

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
1050 First Street, NE, 3rd Floor
Washington, DC 20002

PARENTS, on behalf of)	Date Issued: April 19, 2025
STUDENT, ¹)	
)	Hearing Officer: Peter B. Vaden
Petitioners,)	
v.)	Case No: 2025-0016
)	
DISTRICT OF COLUMBIA)	Online Videoconference Hearing
PUBLIC SCHOOLS,)	
)	Hearing Dates: April 9, 10 and 14, 2025
Respondent.)	

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by the Petitioner parents under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-A, Chapter 5-A30 of the District of Columbia Municipal Regulations (DCMR). In this administrative due process proceeding, the Petitioners seek a revised Individualized Education Plan (IEP), a more restrictive educational placement and other relief from Respondent District of Columbia Public Schools (DCPS) on the grounds that DCPS allegedly denied the child, STUDENT, a free appropriate public education (FAPE) by not providing an appropriate IEP and placement for Student following a prior Hearing Officer Determination issued December 30, 2024 in Case Numbers 2024-0190 and 2024-0217.

Petitioners' Due Process Complaint, filed on January 29, 2025, named DCPS as Respondent. The undersigned hearing officer was appointed on January 30, 2025. The

¹ Personal identification information is provided in Appendix A.

parents filed an amended due process complaint on February 3, 2025. In their due process complaint, the parents requested an expedited due process hearing, which the hearing officer denied. The parties met for a Resolution Session Meeting on February 14, 2025 and did not resolve the issues in dispute.

On February 12, 2025, I convened a telephone prehearing conference with counsel to discuss the issues to be determined, the hearing date and other matters. The due process hearing was set for April 9 and 10, 2025. With the parents' consent, the due process hearing was held online and recorded by the hearing officer, using the Microsoft Teams videoconference platform. Both parents appeared online for the hearing and were represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by LEA REPRESENTATIVE and by DCPS' COUNSEL and DCPS' CO-COUNSEL. Petitioner's Counsel and DCPS' Counsel made opening statements.

Mother testified and called, as additional witnesses, CLINICAL PSYCHOLOGIST SPEECH-LANGUAGE PATHOLOGIST 1 (SLP-1) and OCCUPATIONAL THERAPIST 1 (OT-1). DCPS called as witnesses SPEECH-LANGUAGE PATHOLOGIST 2 (SLP-2), OCCUPATIONAL THERAPIST 2 (OT-2), OCCUPATIONAL THERAPIST 3 (OT-3), SCHOOL SOCIAL WORKER and LEA Representative. Petitioner's exhibits P-1, P-2, P-4 through P-8, P-12 through P-15, P-17 through P-23, P-25 through P-31, P-33 through P-41, P-43 through P-48 and P-50 through P-52 were admitted into evidence, including Exhibits P-7, P-25 and P-41 admitted over DCPS' objections. Only PDF pages 264 through 249 of Exhibit P-32 were admitted. I sustained DCPS' objections to the

remainder of Exhibit P-32, as well as to Exhibits P-3, P-9, P-10, P-24 and P-49.

Petitioners' Counsel withdrew Exhibits P-11, P-16 and P-42. DCPS' Exhibits R-1 through R-18 were all admitted into evidence without objection. On April 14, 2025, Petitioner's Counsel and DCPS' Counsel made oral closing arguments. There was no request to file written closings. The parties were granted leave to file citations to relevant authorities by email. Neither party filed citations to authorities.

JURISDICTION

The hearing officer has jurisdiction under 20 U.S.C. § 1415(f) and 5-A DCMR § 3049.1.

ISSUES AND RELIEF SOUGHT

The issues raised by Petitioners against DCPS are as follows:

- A. Did DCPS deny Student a FAPE by failing to comply with the requirements of the December 30, 2024 HOD to carefully review all of the evaluations that the parents presented to DCPS and write a new IEP that incorporated the evaluations?
- B. Did DCPS deny Student a FAPE by failing to comprehensively review the Independent Educational Evaluation (IEE) reports on the child prior to convening the January 13, 2025 IEP team meeting and developing the IEP?
- C. Did DCPS fail to offer an appropriate IEP on January 13, 2025 because DCPS did not fully review the evaluations presented by the parents; the annual goals were not appropriate, the educational placement was not appropriate, DCPS refused to discuss or change the disability classification and DCPS denied ESY?
- D. Did DCPS deny the Student a FAPE because the location of services at City School 1 is not suitable because Student's behavior severely impacts his/her ability to receive an appropriate education at that school?

At the start of the due process hearing on April 9, 2025, Petitioner's Counsel

withdrew additional allegations that the January 13, 2025 HOD was also inappropriate because DCPS refused to provide special education transportation and because DCPS did not conduct a functional behavior assessment (FBA).

