTEA scores were "consistent with a disability in Math." The IEP team agreed and removed Mathematics as an Area of Concern on the IEP.

The weight of the evidence supports the IEP team's decision to remove Mathematics from the Student's IEP. S/he was indisputably performing at grade level at School B during the latter half of the 2022-23 school year. Whatever was happening within the family that led to absences and a nearly three-month withdrawal beginning in November 2023, by April 2024, Student was again able to demonstrate age-appropriate proficiency in Math on the KTEA. Because the assessment was administered individually and bilingually, Witness H was confident that the results of the assessment accurately reflected Student's Math competency. While Witness A expressed concerns about the elimination of Math support, DCPS' testimony was more persuasive. Unlike Witness A, Witness H observed Student in class, interviewed Student's teachers, and conducted a bilingual evaluation of Student. Witness C, Student's grade C Special Education Teacher, also testified that Student was performing at grade level in Math. As Witness J added, this opinion is supported by Student's performance on assignments involving grade level curriculum.

The IEP provides an insufficient amount of specialized instruction.

There is no objective evidence that Student requires more specialized instruction than s/he is receiving. At School B, Student was thriving. In 2022-23, with less specialized instruction than is now prescribed, Student earned grades of 3 in every course but ELA, and ELA is his/her second language. The current IEP focuses somewhat more specialized attention on Reading and Written Expression with the elimination of Mathematics goals. On Student's February 7, 2025 i-Ready Reading Assessment, Student's 48-point increase from his/her September score exceeded typical annual growth by fifteen points. On her/his January 2025 Math assessment, Student gained a grade level over her/his September score, and her/his increase was only seven points short of typical annual growth.

The data supports a finding that Student is at or about grade level in Math and has demonstrated growth throughout the school year. While Student may not yet be performing at grade level in Reading and Writing, s/he is progressing on his/her goals and her/his i-Ready scores indicate above average growth in proficiency at the current level of support. Witness D, Student's special education teacher this year, cited the latest i-Ready score indicating that Student had already grown one grade level in reading by mid-year and that that assessment was an accurate reflection of Student's progress in Reading.

The IEP was based on insufficient data: (a) DCPS' failure to conduct an occupational therapy evaluation resulted in the student's programming not being informed with regard to his/her executive functioning deficits or potential sensory deficits.

Petitioner's assertion that Student required an OT evaluation is based primarily on the expert testimony of Witness B. She opined that DCPS should have agreed to conduct an OT evaluation at the December 2024 AED meeting because of reports indicating that Student is distracted in class and had low scores in motor components: hyperactivity, executive functioning, and inattention, all of which could be attributed to sensory factors. Again, DCPS's evidence was

more compelling. Unlike Witness B, DCPS' expert, Witness E, observed Student in class and interviewed his/her teachers in response to Petitioner's request for an OT evaluation. Witness E's explanations why an OT evaluation was not necessary at the time of the AED meeting in December 2024 are set forth in explicit detail in paragraph 17 above. She reiterated those reasons in her testimony. In sum, she testified that Student could follow two-step directions, tie his/her shoes, cut-out simple shapes with scissors without difficulty, copy sentences legibly, wrote 19 of 26 letter properly, exhibited no sensory issues, his/her pencil grip required only Tier 1 support, Petitioner had expressed no concerns about Student's fine motor skills, and Student was able to complete activities of daily living independently.

In his April 2022 Psychological Evaluation, Examiner B noted that Student walked with an appropriate gait and indicated no fine or gross motor difficulties. On the Conners in that evaluation, the T-score ratings were Very Elevated for Teacher A and Teacher B in Hyperactivity/Impulsivity. In Learning Problems/Executive Functioning the T-score was Very Elevated for Teacher A. Examiner B concluded that Student's attention and executive functioning skills were affected more in the regular classroom setting than in a small group Special Education setting or at home. He recommended previewing to facilitate improved organization and planning on Student's part.

