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OSSE  
Office of Dispute Resolution  
August 31, 2020

**Confidential**

<p>Guardian on Behalf of Student, Petitioner,</p> <p>v.</p> <p>District of Columbia Public Schools (“DCPS”) Local Educational Agency (“LEA”),</p> <p>and</p> <p>District of Columbia Office of the State Superintendent of Education (“OSSE”) State Education Agency  (“SEA”)</p> <p>Respondents.</p> <p>Case # 2020-0088</p> <p>Date Issued: August 27, 2020</p>	<p>CORRECTED HEARING OFFICER’S DETERMINATION <sup>1</sup></p> <p>Hearing Dates: June 16, 2020, June 17, 2020, June 22, 2020, June 30, 2020, July 2, 2020, July 13, 2020, August 10, 2020</p> <p>Counsel for Each Party listed in Appendix A</p> <p><u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u></p>
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<sup>1</sup> This “Corrected” HOD is issued to make typographical and/or grammatical changes and/or to remove personally identifiable information; no substantive changes have been made. The HOD issuance date, August 27, 2020, remains unchanged, as does the applicable appeal date. Personally identifiable information is in the attached Appendices A & B.

## **JURISDICTION:**

The hearing was conducted, and this decision was written, pursuant to the Individuals with Disabilities Act (“IDEA”), P.L. 101-476, as amended by P.L. 105-17 and the Individuals with Disabilities Education Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E30.

## **BACKGROUND AND PROCEDURAL HISTORY:**

The student who is the subject of this proceeding (“Student”) resides in the District of Columbia with Student’s grandmother (“Petitioner”), who is also Student’s guardian. Student has been determined eligible for special education and related services pursuant to the IDEA with a disability classification of Multiple Disabilities (“MD”) including Autism Spectrum Disorder (“ASD”) and Other Health Impairment (“OHI”) due to various health diagnoses including seizures and scoliosis. District of Columbia Public Schools (“DCPS”) is Student’s local educational agency (“LEA”).

Student attends a non-public special education separate school ("School A") with DCPS funding. Student began attending School A in November 2013. Student’s most recent individualized educational program (“IEP”) was developed at School A on February 3, 2020, and amended on February 26, 2020, to correct Student's dedicated aide services' duration and location. Student's IEP prescribes a least restrictive environment (“LRE”) totally removed from non-disabled peers in a separate day school.

On April 14, 2020, Petitioner filed her due process complaint asserting DCPS had denied Student a free appropriate public education (“FAPE”) by allegedly failing to comprehensively evaluate Student for a triennial review in 2019, by not conducting the following evaluations: a comprehensive psychological, occupational therapy (“OT”), physical therapy (“PT”), assistive technology (“AT”) and an adaptive assessment. Petitioner also asserts that Student’s most recent IEP is inappropriate because it was not based upon data that Petitioner asserts would have been available to the IEP team had DCPS conducted the evaluations Petitioner asserts were not conducted.

Petitioner also asserts in her complaint that DCPS and/or OSSE denied Student a FAPE by allegedly denying Student access to transportation, to wit: Student was no longer provided assistance down the front steps outside of Student’s home to gain access to the school bus as of March 5, 2020. Petitioner asserts that DCPS and/or OSSE did not provide an alternative solution to transport Student to School A or provide Student home instruction during the period Student’s access to the school bus was not provided. In addition, Petitioner asserts DCPS and/or OSSE failed to provide Student a nurse on the bus for three days in November and December 2019 and failed to provide Student a dedicated aide on the bus during school year (“SY”) 2019-2020.

Petitioner seeks as relief that DCPS and/or OSSE provide Student with compensatory education for the alleged denials of FAPE, provide Student door to door assistance onto and off the school bus, provide Student a dedicated aide on the bus, that DCPS provide Petitioner authorization for

independent evaluations (“IEEs”) and that compensatory education be reserved until the IEEs are completed and reviewed by an IEP team.

At the outset of the hearing, DCPS’s counsel stated, and Petitioner's counsel acknowledged, that DCPS had already provided Petitioner authorizations for all the requested IEEs: OT, PT, AT, and a comprehensive psychological evaluation.

### **LEA Response to the Complaint:**

The LEA, DCPS, filed a response to the complaint on April 24, 2020. The LEA denies that there has been any failure to provide Student with a FAPE, and stated, inter alia, in its response, the following:

DCPS denies it failed to conduct comprehensive evaluations. During Student’s triennial review, DCPS conducted evaluations that the IEP team and Petitioner agreed upon. Furthermore, DCPS used appropriate evaluation procedures proscribed by IDEA. DCPS reviewed existing evaluation data, obtained information from teachers, and conducted a classroom observation. Based on the various sources of information, the IEP team determined that Student is a child with a disability and developed an IEP based on information obtained in the evaluation.

DCPS also denies it failed to develop an appropriate IEP. The IEP team relied on various sources of information in developing the IEP. DCPS asserts that Student's IEP was appropriate when it was developed and was reasonably calculated to enable Student to make appropriate progress considering the Student’s circumstances.

DCPS denies that it failed to appropriately implement Student’s February 3, 2019, and February 26, 2020, amended IEP for SY 2019-2020. DCPS appropriately implemented Student’s IEP by providing the required specialized instruction hours and by implementing the required related service hours. Additionally, Student was not eligible for home instruction during SY 2019-2020.

DCPS denies that it failed to appropriately implement Student’s February 3, 2019, and February 26, 2020, amended IEP for SY 2019-2020 by failing to provide door to door transportation, a dedicated aide on the bus, and a nurse on the bus. DCPS it is not responsible for providing transportation services to Student. OSSE is responsible for managing and maintaining transportation services to special education students. DCPS does not have the authority to adjust Student’s transportation, including vehicle or staffing. Any change to Student’s transportation must be made by OSSE. Any failure to provide transportation is a result of OSSE's actions, not those of DCPS.