For relief, the Petitioners request that the hearing officer order DCPS as follows:

DCPS shall provide an appropriate school placement and immediately provide a safety transfer to a school equipped to educate Student and allow the parents to observe the proposed new location and speak with teachers and staff;

DCPS shall develop a new and appropriate IEP for Student which will incorporate the goals provided by the parents' experts and

DCPS shall immediately provide a one to one aide for Student, who shall be interviewed in advance by the parents and the parents shall be allowed to maintain communication with the aide during the school year.

The Petitioners seek to reserve a claim for compensatory education for Student until they consider that DCPS is implementing an appropriate IEP and appropriate compensatory education relief can be determined.

FINDINGS OF FACT

After considering all of the evidence received at the due process hearing in this case on April 9, 10 and 14, 2025, as well as the argument of counsel, my findings of fact are as follows:

1. Student, an AGE child, resides with the parents in the District of Columbia. Testimony of Mother.
2. Student is eligible for special education as a child with a Developmental Delay. Exhibit R-6.

3. Since the beginning of the 2023-2024 school year, Student has attended City School 1, a DCPS public school, where Student is currently in GRADE. Testimony of OT-2, Exhibit R-6.

4. On or about July 12, 2024, OT-1 conducted an Independent Educational Evaluation (IEE) comprehensive occupational therapy evaluation (OT IEE) of Student. The OT IEE report was issued on or about August 1, 2024. Exhibit P-4.

5. In May, June and July 2024, Clinical Psychologist conducted an IEE Neurodevelopmental Diagnostic Evaluation (Psychological IEE) of Student. Petitioners' Counsel identifies the date of this resulting report as August 7, 2024. In the Psychological IEE, Clinical Psychologist reported, *inter alia*, that Student had strong cognitive skills, that Student has made notable progress in his/her fine motor and visual motor skills. Student's pre-academic skills were also solidly developing (50th percentile) and he/she was able to present those skills with appropriate 1:1 behavioral support. Clinical Psychologist reported that her assessment indicated that Student met criteria for Autism Spectrum Disorder (Level 1), Attention Deficit Hyperactivity Disorder (ADHD), Combined presentation with accompanying executive functioning weaknesses and oral expression weaknesses. Clinical Psychologist recommended in her report, *inter alia*, that to be available for learning, Student required a small classroom with a consistent schedule and routines specially designed to support children who are bright, academically capable and who have unique learning and social challenges. She wrote that given Student's significant difficulties with regulation of his/her body, behavior,

attention and emotions, Student required integrated behavior support throughout the school day to provide 1:1 support in the classroom setting. Exhibit P-5.

6. On August 13 and 24, 2024, SOP-1 conducted an IEE Speech and Language Evaluation (S-L IEE). She issued her report on September 3, 2024. Exhibit P-6.

7. The parents shared all three IEE evaluations with DCPS. At an Analysis of Existing Data (AED) meeting at City School 1 on November 6, 2024, the IEEs were discussed. At the meeting, the parents wanted DCPS to change Student's disability classification to Autism or Other Health Impairment. School staff requested to conduct further evaluations of Student in the psychological, speech-language and OT domains. Exhibit P-12. The parents refused to give consent for DCPS to further evaluate Student, and to date, have only consented to DCPS' conducting a Level 2 functional behavioral assessment of Student. Exhibits P-1, P-11, Testimony of Mother.

8. An Functional Behavioral Assessment, Level 1, completed on September 16, 2024, indicated Student exhibited problematic behaviors including: inattention, aggression towards others, elopement, self-injurious behavior or self-deprecating language, and non-compliance. Behavior Intervention Plan (BIP) progress monitoring from September 16 2024 to October 31, 2024 indicated that Student did not engage in aggression towards others, elopement, self injurious behavior or self-deprecating language, or non-compliance at all during the monitoring period. Student displayed inattentive behavior 4-7 times per week during the BIP monitoring period. From BIP

monitoring period 11/1- 12/13/24, Student on average was inattentive more than 8 times per week, non-compliant 4-7 times per week, aggressive 1-3 times per week, self-injurious or utilizing self-deprecating language 1-3 times during week 2 (and not at all during the rest of the monitoring period), and no elopement during the monitoring period. Exhibit R-10.

Prior Due Process Proceeding

9. In October and November 2024, the parents and DCPS, respectively, filed prior due process complaints concerning Student. Both cases were assigned to Impartial Hearing Officer Michael Lazan and were consolidated for hearing (Case No. 2024-0190 and Case No. 2024-0217). Following a due process hearing on December 11, 12, 13 and 18, 2024, Hearing Officer Lazan issued his Hearing Officer Determination on December 30, 2024 (the December 30, 2024 HOD). Exhibit P-39. The issues before Hearing Officer Lazan in the consolidated cases were:

1. Did DCPS deny the Student a Free Appropriate Public Education (“FAPE”) by failing to evaluate or reevaluate the Student in the 2023-2024 school year?
2. Were the speech-language, psychological, and occupational therapy evaluations, completed by DCPS in August and September 2023, and the FBA, completed by DCPS in April 2024, appropriate?
3. Did DCPS deny the Student a FAPE through the Individualized Education Program (“IEP”) dated February 2024?
4. On or about August 9, 2024, did DCPS fail to review the Parents’ evaluations, and then fail to set up an IEP meeting to discuss the evaluations? If so, did DCPS deny the Student a FAPE?