Despite Examiner B's findings in 2022, the record does not support a finding that Student exhibited inattention, hyperactivity, or executive functioning deficits at School A. There is simply no discussion in the PLOPs of Student's behavior, inattention, or executive functioning being a problem. There is no mention of hyperactive or impulsive behavior or a lack of focus, organization, or attention. When asked on redirect if Student exhibited executive functioning deficits, Witness E, the OT who observed Student, interviewed his/her teachers, and gave a detailed report at the AED meeting, replied, "[Student] was able to organize, plan, initiate, and complete tasks without any dysregulation." In the absence of evidence of apparent deficiencies in fine or gross motor skills, attention, sensory issues, or executive functioning, DCPS was justified in declining to conduct an OT evaluation at the AED meeting in December 2024.

A psychological evaluation conducted on or about April 10, 2024 was not comprehensive because it failed to evaluate the student in the area of social, emotional and behavioral and in the cognitive area.

Witness A, Petitioner's educational advocate, opined that Witness H's April 2024 Bilingual Psychological Evaluation was incomplete because it failed to assess Student's cognitive and social-emotional deficits. Witness A noted that records she reviewed indicated that Student was performing below average in Reading, and the 2022 Psychological Reevaluation revealed cognitive weaknesses.

Witness H did not administer a cognitive assessment in 2024 because the 2022 assessment was sufficient to establish Student to be largely Average in cognitive domains but with some weaknesses. She testified that because cognitive capability is relatively stable, the agency policy is not to routinely repeat cognitive assessments. In addition, cognitive tests lose their validity if given often because the student becomes familiar with the cognitive testing problems. Witness H

testified that there was nothing to indicate that Student was not in the average range of cognitive ability; there were no red flags, no head injuries, and no reports of memory issues.

As for the failure to conduct social-emotional and behavioral assessments, nothing in Student's behavior at School A gave the staff any indication that these were areas of concern. There was nothing in Student's April 25, 2023 School B IEP to presage behavioral or social-emotional difficulties. The Consideration of Special Factors indicated that Student's behavior was not an issue and there were no Behavior goals in School B's 2023 IEP. Upon her/his enrollment at School A, Student impressed all of the staff with her/his personable interactions. Witness C, Student's grade C general education teacher, described him/her as sweet and respectful. His/her first special education teacher at School A, Witness D, characterized Student as wonderful, respectful, and very affectionate. At the December 2024 AED meeting, Witness D stated that "[S/he's one of my more well-behaved students, definitely doesn't affect [him/her] school work at all... Never had any issues with [him/her]. [S/he] follows directions given by any adult. [S/he] knows how to conduct [him/herself] within a group, a small group and independently completing tasks." When Witness E observed Student to determine the need for an OT evaluation, Student was able to organize, plan, initiate, and complete tasks without any dysregulation. When Witness H observed Student as part of the 2024 Psychological Evaluation, Student was organized, prepared, attended properly, had an organized approach to tasks, exhibited no disciplinary issues, no distractions, and interacted with others appropriately. Witness H observed no executive functioning deficits or cognitive concerns.

The record does not support a finding that School ignored evidence that indicated that Student had experienced a change in her/his cognitive ability or that s/he had social-emotional or behavioral issues that were impairing her/his learning or that of others. On the contrary, Witness H testified that there was no indication that Student's cognitive level was not in the average range, and Student's behavior, organization, and attentiveness in class raised no concerns among any of her/his teachers or other staff members. Witness H's evaluation was sufficiently comprehensive to determine that Student remained eligible for services and that s/he had learning disabilities warranting support in Reading and Written Expression.

Student thrived and made progress at School B with less specialized instruction than s/he now receives on School A's IEP. Since enrolling in School A in January 2024, the KTEA and his/her teachers have determined that Student is performing at grade level in Mathematics. All of his/her specialized instruction is now directed to Reading and Written Expression in which the Progress Reports indicate that s/he is progressing. As was discussed above, her/his i-Ready scores at School A indicate above average growth in proficiency at the current level of support. His/her latest i-Ready score indicated that Student had already grown one grade level in Reading by mid-year. I conclude that DCPS has met its burden of proving that the IEP it developed on May 30, 2024 was reasonably calculated to enable Student to make academic progress in light of his/her circumstances.