### **SEA Response to the Complaint:**

On May 4, 2020, the SEA, OSSE, filed a response to the complaint combined with a Motion to Dismiss. The Motion to Dismiss was denied prior to the hearing. The SEA denies that there has been any failure to provide Student with a FAPE, and stated, inter alia, in its response, that OSSE made transportation available to Student and Petitioner refused the transportation services. OSSE

also asserts that there was no failure to provide Student with appropriate staffing on the school bus per Student's IEP.

### **Resolution Meeting, Pre-Hearing Conference, and Continuances:**

Petitioner and the LEA held a resolution meeting on April 17, 2020. The complaint was not resolved, and the parties did not mutually agree to proceed directly to a hearing. The 45-day period began on May 14, 2020, and ended [and the Hearing Officer's Determination ("HOD") was originally due] on June 28, 2020. With regard to the case against OSSE, OSSE's counsel filed an unopposed motion to align the timelines for the case against OSSE and DCPS. That motion was granted.

Because the parties were not available for the hearing dates initially offered, a motion to extend the HOD due date was filed along with subsequent requests for continuances and extensions to accommodate additional hearing dates. The HOD is now due on August 27, 2020.

A pre-hearing conference ("PHC") in this matter was held on May 8, 2020. The undersigned hearing officer ("Hearing Officer") issued a pre-hearing order ("PHO") on May 13, 2020, setting the hearing dates and outlining, inter alia, the issues to be adjudicated.

### **ISSUES:**

The Hearing Officer determined, and the parties agreed and reaffirmed at the start of the hearing, that the following were the only issues to be adjudicated:

### **Claims Against Respondent DCPS <sup>2</sup>**

1. Whether DCPS denied Student a FAPE by failing to conduct a comprehensive reevaluation in 2019 by not conducting: (a) a full and comprehensive psychological evaluation, and/or (b) by not conducting the following evaluations: an adaptive, OT, PT, and AT.
2. Whether DCPS failed to provide Student with appropriate IEPs for SY 2019-2020 until the present (the February 3, 2020, IEP and the February 26, 2020, amended IEP), because the IEPs were not based on a comprehensive reevaluation in 2019 that included the following: a full and comprehensive psychological evaluation, and/or the following evaluations: an adaptive, OT, PT, and AT.

### **Claims Against Respondent DCPS & OSSE**

3. Whether DCPS and/or OSSE denied Student a FAPE during SY 2019-2020 by failing to appropriately implement Student's transportation services by denying Student care from a nurse for 3 days in November and December 2019, and assistance from a dedicated aide

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<sup>2</sup> At the outset of the hearing, Petitioner's counsel withdrew the claims as to a speech-language evaluation in both issues #1 and #2, that were expressed in the issues as outlined in the PHO.

for SY 2019-2020 that is necessary for Student to access transportation, and/or failed to provide Student at-home instruction if transportation was not possible.

### **DUE PROCESS HEARING:**

The Due Process Hearing was convened on June 16, 2020, June 17, 2020, June 22, 2020, June 30, 2020, July 2, 2020, July 13, 2020, and August 10, 2020. Due to the COVID-19 emergency, the hearing was conducted via video-teleconference. The parties submitted closing arguments on August 18, 2020.

### **RELEVANT EVIDENCE CONSIDERED:**

This Hearing Officer considered the testimony of the witnesses and the documents submitted in each party's disclosures (Petitioner's Exhibits 1 through 98, DCPS Exhibits 1 through 38 identified as "Respondent's Exhibits" and OSSE Exhibits 1 through 19) that were admitted into the record and are listed in Appendix 2. The witnesses testifying on behalf of each party are listed in Appendix B.<sup>3</sup>

### **SUMMARY OF DECISION:**

Petitioner held the burden of production on all issues adjudicated and held the burden of persuasion on issues #1 and #3. Petitioner established a prima facie case on issue #2 before the burden of persuasion fell to Respondent DCPS on issue #2. Based on the evidence adduced, the Hearing Officer concluded that Petitioner sustained the burden of persuasion by a preponderance of the evidence on issue #1 as to the comprehensive psychological evaluation only. Respondent sustained the burden of persuasion by a preponderance of the evidence on issue #2 on all aspects except with regard to the psychological evaluation, which the Hearing Officer dismissed without prejudice. Petitioner did not sustain the burden of persuasion by a preponderance of the evidence on issue #3.

The Hearing Officer granted Petitioner authorization to request compensatory education for the denial of FAPE determined in this HOD from DCPS following an IEP meeting held to review the IEE reports, and the right to pursue, in due process hearing if need be, a compensatory education award based on the denial of FAPE determined in this HOD.

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<sup>3</sup> Petitioner presented the following seven witnesses, all of whom testified as expert witnesses except Petitioner and the OSSE employee: (1) Petitioner, (2) a Physical Therapist, (3) a Speech-Language Pathologist, (4) Associate Director of OSSE Student Transportation, (5) an Occupational Therapist, (6) an Educational Advocate employed by the law firm representing Petitioner, and (7) a second Educational Advocate employed by the law firm representing Petitioner, testifying as a Psychologist. DCPS presented nine witnesses: (1) a DCPS School Psychologist, (2) the DCPS Monitoring Specialist for School A, (3) a Physical Therapist, (4) an Occupational Therapist, (5) a Speech-Language Pathologist, (6) a Behavior Specialist, (7) a second DCPS School Psychologist, (8) DCPS Assistive Technology Specialist, and (9) Student's Special Education Teacher. All DCPS witnesses testified as expert witnesses except the Monitoring Specialist, the Behavior Specialist, the AT Specialist, and the Special Education Teacher. OSSE presented one witness: (1) Associate Director of OSSE Student Transportation.