In the December 30, 2024 HOD, Hearing Officer Lazan found in favor of DCPS on all issues, except Issue 3, the appropriateness of DCPS' February 2024 IEP. Student's prior August 2023 DCPS IEP recommended five hours of specialized instruction per week inside general education, 120 minutes of speech-language services per month outside general education, thirty minutes of behavioral support services per week outside general education, and 120 minutes of occupational therapy per month outside general education. At the February 26, 2024 IEP review, the DCPS members of the IEP team felt that the Student was doing well, and recommended a reduction of services to 2.5 hours of specialized instruction per week inside general education. The team also reduced the Student's occupational therapy mandate to thirty minutes per week on a consult basis, and they reduced the Student's speech-language pathology from 120 minutes per month direct services to thirty minutes per month in a group setting. The Parents felt that they had no input into the February 26, 2024 IEP and asked for data supporting the proposed reduction in services.

With regard to the appropriateness of the reduction in services in the February 26, 2024 IEP, Hearing Officer Lazan found that Student had not mastered any of the goals in the prior, August 2023, IEP, except for speech intelligibility goals. Hearing Officer Lazan was not persuaded that it was appropriate for DCPS to reduce Student's Specialized Instruction Services from 5 hours per week or to curtail direct OT services. For these reasons, Hearing Officer Lazan concluded that DCPS denied Student a FAPE through the issuance of the February 26, 2024, IEP.

For relief for this FAPE denial, Hearing Officer Lazan ordered DCPS to convene Student's IEP team to rewrite Student's IEP within fifteen calendar days. Hearing Officer Lazan directed that the IEP team closely review all of the child's independent evaluations, including his/her independent speech evaluation, occupational therapy evaluation, and neuropsychological evaluation and to revise Student's educational program, with particular emphasis on managing the Student's behavior and providing the Student with specialized instruction in English Language Arts (ELA). Hearing Officer Lazan also awarded Student compensatory education tutoring and OT for the denial of FAPE. Exhibit P-39.

10. On January 10, 2025, OT-2, a DCPS occupational therapist issued an Occupational Therapy Independent Assessment Review, in which she reviewed the independent OT Report and discussed her own January 2025 classroom observation and interview with Student's teacher. Exhibit R-2.

11. On January 8, 2025, SLP-2, a DCPS Speech-Language Pathologist issued a Speech/Language Independent Assessment Review, in which she reviewed the IEE SLP Report and discussed her own September 2024 classroom observation. Exhibit R-4.

12. On January 12, 2025, DCPS SCHOOL PSYCHOLOGIST issued a Review of Independent Educational Evaluation report, in which she reviewed the Clinical Psychologist's independent psychological report and discussed her own October 2024 classroom observation of Student. Exhibit R-3.

13. After the December 30, 2024 HOD was issued, City School 1 convened a

meeting on January 13, 2025 to review the independent educational evaluations of Student and update the child's IEP. Both parents, Petitioners' Counsel, EDUCATIONAL CONSULTANT, and Clinical Psychologist attended the meeting. OT-2 summarized the findings from her review of the OT IEE. SLP-2 summarized the findings from her review of the SLP IEE. Clinical Psychologist and the child's special education teacher reviewed proposed cognitive and adaptive goals. Clinical Psychologist's IEE Psychological findings were partially incorporated in the IEP Cognitive and Emotional, Social and Behavioral Development Present Levels of Performance (PLOPs). The SLP-IEE findings were partially incorporated in the Communication/Speech and Language PLOPs. The OT-IEE findings were partially incorporated in the Motor Skills/Physical Development and Social-Emotional PLOPs. For Special Education and Related Services, the school members of the IEP team decided that Student would receive 5 hours per week of Specialized Instruction outside general education, 2 hours per month of Behavioral Support Services in general education, 2 hours per month of Behavioral Support Services outside general education and 30 minutes per month of Speech Language Pathology in general education. The IEP team also provided for consultation services for OT (30 minutes per month) and Speech Language Pathology (15 minutes per month). With regard to OT, Educational Consultant stated at the meeting that the family felt that direct OT services, in addition to consultation services, were needed. The team did not find Student eligible for Extended School Year (ESY) services and tabled the ESY determination until additional data could be gathered concerning Student's

performance after a break in service. Exhibits P-13, P-14, P-15, Testimony of LEA Representative.

14. In a February 8, 2025 email to DCPS, Petitioners' Counsel wrote that the parents remained firm that Student did not require any further assessments. Exhibit P-34. Mother explained at the due process hearing that the parents wanted to reserve more testing until they understood what data need to be collected and what the specific goals of the testing would be. Testimony of Mother.