Whether DCPS denied Student a FAPE by failing to implement Student's IEPs. Specifically, Petitioner asserts that DCPS failed to provide approximately five hours (31%) of the speech and language services prescribed on Student's IEPs during the 2023-24 and 2024-25 school years.

An LEA is culpable for failing to implement a child's IEP if the services provided materially deviate from the services prescribed in the IEP.⁹¹ A material deviation requires more than a minor discrepancy or a "de minimis failure to implement all elements of [the student's] IEP."⁹² It is "...[t]he proportion of services mandated to those provided that is the crucial measure for purposes of determining whether there has been a material failure to implement."⁹³

The Office of the State Superintendent's Special Education Process Handbook provides the following guidance on missed related services:

If a student is regularly or chronically missing services, it is best practice for the service provider to collaborate with the parent on attendance support and service implementation. The occasional missed related service session may be unavoidable; however, the LEA must always consider the impact of the missed session on the student's progress and performance and ensure the continued provision of FAPE. If the IEP team determines that missed services constitutes a denial of FAPE, it should consider the need for compensatory services. LEAs are encouraged to develop and make available a related services policy that details internal procedures for missed services.⁹⁴

Based on the Related Service Tracker in the record, Student missed two hours of SLP services during the 2023-24 school year and one hour during the 2024-25 school year. None of the missed services were attributable to the unavailability of the service provider. Moreover, the amount of services missed did not constitute a material deviation from the amount of services as to which Student was entitled. Therefore, I conclude that Petitioner has failed to meet her burden of proving that DCPS failed to implement the IEPs as alleged.

⁹¹ *Middleton v. District of Columbia*, 312 F. Supp. 3d 113, 144 (D.D.C. 2018); *Van Duyn ex rel. Van Duyn v. Baker School District 5J*, 502 F.3d 811, 822 (9th Cir. 2007).

⁹² *Johnson v. District of Columbia*, 962 F. Supp. 2d 263, 268 (D.D.C. 2013), quoting *Catalan ex rel. E.C. v. District of Columbia*, 478 F. Supp. 2d 73, 75 (D.D.C. 2007). See *J.B. ex rel. Belt v. District of Columbia, Report and Recommendation*, Case No. 17-cv-1298, 2018 WL 10399853 at 17 (D.D.C. May 8, 2018)(a deviation of less than 10% of the school day was deemed *de minimus*).

⁹³ *Turner v. District of Columbia*, 952 F. Supp. 2d 31, 41 (D.D.C. 2013), citing *Wilson v. District of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011).Fe

⁹⁴ P43:25 (359).

Whether DCPS denied Student a FAPE by failing comprehensively to evaluate Student in all areas of suspected disability since April 10, 2024. Specifically, Petitioner alleges that a psychological evaluation completed that day by DCPS was inadequate because it did not evaluate Student’s cognitive and social/emotional deficits or reevaluate for executive functioning deficits revealed in a March 31, 2022 psychological evaluation. Petitioner also alleges that at an AED meeting on December 16, 2024, DCPS denied Petitioner’s request that it conduct OT, S/L, and A/T evaluations and denied authorization for an independent psychological evaluation.

IDEA regulations require that LEA evaluate children with disabilities in all areas of suspected disabilities:

Each public agency must ensure that... the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities...⁹⁵

The regulations also require reevaluations if a teacher or parent requests them, and at least once every three years:

A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311—

(1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(2) If the child's parent or teacher requests a reevaluation.

(b) Limitation. A reevaluation conducted under paragraph (a) of this section—

(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and

(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.⁹⁶

During the triennial review, the MDT must make a determination if further assessments are necessary to make the eligibility determine or to determine an appropriate educational program for the student:

As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—

(1) Review existing evaluation data on the child, including—

(i) Evaluations and information provided by the parents of the child;

(ii) Current classroom-based, local, or State assessments, and classroom-based observations; and

(iii) Observations by teachers and related services providers; and

⁹⁵ 34 C.F.R. §300.304 (c)(4).