## **FINDINGS OF FACT:<sup>4</sup>**

1. Student resides in the District of Columbia with Petitioner and has been determined eligible for special education and related services pursuant to the IDEA with an MD disability classification including ASD and OHI. DCPS is Student's LEA. Student attends School A, a non-public special education separate school, with DCPS funding. Student began attending School A in November 2013. (Petitioner's Exhibits 15, 62)
2. In May 2013, when Student was attending a DCPS public school, DCPS conducted the following evaluations of Student: Augmentative Alternative Communication ("AAC"), PT, OT, and psychological. The psychological evaluation assessed Student's cognitive abilities, achievement levels, adaptive skills, and disability classification. The psychologist assessed Student's cognitive skills using the Test of Nonverbal Intelligence, Fourth Edition (TONI4). That assessment is intended to be used with persons ranging from ages 6 to 89; it generally takes 15 minutes to administer and is ideal for persons who have language or motor impairments as Student does. Student's performance was within the Very Poor range at the 2<sup>nd</sup> percentile. The AAC evaluation recommended Student utilize hi-tech devices for communication and learning, including the use of the Accent 700, a dynamic screen communication device, and use of an Ipad for learning and educational tasks, but not as a means for communication. The evaluation recommended training for Student, Student's grandmother, and teacher on the use and programming of the Accent 700 and that the training carry over into the classroom. Based on the PT and OT evaluations, Student qualified for PT and OT services on Student's 2013 IEP. Student also qualified for speech-language pathology ("SLP"), which was also prescribed in Student's 2013 IEP. (Petitioner's Exhibits 5, 55, 56, 59, 60)
3. In June 2016, when Student was attending School A, DCPS conducted a comprehensive psychological reevaluation as a part of Student's triennial review. The evaluator attempted to conduct the Comprehensive Test of Nonverbal intelligence – Second Edition ("CTONI-2) and conducted the Adaptive Behavior Assessment System – Third Edition ("ABAS-III") and Gilliam Autism Rating Scale – Third Edition ("GARS"). She also interviewed the Student's grandmother, teacher, and dedicated aide. The evaluator also conducted a classroom observation of Student and reviewed Student's educational and medical records. The CTONI-2 measures nonverbal reasoning and is designed for individuals between ages 6 and 89 who are language disordered. It has six subtests (pictorial analogies, pictorial categories, pictorial sequences, geometric analogies, geometric categories, and geometric sequences) that provide composite scores. Overall, Student did not seem to understand the concepts of any of the subtests and was unable to complete the tasks. Therefore, no formal IQ score was derived. (Respondent's Exhibit 10)

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<sup>4</sup> The evidence (documentary and/or testimony) that is the source of the Findings of Fact ("FOF") is noted within parenthesis following the finding. A document is noted by the exhibit number. The second number following the exhibit number denotes the page of the exhibit from which the fact was extracted. When citing an exhibit that has been submitted by more than one party separately, the Hearing Officer may only cite one party's exhibit.

4. At the time of DCPS's June 2016 psychological evaluation, Student had limited academic achievement but was able to answer direct questions about text read to Student using graphic aides and picture supported answer choices. Student was able to identify six colors with gestural prompts and sort objects by color but did not consistently maintain attention, which impacted Student's ability to master tasks. Student's adaptive functioning was measured in the Extremely Low range at home and school. The GARS-3 assessment indicated Student's impairment in areas of restricted, repetitive behaviors, social interaction, and social communication. The evaluation findings suggested that Student continued to meet the criteria for the ASD classification, and due to Student's history of neurodevelopmental disorder, the evaluator concluded that an OHI classification was also appropriate. In July 2016, DCPS determined Student met the criteria for the MD classification, including ASD and OHI. (Respondent's Exhibit 10)
5. On April 23, 2019, DCPS convened a meeting that Petitioner participated in by telephone. The purpose of the meeting was to review the analysis of existing data ("AED") that had been compiled, to review Student's disability eligibility and the Student's IEP. The DCPS Monitoring Specialist for School A participated along with a DCPS psychologist, a speech-language therapist, an occupational therapist, and a physical therapist. The team noted, among other things, that Student had two Ipads, one exclusively used for communication and another for Student to access other activities, including games. The occupational therapist did not recommend an updated OT evaluation and noted Student's grasp strength and feeding skills were improving and that Student would engage in preferred activities. The physical therapist indicated that medical information was essential to determine if scoliosis is affecting Student's mobility and to determine if one of Student's legs is longer than the other. The meeting notes state: "The medical information would be essential to determine Current recommendations for services are appropriate as well as goals." The DCPS psychologist did not recommend any additional formal testing and noted that Student's last psychological was conducted in 2016. She stated that Student's disability classification and goals were appropriate, and she would conduct a triennial review. The team noted Student had mastered social and emotional goals, and new goals in that area would be added through an IEP amendment. Otherwise, Student's IEP did not change. The team did not conclude that there was a need for additional evaluation or testing in OT, PT, AT, and adaptive functioning. (Petitioner's Exhibit 46)
6. On May 17, 2019, DCPS issued a prior written notice ("PWN") that stated that Student's IEP team agreed that Student remains a student with a disability. The PWN also stated: "Team feels they need additional information in the area of speech and language and academic and cognitive testing." "Team feels they need updated information to plan accordingly." The PWN also stated that the data used to conclude that additional testing was needed were Student's analysis of existing data, progress reports, and attendance. (Petitioner's Exhibit 43)
7. In June 2019, DCPS conducted a comprehensive speech and language assessment and a triennial psychological reevaluation. The DCPS psychologist reviewed Student's prior evaluations and summarized them in her evaluation report. She summarized Student's response to intervention in reading and math, adaptive functioning, social, emotional, and