15. Over the 2024-2025 school year, Student has had a number of behavior incidents which have resulted in his/her being removed from the classroom or separated from classmates. Between September 5, 2024 and November 15, 2024, the school team reported 6 behavior incidents by email to the parents, including two incidents when Student allegedly hit or scratched another student. Exhibit P-32.

16. On October 29, 2024, School Social Worker reported to the parents that Student had adjusted to his/her regular school day routines and the teachers had been providing good reports. She wrote that Student had come a long way since the school year began. Exhibit R-16.

17. From the start of the 2024-2025 school year, based on performance on i-ready diagnostic assessments, Student has shown a lot of growth in Reading and tremendous growth in math. Exhibits P-17, R-15; Testimony of LEA Representative.

18. Beginning on January 21, 2025, at the parents' request, School Social Worker began keeping Daily Behavior Reports for Student which were sent home to the

parents. Exhibit P-43. The logs indicate that from January 21, 2025 to March 31, 2025, Student has been pulled out of class 17 to 27 times for behavior issues. Testimony of School Social Worker, Testimony of LEA Representative.

19. Since toward the end of January 2025, Student's physical aggression and self-injurious behaviors have increased to maybe 1-2 times per week. Testimony of School Social Worker. LEA Representative is now recommending a more restrictive special classroom placement for Student due to the uptick in aggression and Student's not being responsive to the school's Behavior Intervention Plan (BIP). On January 31, 2025, LEA Representative informed the parents that she was sharing data with DCPS' inclusion manager. On March 31, 2025, LEA Representative made a more restrictive environment (MRE) referral to DCPS for Student. As of the hearing date, Student's IEP team had not met to change Student's educational placement to a more restrictive environment. Testimony of LEA Representative.

20. In a March 21, 2025 Functional Behavioral Assessment II (FBA-II), School Social Worker reported although Student's ability to self-regulate had improved, he/she continued to have social and behavioral challenges that impact his/her ability to be fully present during academic instruction as he/she often must be removed from the classroom when he/she engages in challenging behaviors such as physical aggression and mood dysregulation. The behaviors also place a strain on some of Student's peer relationships. Student presents with increasing physical aggression towards peers that

is often accompanied by a meltdown. Student continues to demonstrate grade level academic performance despite his/her behavioral challenges. Exhibit R-1.

21. At a meeting to review Student's FBA II on March 31, 2025, the City School 1 school team determined that Student was not eligible for ESY services because data did not show regression after the 2024-2025 winter break. Testimony of LEA Representative.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and argument of counsel, as well as this hearing officer's own legal research, my Conclusions of Law are as follows:

Burden of Proof

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the parents in this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the appropriateness of the child's IEP 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 must be met by a preponderance of the evidence. *See* D.C. Code § 38-2571.03(6).

ANALYSIS

A. Did DCPS deny Student a FAPE by failing to comply with the requirements of the December 30, 2024 HOD to carefully review all of the evaluations that the parents presented to DCPS and write a new IEP that incorporated the evaluations?

B. Did DCPS deny Student a FAPE by failing to comprehensively review the Independent Educational Evaluation (IEE) reports on the child prior to convening the January 13, 2025 IEP team meeting and developing the IEP?

Prior to the November 6, 2024 Analysis of Existing Data (AED) meeting for Student, the parents provided to DCPS three independent educational evaluation (IEE) reports on Student, including the Psychological IEE, the OT IEE and the Speech-Language IEE. In the December 30, 2024 HOD, Hearing Officer Lazan ordered DCPS to convene Student's IEP team to rewrite the child's IEP and directed that the IEP team "closely review" all of the Student's independent evaluations, including, specifically, these three reports. The parents allege that when the IEP team met on January 13, 2025 to rewrite Student's IEP, DCPS did not ensure that the IEP team comprehensively reviewed the IEE evaluation reports. DCPS maintains that all three reports were considered by the IEP team and in some cases, the IEE findings were incorporated in the January 13, 2025 IEP. I find that the parents did not establish that the IEP team failed to appropriately consider the IEE reports.

The IDEA does not empower hearing officers to enforce a hearing officer determination issued in a prior case. *See Robinson v. Pinderhughes*, 810 F.2d 1270, 1273-1274 (4th Cir. 1987) (The federal statute does not contain any provision for enforcing final administrative orders.) Nonetheless, if a local education agency's (LEA)

non-compliance with a hearing officer order results in failure to provide FAPE, this failure may constitute a separate, actionable, violation of the IDEA. *Cf. Sellers by Sellers v. School Bd. of City of Manassas*, 141 F.3d 524, 531 (4th Cir.1998).