⁹⁶ 34 C.F.R. §300.303.

- (2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—
- (i)(A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or
 - (B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child...⁹⁷

In the first issue addressed above, I concluded that DCPS was justified in denying Petitioner's requests at the AED meeting in December 2024 for a psychological reevaluation and for an OT evaluation. As for the psychological evaluation, a cognitive evaluation had been conducted in 2022 and Witness H gave credible explanations for declining to repeat a cognitive assessment less than three years later. Moreover, the School A staff's experience with Student during her/his eleven months at School A belied Petitioner's assertions that Student exhibited social-emotional or behavioral problems that warranted assessment. In fact, Student presented no behavioral, social-emotional, or executive functioning issues that warranted assessment.

At the December 16, 2024 AED meeting, Petitioner's team also requested a S/L evaluation and an A/T evaluation. DCPS uses the AED process to implement triennial evaluations. In each area of concern, the MDT makes a determination as to whether further assessments are necessary for the team to make a determination as to eligibility and programming. Witness A's December 20, 2024 letter to DCPS dissented from the IEP team's refusal to agree to conduct S/L and A/T evaluations but provided no reasons why these evaluations were necessary.

In the Communications PLOP of the May 2024 IEP, summarized in paragraph 12 above, Witness F, Student's SLP provider, reported that Student was vocal, communicated her/his wants and needs, and described several other attributes indicating that she was well aware of Student's communication deficits and needs. At the hearing, Petitioner offered no testimony from an expert in speech-language pathology to support her claim that an evaluation was necessary. Witness F testified that Student was shy at first, but once s/he became reacclimated, s/he became very vocal and made progress. S/he mastered one goal and made progress on two others. Petitioner never expressed concern to Witness F about Student's SLP progress or services. Witness F opined that Student did not require further SLP assessment; s/he was evaluated in 2022 and his/her need for services had been established. Witness D, Student's special education teacher, testified that s/he was eager to participate in class. During Witness H's observation of Student, Student interacted appropriately with others.

As for the need for an A/T evaluation, Petitioner offered no testimony from an expert with experience in assistive technology. Since returning to school in January 2024, Student has demonstrated the ability to make greater than typical annual growth in reading with his/her current level of support without the use of A/T.

I conclude that Petitioner has failed to meet her burden of proving that DCPS' refusal to

⁹⁷ 34 C.F.R. §300.305(a). *See also, Office of the State Superintendent's Special Education Process Handbook*, P43:14 (348)(IEP teams may determine that sufficient data exists to support an eligibility determination without additional assessments).

conduct an occupational therapy evaluation, a speech and language evaluation, and assessments of Student's cognitive, social-emotional, and executive functioning deficits at the December 16, 2024 AED meeting constituted a denial of FAPE.

RELIEF

For relief, Petitioner requests, *inter alia*, (1) an order requiring DCPS to conduct and review OT and S/L evaluations of Student, (2) an order requiring DCPS to fund and review an independent psychological evaluation, (3) an order requiring DCPS to convene an IEP meeting upon the completion of the evaluations to update Student's IEP and increase the amount of specialized instruction to Student, (4) compensatory education, (5) consideration of additional compensatory education to be reserved pending completion of the evaluations, and (6) attorneys' fees.

ORDER

Upon consideration of the *Complaint*, the *Response*, the *Prehearing Order*, the exhibits that were admitted into evidence, the testimony presented during the hearing, the closing arguments of counsel for the parties, and the parties' post-hearing submission, it is hereby

ORDERED, that the Complaint is **DISMISSED** with prejudice.

APPEAL RIGHTS

This decision is final except that either party aggrieved by the decision of the Impartial Hearing Officer shall have ninety (90) days from the date this decision is issued to file a civil action, with respect to the issues presented in the due process hearing, in a district court of the United States or the Superior Court of the District of Columbia as provided in 34 C.F.R. §303.448 (b).



Terry Michael Banks
Hearing Officer

Date: April 12, 2025

Copies to: Attorney A, Esquire
Attorney B, Esquire
OSSE Office of Dispute Resolution