behavioral development by reviewing Student's progress relative to IEP goals. The DCPS psychologist did not administer or attempt to administer any cognitive, educational, or adaptive assessments. The psychologist reviewed Student's 2016 psychological evaluation, but not the 2013 psychological evaluation. She did not have available to her Student's functional behavioral assessment ("FBA") or behavior intervention plan ("BIP"). She noted Student's performance on the 2018 Multi-State Alternative Assessment ("MSAA") and related that Student performed better than 53% of public-school students in the District in English and Language Arts ("ELA") and better than 18% of public-school students in Math. The evaluator concluded that Student's developmental disorder significantly impacts Student's overall functioning – cognitive, adaptive, academic, and social and Student had limited ability to retain concepts, problem solve, reason, and sustain attention. She noted that Student's speech development is significantly impaired. The evaluator concluded that Student met the criteria for the continued MD classification, including ASD and OHI. (Witness 13's testimony, Respondent's Exhibits 11, 12)

8. The speech-language evaluator determined that Student continued to present with a severe impairment in communication, but Student's profile was not unusual given the global deficits that impact Student's cognition, academics, and communication. Student did not present with a primary disability condition in the area of speech or language impairment. She stated that Student's concerns are characteristic of Autism. She noted that Student had made progress and expressly noted that standardized testing is not the most appropriate avenue to measure Student's progress. She stated that Student's oral communication progress should be monitored via a Functional Communication Profile and/or informal measures, progress reports, and service tracking instead of standardized measures. The evaluator recommended, among other things, that Student's consistent use of the communication device in the classroom is necessary to carry over skills learned during speech language-related services. (Respondent's Exhibits 12)
9. A student may not receive updated formal OT evaluations during a triennial review if the data indicates that the student continues to qualify for OT services, and if the student is making incremental progress. Student's School A occupational therapist has an ongoing knowledge of Student's strengths and weaknesses and progress towards IEP goals. Student was making progress in OT goals; therefore, a formal OT evaluation was not required or recommended during Student's triennial evaluation. (Witness 10's testimony, Petitioner's Exhibits 16 through 21)
10. Likewise, students may not receive updated formal PT evaluations during a triennial review if the data indicates Student continues to qualify for PT services, and if the student is making progress. Student's School A physical therapist has an ongoing knowledge of Student strengths and weaknesses and progress towards goals. Student was making progress in PT goals; therefore, a formal PT evaluation was not required or recommended during Student's triennial evaluation. (Witness 10's testimony, Petitioner's Exhibits 16 through 21)
11. AT is to be considered by the IEP team annually. However, there would not be a need for an updated AT evaluation if a team believed that the AT supports in place are providing



the necessary support for a student. An AT evaluation would not be conducted to determine a student's present levels of performance or if a student needed a new device. If a student has an AAC device, all IEP team members should discuss how the device is being used and whether the use of the device is working. (Witness 14's testimony)

12. Student uses a total communication approach (pointing, gestures, some verbal, speak generating device ("SGD")). Student uses the device during instruction and pull out sessions. Student can greet others, express feelings, pull up animals, and identify food. Considering Student's low functioning, Student does a good job with the SGD. Student has made some improvements with using the SGD and does not need as much prompting. Student's speech-language pathologist does not believe the Student needed an AT reevaluation. (Witness 11's testimony)
13. During Student's attendance at School A, Student has received consistent IEP services and made consistent progress on IEP goals, albeit slow progress. Petitioner is pleased that Student is attending School A. (Petitioner's testimony, Petitioner's Exhibits 16 through 21)
14. Student's IEP for SY 2019-2020, dated February 3, 2020, and amended on February 26, 2019, prescribes 27 hours per week of specialized instruction, 1 hour a week each of SLP, OT, and PT, 60 minutes per week of behavior support consultation services. The IEP also proscribes assistive technology, and transportation services. (Petitioner's Exhibit 15)
15. Student's IEP states the following with regard to AT: "[Student] is a non-verbal communicator who benefits from the use of a total communication approach (e.g., use of a speech-generating device (SGD), picture communication symbols, signs, gestures, etc. [Student] currently utilizes an SGD in the school setting with a speech app (Proloquo2go)." The IEP also states on the Special Education Services page that Student is provided AT for communication in the form of a Voice Output device (Proloquo2go) on iPad. (Petitioner's Exhibit 15)
16. Student's IEP states, among other things, the following regarding Student's present level of performance in the areas of health/physical: "[Student] continues to need [to] support to transfer from one position to another during educational activities. [Student's] decreased independence when walking up and down stairs impacts [Student's] ability to independently access [Student's] educational environment. (Petitioner's Exhibit 15)
17. Student's IEP states the following with regard to transportation services: "Medical Condition(s): seizures, scoliosis. Nursing Assistance Required: If seizure las[ts] longer th[an] 5 minute[s] call 911." "Behavior Intervention Needs. Yes. [Student] requires a one to one aide on the bus to monitor [Student] for the onset of seizures. [Student] has seizures that present as if [Student] is just daydreaming. These blank stares are actually seizures. If the stares last longer than 5 minutes and cannot be broken, then emergency medical assistance is required. [Student] also has a history of banging [Student's] head on the windows of the school bus and getting up out of [Student's] seat while the bus is moving. [Student] requires an additional 5 minutes of wait time for transportation services."