The Federal IDEA regulations require that if the parents obtain an independent educational evaluation which they share with the local education agency, the results of the evaluation must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child. *See* 34 C.F.R. § 300.502(c)(1). Here, the parents shared the independent Psychological, OT and Speech-Language evaluations of Student with DCPS and the evidence establishes that the January 13, 2025 IEP team did consider the results of all three independent evaluations. In January 2025, before the January 13th IEP meeting, DCPS obtained written assessment review reports on all three IEEs, done by a school psychologist, an occupational therapist and a speech-language pathologist from City School 1. All three IEE evaluations were discussed at the January 13, 2024 IEP meeting. Parts of all three IEE reports were incorporated into the corresponding PLOPs in the final IEP. Clinical Psychologist, who authored the Psychological IEE, attended the January 13th meeting and helped to review and revise Student's cognitive and adaptive IEP goals. On this evidence, I find that the Parents failed to establish that the January 13, 2025 IEP team did not appropriately consider the results of the independent Psychological, OT and Speech-Language evaluations of Student.

C. Did DCPS fail to offer an appropriate IEP for Student on January 13, 2025 because DCPS did not fully review the evaluations presented by the parents; the annual goals were not appropriate, the educational placement was not

appropriate, DCPS refused to discuss or change the disability classification and DCPS denied ESY?

D. Did DCPS deny the Student a FAPE because the location of services at City School 1 is not suitable because Student's behavior severely impacts his/her ability to receive an appropriate education at that school?

Petitioners allege that the January 13, 2025 IEP was not appropriate for Student because DCPS did not fully review the IEEs presented by the parents; the annual IEP goals were not appropriate; the proposed educational placement was not appropriate; DCPS refused to discuss or change Student's disability classification from Developmentally Delayed and DCPS denied Extended School Year (ESY) services. DCPS responds that the IEP was appropriate for Student based on the data available when the IEP was developed. Through the testimony of the Parents' expert witnesses SLP-1, OT-1 and Clinical Psychologist, the parents made a *prima facie* showing that the January 13, 2025 IEP was not appropriate. Therefore, the burden of persuasion as to the IEP's appropriateness falls on DCPS.

In *Middleton v. District of Columbia*, 312 F. Supp. 3d 113 (D.D.C. 2018), U.S. District Judge Rudolph Contreras explained how a court or a hearing officer must assess an IEP:

In reviewing a challenge under the IDEA, courts conduct a two-part inquiry: "First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?" *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206–07, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982) (footnotes omitted).

Middleton at 128. In this decision, I have already considered the allegation that DCPS failed to comply with IDEA procedures when it allegedly did not appropriately consider the independent educational evaluations of Student shared by the parents and concluded that the parents did not meet their burden of persuasion on that claim. Otherwise, Petitioners have not alleged a procedural compliance issue with respect to the January 13, 2025 IEP. Therefore, I turn to the second prong of the *Rowley* inquiry. Was the January 13, 2025 IEP “reasonably calculated to enable [Student] to make progress appropriate in light of the child’s circumstances?” See *Andrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399, 137 S. Ct. 988, 999, 197 L. Ed. 2d 335 (2017).

In *A.D. v. Dist. of Columbia*, No. 20-CV-2765 (BAH), 2022 WL 683570, (D.D.C. Mar. 8, 2022), U.S. District Judge Beryl Howell explained the IDEA’s IEP requirement:

A “free and appropriate public education,” or “FAPE,” is delivered by local education authorities through a uniquely tailored “ ‘individualized education program,’ “ or “IEP.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988, 993-994 (2017); see also 20 U.S.C. §§ 1401(9)(D), 1412(a)(1). To be IDEA-compliant, an IEP must reflect “careful consideration of the child’s individual circumstances” and be “reasonably calculated to enable the child to receive educational benefits,” *Andrew F.*, 137 S. Ct. at 994, 996 (cleaned up), “even as it stops short of requiring public schools to provide the best possible education for the individual child,” *Z.B. v. District of Columbia*, 888 F.3d 515, 519 (D.C. Cir. 2018). . . . An IEP failing to satisfy these statutory directives may be remedied through an IDEA claim to the extent the IEP “denies the child an appropriate education.” *Z.B.*, 888 F.3d at 519.

A.D., 2022 WL 683570 at *1. “[A]n IEP’s adequacy thus ‘turns on the unique circumstances of the child for whom it was created,’ and a reviewing court should defer

to school authorities when they ‘offer a cogent and responsive explanation’ showing that an IEP ‘is reasonably calculated to enable the child to make progress appropriate in light of [her] circumstances.’” *A.D.* at *7, quoting *Endrew F.*, *supra*, 137 S. Ct. at 1001-02.

The parents complain that at the IEP meeting, DCPS denied Student a FAPE by its alleged refusal at the January 13, 2025 IEP meeting to discuss or change Student’s disability classification from Developmentally Delayed. The parents contend that Student’s disability classification at this time should have been Autism or Other Health Impairment. However, an LEA may not change a child’s disability classification without first conducting a comprehensive evaluation, pursuant to 34 C.F.R. § 300.304 through 300.306. At the November 6, 2024 AED meeting, the City School 2 team agreed to conduct additional reevaluations of Student to determine whether Autism or another IDEA disability might be a more appropriate classification for the child. However, the parents withheld consent for DCPS to reevaluate Student, except with an FBA II in February 2025. While DCPS had a duty to consider the IEE evaluation findings, the District had the right to conduct its own reevaluation of Student in lieu of accepting the IEE reports. *See, e.g., Johnson by Johnson v. Duneland Sch. Corp.*, 92 F.3d 554, 558 (7th Cir.1996) (“[B]ecause the school is required to provide the child with an education, it ought to have the right to conduct its own evaluation.”) While the parents had the right to withhold their consent for DCPS to reevaluate Student, they do not have grounds to complain that DCPS did not change Student’s disability classification at the January 13, 2025 IEP meeting.

Moreover, the IDEA does not require school districts to classify a student with a disability in a particular category or categories. Rather, the child's identified needs, not the child's disability category, determine the services that must be provided to her. *Letter to Anonymous*, 48 IDELR 16 (OSEP 2006). *See, also, Heather S. v. State of Wis.*, 125 F.3d 1045, 1055 (7th Cir. 1997) (IDEA not concerned with labels, but with whether a student is receiving a FAPE); *M.M. v. Lafayette School Dist.*, 2012 WL 398773, 17 (N.D.Cal.2012). The identification of Developmental Delay as Student's IDEA disability did not make the January 13, 2025 IEP inappropriate.

With respect to annual IEP goals, The IDEA requires that each student's IEP must include a statement of measurable annual goals, including academic and functional goals, designed to,

- (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
- (B) Meet each of the child's other educational needs that result from the child's disability

and a statement of the special education and other services to be provided to enable the child to advance toward attaining the goals. *See* 34 C.F.R. § 300.320(a)(2)(i), (a)(4).

Adaptive and Cognitive Goals

The parents' expert, Clinical Psychologist, participated in drafting the Adaptive Daily Living Skills and Cognitive annual goals for the January 13, 2025 IEP and there was no creditable evidence at the due process hearing that those goals were inappropriate.

Communication, Speech and Language Goals

The parents' speech and language expert, SLP-1, had proposed a list of speech and language goals for the January 13, 2025 IEP. SLP-1 opined that the IEP's single speech-language goal – for Student to increase speech intelligibility – did not address Student's true speech deficits, including using correct pronouns, grammatical accuracy and correct questions and social pragmatics. DCPS' expert, SLP-2, testified that she determined speech and language goals for Student by considering the child's PLOPs, recent testing, and evidence-paced practice. Based on her observation of Student in the classroom, she testified that Student continued to make progress in speech, was able to engage with peers and use intelligible speech in the classroom.

SLP-2 was critical of SLP-1's independent evaluation because the IEE report did not address whether there was an educational impact in the classroom from Student's reported speech deficits. She noted that SLP-1 did not conduct a classroom observation or interview Student's teachers. SLP-2 explained that she did not adopt all of the goals proposed by SLP-1 for the January 13, 2025 IEP, because the additional goals were in areas she had recommended for additional testing, to which the parents had not consented. SLP-2 opined that the IEP speech goal was appropriate for Student based upon the information available to her.

On balance, I found SLP-2's opinion more persuasive. Unlike SLP-1, SLP-2 personally assessed Student's communication skills in the classroom and in communications with peers. Moreover, DCPS should not be faulted for not adopting all

of SLP-1's proposed speech and language goals, when the parents withheld consent for the District to reevaluate Student to corroborate SLP-1's findings and to fully evaluate Student's speech and language needs.

Occupational Therapy Goals

The January 13, 2025 IEP identified two goals for Motor Skills/Physical Development. The parents' expert, OT-1, had submitted a list of six proposed OT goals, one of which (completing a visual-motor craft activity) was adopted in the IEP. DCPS' expert, OT-3, opined that the Motor Skills/Physical Development goals on the IEP were appropriate for Student and noted that several of the goals proposed by OT-1 were more suitable for the Emotional, Social, Behavioral Development area of concern than for OT. The IEP Emotional, Social and Behavioral Development area of concern includes 7 annual goals, which were not challenged by Petitioners' experts, and I found OT-3's testimony persuasive.

I conclude that DCPS has provided a cogent and responsive explanation for the annual goals included in the January 13, 2025 IEP and it is appropriate to defer to DCPS' experts, especially when the parents have not consented to DCPS' requests, starting in November 2024, to conduct its own psychological, speech-language and OT reevaluations of Student. *See, e.g., T.T. v. District of Columbia*, 2007 WL 2111032, 9 (D.D.C. 2007) (DCPS personnel had special education expertise requiring deference.)