"Specialized Equipment – specialized seatbelt; Other: air-conditioned bus to prevent seizures; Harness." Student's IEP does not state that Student's requires an escort to and from the school bus to assist Student in descending and ascending the stairs at Student's home. (Petitioner's Exhibit 15)

18. Student can walk independently, but seems to be getting more off balance. Someone is usually near to catch Student if Student does fall. Student walks with a limp and stumbles a lot, yet tries to run. Student is stiff in the morning and needs help walking to the bathroom, getting in the shower, toileting, and getting downstairs. When Student leaves home to descend the front stairs, there is always someone in front of Student to help Student focus and to descend the stairs safely. Although Student can descend the stairs using the railings on each side without any physical support, Student needs to be coaxed and reminded to focus on getting down the stairs by the person in front because Student is easily distracted by other stimulation in the environment. It usually takes Student 2 to 5 minutes to get downstairs with assistance. (Petitioner's testimony, Petitioner's Exhibit 91)
19. During SY 2019-2020 until approximately February 2020, the school bus attendant assisted Student down and up the front stairs of Petitioner's home when Student boarded and disembarked the school bus. In February, the bus attendant told Petitioner that her terminal manager told her that she could no longer escort Student down the stairs and that at the beginning of March 2020, she would not escort Student. The bus attendance did not give Petitioner a reason for the change. Petitioner called the OSSE transportation parent call center and made complaints; however, the issue was not resolved to Petitioner's satisfaction. (Petitioner's testimony)
20. As a result of Petitioner's call to OSSE about Student's transportation services, OSSE conducted a safety observation at Student's home on March 3, 2020, to assess how Student descended the front stairs. The observation revealed that Student was resting a portion of Student's weight on the attendant as she was escorting Student down the front steps. As a result, OSSE concluded this was an unsafe condition that put both Student and the bus attendant at risk of injury. OSSE recommended an additional accommodation be added to Student's IEP to assist Student down the steps in the form of a "posey belt" or transport chair. (Witness 3's testimony)
21. On March 5, 2020, the school bus came, but Student did not board the bus because Petitioner could not escort Student to the bus, and the bus attendant did not do so. OSSE continued to send transportation for Student each day. For the school days that followed, until school was closed for the COVID emergency in mid-March 2020, Petitioner informed the bus staff when they arrived that Student would not be attending school because there was no one to assist Student down the stairs. Student was provided no home instruction during that period. (Petitioner's testimony)
22. Although Student's IEP states that Student is to have a dedicated aide and a nurse on the bus, the justification for each of these individuals is the same - to guard for seizures and prevent Student from banging Student's head. As a result of the duplication of duties, OSSE determined that Student only required the nurse on the bus to fulfill these functions.

During SY 2019-2020, until Student stopped taking the bus on March 5, 2020, there is no documentation that there was not a nurse traveling with Student on the school bus. (Witness 3's testimony)

23. On June 9, 2020, DCPS issued an authorization to Petitioner for public funding of the following independent evaluations: comprehensive psychological, OT, PT, and AT. On June 9, 2020, DCPS also issued an authorization funding independent tutoring (120 hours), PT (10 hours), and OT (10 hours) services. (Respondent's Exhibits 25, 26)

## CONCLUSIONS OF LAW:

The overall purpose of the IDEA is to ensure that “all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A). *See Boose v. Dist. of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (the IDEA “aims to ensure that every child has a meaningful opportunity to benefit from public education

Pursuant to IDEA §1415 (f)(3)(E)(i), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education (“FAPE”).

Pursuant to IDEA §1415 (f)(3)(E)(ii), in matters alleging a procedural violation, a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child’s right to FAPE, significantly impeded the parent’s opportunity to participate in the decision-making process regarding provision of FAPE, or caused the child a deprivation of educational benefits. An IDEA claim is viable only if [DCPS] procedural violations affected the student’s substantive rights.” *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

34 C.F.R. § 300.17 provides:

A free appropriate public education or FAPE means special education and related services that--  
(a) Are provided at public expense, under public supervision and direction, and without charge;  
(b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324.

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case, Petitioner held the burden of production on all issues to be adjudicated. Respondent DCPS held the burden of persuasion on issue # 2 after Petitioner established a prima facie case on that issue. <sup>5</sup> Petitioner held the burden

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<sup>5</sup> DC Code § 38-2571.03 (6) provides:

(A) In special education due process hearings occurring pursuant to IDEA (20 U.S.C. § 1415(f) and 20 U.S.C. § 1439(a)(1)), the party who filed for the due process hearing shall bear the burden of production and the burden of persuasion; except, that:

(i) Where there is a dispute about the appropriateness of the child’s individual educational program or

of persuasion on the other issues as to DCPS and on the issue as to OSSE. The burden of persuasion shall be met by a preponderance of the evidence. See, e.g., *N.G. V. District of Columbia* 556 F. Sup. 2d (D.D.C. 2008) see also 20 U.S.C. §1451 (i)(2)(C)(iii).

## **Claims Against DCPS**

**ISSUE 1:** Whether DCPS denied Student a FAPE by failing to conduct a comprehensive reevaluation in 2019 by not conducting: (a) a full and comprehensive psychological evaluation, and/or (b) by not conducting the following evaluations: an adaptive, OT, PT, and AT.

**Conclusion:** Petitioner sustained the burden of persuasion by a preponderance of the evidence on this issue as to only the comprehensive psychological, which the Hearing Officer presumes would have included an adaptive assessment based on that assessment having been included in Student's 2013 psychological evaluation.

34 C.F.R. § 300.303 provides:

(a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with Sec. 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.

34 C.F.R. § 300.303(a) makes it clear that "A local education agency ("LEA") *shall ensure* that a reevaluation of each child with a disability is conducted...if the child's parents or teacher requests a reevaluation." and that the reevaluation must be conducted at least once every three years.