Extended School Year (ESY)

The parents alleges that the failure of the January 13, 2025 IEP team to find that Student required Extended School Year (ESY) services for summer 2025 was a denial of FAPE. In determining whether ESY services are necessary for the provision of FAPE, the IEP team must consider and document each of the following:

- (a) The impact of a break in service on previously attained or emerging critical skills;
- (b) The likelihood and degree of regression related to previously attained or emerging critical skills; and
- (c) The time required for recoupment of previously attained or emerging critical skills.

5A DCMR § 3015.2 (2022). “ESY Services are only necessary to a FAPE when the benefits a disabled child gains during a regular school year will be significantly jeopardized if he is not provided with an educational program during the summer months.” *S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 68-69 (D.D.C. 2008), *adopting standard from MM v. Sch. Dist. of Greenville County*, 303 F.3d 523, 537–38 (4th Cir.2002)). *See, also Johnson v. District of Columbia*, 873 F. Supp. 2d 382, 386 (D.D.C. 2012) (“[A]ll students, disabled or not, may regress to some extent during lengthy breaks from school. ESY Services are required under the IDEA only when such regression will substantially thwart the goal of ‘meaningful progress.’”)

At the January 13, 2025 IEP team meeting, the school team members tabled consideration of Student’s eligibility for ESY services because the team lacked data on the likelihood of regression for Student, if he/she were not provided ESY services. I find that the decision to table the ESY consideration was appropriate because Student’s

middle-of-year (MOY) i-Ready diagnostic testing results, following the winter break, had not yet been received . I find that this decision was appropriate when made. *See, e.g., Z. B. v. District of Columbia*, 888 F.3d 515, 524 (D.C. Cir. 2018) (Standard calls for evaluating an IEP as of the time IEP was created.) Subsequently on March 31, 2025, the IEP team reviewed Student’s ESY eligibility and concluded he/she was not eligible based on his/her strong performance on the MOY i-Ready tests after the winter break. The appropriateness of the March 31, 2025 ESY decision is not before the hearing officer.

Educational Placement

The IDEA contemplates a continuum of educational placements to meet the needs of children with disabilities. Depending on the nature and severity of the disability, a child may be instructed in regular classes, special classes, special schools, at the home, or in hospitals and institutions. *See* 5E DCMR § 3012, 20 U.S.C. § 1412(a)(5), 34 CFR § 300.115. The IDEA requires that students with disabilities be placed in the “least restrictive environment” so that they can be educated in an integrated setting with students who are not disabled to the maximum extent appropriate. *See, e.g., Smith v. District of Columbia*, 846 F.Supp.2d 197, 200 (D.D.C. 2012).

The January 13, 2025 IEP placed Student in regular classes for most of the school day – that is, in the general education classroom at City School 1, with 5 hours per week of push-in Specialized Instruction. The parents’ expert, Clinical Psychologist, opined in her testimony that Student needs almost consistent support in a special education classroom taught by teachers trained to work with children, like Student, on the autism

spectrum. She also recommends that Student receive integrated behavior support for his/her self-regulation challenges. At the due process hearing, DCPS' own experts, LEA Representative and School Social Worker seemed to agree that at least at this time, Student needs a special classroom. LEA Representative opined that due to the increase in Student's aggression since late January 2025 and his/her not responding to the Behavior Intervention Plan, Student needs a more restrictive setting, such as a DCPS Behavior and Education Support classroom. School Social Worker opined that Student needs a lot more direct support than he/she is receiving. She testified that City School 2 could "make it work" for Student, but it would be a challenge.

This leaves open the question of whether the decision of the school team at the January 13, 2025 IEP meeting to maintain Student's placement in the regular education classroom was appropriate –that is, whether DCPS met its burden of persuasion that the January 13, 2015 IEP team decision to place Student in the general education setting, supported with 5 hours of Specialized Instruction, was appropriate. I find that DCPS has not met its burden.

In her hearing testimony, LEA Representative testified that Student's behavior, especially his/her aggression, became more intense in early January or late February subsequent to the January 13, 2025 IEP meeting. However, while Student's aggression may have increased after the meeting, Student's behavior challenges were already well known. In April 2024 an FBA had been prepared for Student at City School 1. The FBA indicated that the Student was engaging in harmful behaviors, such as punching

him/herself in the face and saying, “I want to hurt myself” and “I don’t want to live,” about three times per week, with each behavior lasting approximately five minutes. The FBA also indicated that the Student was aggressive to peers about five times per week, with each behavior lasting approximately ten minutes. A safety plan for Student was written on April 22, 2024. The safety plan indicated that the Student had engaged in self-injurious behaviors when he/she became frustrated or overwhelmed. The safety plan also indicated that the Student demonstrated physical aggression towards peers by balling up his/her fists and staring at other students when he/she felt wronged. During the fall of the 2024-2025 school year, Student had a number of behavior incidents which has resulted in his/her being removed from the classroom or separated from classmates. Between September 5, 2024 and November 15, 2024, the school team reported 6 behavior incidents to the parents, including two incidents when Student allegedly hit or scratched another student.