Students are also entitled to a reevaluation of their disability upon a parental request, provided that no reevaluation occurs "more frequently than once a year," though a requested reevaluation must occur "at least once every 3 years." 34 C.F.R. § 300.303(a)(2); see *Cartwright v. Dist. of*

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placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided, that the party requesting the due process hearing shall retain the burden of production and shall establish a prima facie case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence.

(ii) Where a party seeks tuition reimbursement for unilateral placement, the party seeking reimbursement shall bear the burden of production and the burden of persuasion on the appropriateness of the unilateral placement; provided, that the hearing officer shall have the authority to bifurcate a hearing regarding a unilateral placement; provided further, that if the hearing officer determines that the program offered by the public agency is appropriate, it is not necessary to inquire into the appropriateness of the unilateral placement.

(B) This paragraph shall apply to special education due process hearings resulting from complaints filed after July 1, 2016.

*Columbia*, 267 F. Supp. 2d 83, 87 (D.D.C. 2003) ("DCPS' failure to comply with [the parent's] request clearly violates the language of [34 C.F.R. § 300.303].").

Pursuant to 34 C.F.R. § 300.304 (c), a school district must ensure that a student has been appropriately evaluated in all areas of suspected disability. D.C. law requires that "a full and individual evaluation is conducted for each child being considered for special education and related services." D.C. Mun. Regs. Title. 5E, § 3005.1 (2006). "Qualified evaluators [are to] administer tests and other assessment procedures as may be needed to produce the data required" for the MDT to make its determinations. D.C. Mun. Regs. Title. 5E § 3005.5 (2006).

Generally, when a child has been evaluated for special education eligibility, and the appropriateness of the agency's evaluation is at issue, the hearing officer must consider whether the agency adequately gathered functional, developmental and academic information about the child's needs to determine the content of the IEP in all areas of suspected disability and that the evaluation was sufficiently comprehensive to identify all of the child's needs. 20 U.S.C. §§ 1412(a)(6)(B), 1414(b)(1-3); 34 C.F.R. §300.304(b)(1-3), (c)(4, 6).

Pursuant to § 300.305 (a) As part of an initial evaluation (if appropriate) and as part of any reevaluation, 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 (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; (ii) The present levels of academic achievement and related developmental needs of the child; (iii)(A) Whether the child needs special education and related services; or (B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and (iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

The evaluators shall utilize "a variety of assessment tools and strategies [to] gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum ... that may assist in determining whether the child is a child with a disability." D.C. Mun. Regs. Title 5E § 3005.9(b).

All areas "related to the suspected disability" should be assessed, including academic performance, health, vision, hearing, social and emotional status, general intelligence (including cognitive ability and adaptive behavior), communicative status, and motor abilities. D.C. Mun. Regs. Title. 5E § 3005.9(g). The evaluations must be "sufficiently comprehensive to identify all of the child's special education and services needs." D.C. Mun. Regs. Title 5E § 3005.9(h) (2007).

The evidence in this case demonstrates that in 2013 DCPS conducted the following evaluations of Student: AAC, PT, OT, and psychological. The psychological evaluation assessed Student's cognitive abilities, achievement levels, adaptive skills, and disability classification. In 2016 DCPS conducted a psychological reevaluation, and the evaluator attempted to assess Student's cognitive abilities using a standardized assessment. However, the evaluator concluded that Student did not understand the assessment elements sufficiently for it to be a basis for determining Student's IQ. Consequently, no IQ score was obtained. The evaluator, however, was able to evaluate Student in other areas. In 2016 DCPS did not conduct any other evaluation in any related service areas. In 2019 DCPS convened an IEP meeting in which Petitioner participated. The team determined what assessments it needed to determine Student's continued eligibility and special education and related services needs. The DCPS psychologist stated that Student's disability classification and goals were appropriate, and she would conduct a triennial review. The team did not conclude that there was a need for additional evaluations or testing in the areas of OT, PT, AT, and adaptive functioning.

However, on May 17, 2019, DCPS issued a PWN that stated, among other things: "Team feels they need additional information in the area of speech and language and academic and cognitive testing." "Team feels they need updated information to plan accordingly." The PWN also stated that the data that was used to conclude that additional testing was needed was Student's analysis of existing data, progress reports, and attendance. Although the DCPS psychologist stated in the meeting that she would conduct a psychological review, the PWN clearly stated that the team had determined that academic and cognitive testing were required.

DCPS conducted the speech-language evaluation, and the speech-language evaluator stated in her evaluation the reason that the use of standardized assessments with Student was inappropriate and gave alternative methods of assessments. Although the PWN clearly stated that academic and cognitive testing were needed, the DCPS psychologist did not administer or attempt to administer any cognitive, educational, or adaptive assessments. The psychologist reviewed Student's 2016 psychological evaluation, but not the 2013 psychological evaluation. She did not have available to her Student's FBA or BIP. Unlike the speech-language evaluation, the psychological review contained no explanation of why the standardized assessments were not at least attempted with Student.

Based upon this evidence and the explicit requirements for cognitive and academic testing stated in the May 17, 2019, PWN, the Hearing Officer concludes that the psychological review that DCPS conducted in 2019 was not consistent with the PWN, and was at least a procedural violation that significantly impeded Petitioner's opportunity to participate in the decision-making process regarding provision of FAPE. The Hearing Officer also concludes that because Student's previous psychological evaluations also included assessments of Student's adaptive functioning, had a thorough psychological evaluation been conducted in 2019, it would have also included an assessment of Student's adaptive functioning. Consequently, in the order below, the Hearing Officer directs DCPS to convene an IEP meeting to review the independent comprehensive psychological evaluation that DCPS has already authorized and review and revise Student's IEP as appropriate.