At the November 6, 2024 AED meeting, DCPS had reviewed Clinical Psychologists Psychological IEE report, in which Clinical Psychologist had diagnosed Student with ASD (Level 1) and ADHD, Combined presentation. In that report, Clinical Psychologist recommended that to be available for learning, Student required a small classroom with a consistent schedule and routines specially designed to support children who are bright, academically capable and who have unique learning and social challenges. Clinical Psychologist wrote that given Student’s significant difficulties with regulation of his/her body, behavior, attention and emotions, Student required

integrated behavior support throughout the school day to provide 1:1 support in the classroom setting.

Considering Student's well-documented behavior concerns dating from the 2023-2024 school year, Clinical Psychologist's fall 2024 recommendation for a small classroom setting with behavior support and Student's continued behavior challenges up to 2024-2025 winter break, I find that DCPS has failed to provide a cogent or responsive explanation for the IEP team's decision at the January 13, 2025 IEP team meeting to continue Student's educational placement in the regular education classroom setting. I conclude that DCPS has failed to meet its burden of persuasion that the educational placement in the January 13, 2025 IEP was appropriate for Student. Hence, I find that DCPS failed to offer Student a free appropriate education with the January 13, 2025 IEP.

In light of my decision that DCPS has not established the appropriateness of Student's educational placement in the January 13, 2025 IEP, I do not reach the Petitioners' separate allegation that the location of services at City School 1 is not suitable for Student.

Relief

For relief for DCPS' failure to offer an appropriate educational placement to Student in the January 13, 2025 IEP, the parents request that DCPS be ordered to provide an appropriate school placement and immediately provide a safety transfer to a school equipped to educate Student and allow the parents to observe the proposed new

location and speak with teachers and staff. The parents also request that DCPS be ordered to develop a new and appropriate IEP for Student, which would include the provision of a dedicated aide.

In this decision, I have found that DCPS denied Student a FAPE by offering, in the January 13, 2025 IEP, an inappropriate educational placement in the regular education classroom at City School 1. Clinical Psychologist recommended that Student be placed in program providing a small classroom with a consistent schedule and routines, specially designed to support children who are bright, academically capable and who have unique learning and social challenges associated with ASD and ADHD and other neurodiversities. Since the January 13, 2025 IEP team meeting, City School 1 has communicated with DCPS' central office to start the process of obtaining a more restrictive setting for Student. However, placement decisions must be made by the child's IEP team, *see* 34 C.F.R. § 300.116(a). Student's IEP team has yet not met to change his/her educational placement. Therefore, I will order DCPS to convene Student's IEP team to review and revise Student's IEP educational placement in accordance with Clinical Psychologist's recommendations. Under District of Columbia law, the parents have the right to visit and observe any special education program proposed for Student by DCPS. *See* D.C. Code § 38-2571.03(5)(A).

Petitioners seek to reserve a claim for compensatory education for Student until they consider that DCPS is implementing an appropriate IEP. However, at the due process hearing, the parents did not propose a compensatory education remedy and did

not offer evidence of educational harm to Student from the inappropriate educational placement in the January 13, 2025 IEP. Therefore, I deny Petitioner's request to reserve a compensatory education claim for Student. *See J.T. v. District of Columbia*, No. 21-CV-3002 (RBW/GMH), 2023 WL 9215177, at *17 (D.D.C. Jan. 4, 2023), *report and recommendation adopted*, No. CV 21-3002 (RBW), 2023 WL 8369938 (D.D.C. Dec. 4, 2023), *appeal dismissed*, No. 24-7003, 2024 WL 3033764 (D.C. Cir. June 14, 2024) (Plaintiff not entitled to compensatory education remedy because she failed to put forward evidence of educational harm.)

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby

ORDERED:

1. Within 15 school days of the date of this decision, DCPS shall convene Student's IEP team to review and revise his/her IEP to provide for a more restrictive educational placement in a special class or special school as may be appropriate. *See* 34 C.F.R. § 300.115. The revised IEP shall provide for Student's placement in a program providing a small classroom with a consistent schedule and routines designed to support children who are bright, academically capable and who have unique learning and social challenges associated with ASD, ADHD and other neurodiversities. DCPS shall, in collaboration with the parents, ensure that the educational placement in the revised IEP is implemented in a suitable location as soon as possible. This is without prejudice to DCPS' discretion to select the appropriate educational site for Student, so long as the location of services is based on, and capable of implementing, the child's revised IEP.
2. All other relief requested by the Petitioners herein is denied.

Date: April 19, 2025

s/ Peter B. Vaden
Peter B. Vaden, Hearing Officer

NOTICE OF RIGHT TO APPEAL

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 (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. § 1415(i).

cc: Counsel of Record
Office of Dispute Resolution