Petitioner also asserts that in 2019 at Student's triennial review DCPS should have also conducted evaluations or assessments in the areas of PT, OT, and AT. Petitioner presented expert witnesses who testified that these additional areas should have been formally assessed as a part of the triennial review. However, these witnesses had not spoken with Student's teachers or therapists at School A, had not evaluated Student and had not observed Student in school. On the other hand, DCPS's expert witnesses had worked with Student, were familiar with Student's strengths and weaknesses, and the progress Student had made relative to the provided services. The Hearing Officer found DCPS' witness far more credible than Petitioner's witnesses as a result. They credibly testified why formal assessments in these other areas were not warranted or requested as part of Student's 2019 triennial review. There was insufficient evidence of denial of a FAPE to Student or of a procedural violation that significantly impeded the Petitioner's opportunity to participate in the decision-making process regarding provision of FAPE.

**ISSUE 2:** Whether DCPS failed to provide Student with appropriate IEPs for SY 2019-2020 until the present (the February 3, 2020, IEP and the February 26, 2020, amended IEP), because the IEPs were not based on a comprehensive reevaluation in 2019 that included the following: a full and comprehensive psychological evaluation, and/or the following evaluations: OT, PT, and AT.

**Conclusion:** Respondent sustained the burden of persuasion by a preponderance of the evidence on this issue on all aspects except with regard to the psychological evaluation, which the Hearing Officer dismissed without prejudice. DCPS did not deny Student a FAPE by failing to provide Student an appropriate IEP (the February 3, 2020, and/or the February 26, 2020) that is tailored to meet Student's needs because the IEPs were not based on a comprehensive reevaluation in 2019 that included the following: an adaptive, OT, PT, and AT.

In *Board of Education v. Rowley*, the United States Supreme Court set forth a two-part inquiry for determining whether a school district has satisfied the FAPE requirement. First, the state must have "complied with the procedures set forth in the Act." *Rowley*, 458 U.S. at 206. Second, the IEP that is developed must be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206-07. To be appropriate under 34 C.F.R. § 300.324, the IEP must consider the (i) strengths of the child; (ii) concerns of the parents; (iii) results of the initial or most recent evaluation; and (iv) academic, developmental, and functional needs of the child.

"The IEP is the "centerpiece" of the IDEA's system for delivering education to disabled children," *D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (2010) (quoting *Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 173 (3d Cir. 1988), and the centerpiece for the implementation of FAPE is the IEP. *S.H. v. State-Operated Sch. Dist. of the City of Newark*, 336 F.3d 260, 264 (3d Cir. 2003).

Pursuant to *Schaefer v. Weast*, 554 F.3d 470 (U.S. App. 2009), the Hearing Officer must "focus on the adequacy of the IEP at the time it was created, and ask if it was reasonably calculated at that time to enable the student to receive educational benefits."

The second, substantive, prong of the *Rowley* inquiry is whether the IEP DCPS developed was reasonably calculated to enable Student to make progress appropriate in light of Student's individual circumstances.

In *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.* RE-1, 137 S. Ct. 988 (2017), the U.S. Supreme Court elaborated on the “educational benefits” requirement pronounced in *Rowley*: To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. . . . Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. . . . When a child is fully integrated in the regular classroom, as the Act prefers, what that typically means is providing a level of instruction reasonably calculated to permit advancement through the general curriculum. . . . If that is not a reasonable prospect for a child, his IEP need not aim for grade-level advancement. But his educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives. *Endrew F.*, supra, 137 S. Ct. at 999–1000 (citations omitted).

The key inquiry regarding an IEP’s substantive adequacy is whether, taking account of what the school knew or reasonably should have known of a student’s needs at the time, the IEP offered was reasonably calculated to enable the specific student’s progress....“Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.” *Z.B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018) citing *Endrew F.*, supra, 137 S. Ct. 988.

As discussed in issue #1 above, the Hearing Officer has concluded that the preponderance of the evidence does not support a conclusion that DCPS was required to conduct any of the following evaluations or assessments: OT, PT, and AT. Consequently, the evidence also does not support a finding that Student’s February 2020 IEPs were inappropriate because these evaluations were not conducted. DCPS did not deny Student a FAPE by failing to provide Student an appropriate IEP (the February 3, 2020, and/or the February 26, 2020) that is tailored to meet Student’s needs because the IEPs were not based on a comprehensive reevaluation in 2019 that included the following: OT, PT, and AT.

The Hearing Officer concluded that there was a denial of a FAPE as a result of DCPS not conducting a comprehensive psychological evaluation in 2019 that included assessments of Student’s cognitive, academic, and adaptive functioning. Although Petitioner presented expert witnesses who averred reasons that Student’s February 2020 IEPs were inappropriate, as also noted above, these witnesses had not spoken with Student’s teachers or service providers at School A, had not evaluated Student and had not observed Student in school. Based upon their testimony, the Hearing Officer cannot conclude that Student’s IEP was inappropriate because a comprehensive psychological evaluation was not conducted in 2019 so that the IEP team would have considered that evaluation when Student’s IEP was developed. It is premature to make such a determination prior to the comprehensive psychological evaluation being completed and reviewed by a team. As a result, the Hearing Officer dismisses this particular claim without prejudice until that evaluation is completed.



## Claims Against Respondents DCPS and OSSE

**ISSUE 3.** Whether DCPS and/or OSSE denied Student a FAPE during SY 2019-2020 by failing to appropriately implement Student's transportation services by denying Student care from a nurse for 3 days in November and December 2019, and assistance from a dedicated aide for SY 2019-2020 that is necessary for Student to access transportation, and/or failed to provide Student at-home instruction if transportation was not possible.

**Conclusion:** Petitioner did not sustain the burden of persuasion by a preponderance of the evidence on this issue.

According to 5E DCMR 3002.1(f) the LEA must provide services to address all of a student's identified special education and related services needs. This provision is consistent with the federal regulations, which indicate that a FAPE includes the provision of related services defined as "transportation and such developmental, corrective and other supportive services" as are required to assist a child with a disability to benefit from special education 34 C.F.R. §300.34(a), (b) (16).

According to 5E DCMR 3002.1(f) the LEA must provide services to address all of a student's identified special education and related services needs. This provision is consistent with the federal regulations, which indicate that a FAPE includes the provision of related services defined as "transportation and such developmental, corrective and other supportive services" as are required to assist a child with a disability to benefit from special education 34 C.F.R. §300.34(a), (b) (16).

In the federal regulations, transportation is specifically listed as a related service. In the District of Columbia, the applicable regulations also specifically indicate that transportation is a related service that must be made available by the LEA. 5E DCMR 3001.1. It should be pointed out that a local federal court has held that the LEA in the District of Columbia continues to have legal responsibility to provide transportation to its students. *Wilson v. District of Columbia*, 770 F. Supp. 2d 270 (D.D. C. 2011).

For a failure to implement claim, the IDEA is violated only when a school district deviates materially from a student's IEP. See *James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 139 (D.D.C. 2016); The IDEA is violated when a school district deviates materially from a student's IEP. *Wilson v. District of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011) (citation omitted). A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by that child's IEP. *Holman v. District of Columbia*, No. 14-1836, 2016 WL 355066 (D.D.C. 2016) (citing *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811, 822 (9th Cir. 2007)). In other words, for the court to find a failure to implement an IEP, the school board or local authorities must have "failed to implement substantial or significant provisions of the IEP." *Wilson*, 770 F. Supp. 2d at 274 (citing *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000)). There is no requirement that the child suffer educational harm in order to find a violation; rather, the proportion of services mandated compared with those provided is "the crucial measure for purposes of determining whether there has been a material failure to implement" an IEP.

The evidence clearly demonstrates that the provision of transportation services is a related services prescribed by Student's IEP. The failure to provide consistent and timely transportation services is an alleged failure to implement the IEP.

Student's IEP states the following with regard to transportation services: "Medical Condition(s): seizures, scoliosis. Nursing Assistance Required: If seizure las[ts] longer th[an] 5 minute[s] call 911." "Behavior Intervention Needs. Yes. [Student] requires a one to one aide on the bus to monitor [Student] for the onset of seizures. [Student] has seizures that presents as if [Student]present day dreaming. These blank stares are seizures. If the stares last longer than 5 minutes and cannot be broken, then emergency medical assistance is required. [Student] also has a history of banging [Student's] head on the windows of the school bus and getting up out of [Student's] seat while the bus is moving. [Student] requires an additional 5 minutes of wait time for transportation services." "Specialized Equipment – specialized seatbelt; Other: air-conditioned bus to prevent seizures; Harness."

Student's IEP does not state that Student's requires an escort to and from the school bus to assist Student in descending and ascending the stairs at Student's home.

The evidence demonstrates that during SY 2019-2020 until approximately February 2020, Student's school bus attendant assisted Student down and up the front stairs of Petitioner's home. Petitioner was informed that the attendant would no longer assist Student in this way. Petitioner called the OSSE transportation parent call center and made complaints. There was no solution obtained prior to School A closing due to COVID-19. Although OSSE continued to send the school bus to Petitioner's home Petitioner did not send Student to school because she was not physically capable of assisting Student down the stairs and there as no one else to do so. As a result, Student missed school and did not have any home instruction during those missed days.

Because Student's IEP did not expressly state that Student requires an escort to and from the school bus to assist Student in descending and ascending the stairs at Student's home, the Hearing Officer concludes that evidence does not support a finding that Student's IEP was not implemented. OSSE continued to send the school bus to pick Student up for school, and the services prescribed by Student's IEP were available to Student although Petitioner did not send Student to school after March 5, 2020.

Although Petitioner complained to OSSE and presumably DCPS, and OSSE conducted an observation that resulted in recommendations for additional accommodations, there was no amendment of Student's IEP to include that recommended accommodations and no request for a meeting to amend Student's IEP to include a provision to address Petitioner's concern. No doubt had COVID-19 not interrupted in-person school, such a meeting would have occurred. Based upon the evidence presented, the Hearing Officer does not conclude that there was a violation by DCPS or OSSE that resulted in a denial of a FAPE to Student. However, in the order below, the Hearing Officer directs DCPS to convene an IEP meeting to consider amending Student's IEP to address Petitioner's concern about Student descending and ascending stairs to and from the school bus.

In addition, the evidence supports a finding and conclusion that Student was provided the

necessary services of a nurse on the school bus when Student rode the bus to watch for seizures and to prevent Student from injuring Student's head. The Hearing Officer concludes that it was reasonable to have concluded that because the same justification and functions were outlined in the IEP for the nurse on the bus and the dedicated aide, that a single person, in this case, the nurse, could support that function. The Hearing Officer does not conclude there was a failure to implement Student's IEP because there was not both a dedicated aide and a nurse at all times on the bus with Student. Petitioner failed to put on any evidence to substantiate the claim that OSSE failed to provide a nurse on the bus three (3) days in the months of November 2019 and December 2019.

### **Remedy:**

A hearing officer may award appropriate equitable relief when there has been an actionable violation of IDEA. *See* 20 U.S.C. § 1415(f)(3)(E)(ii)(II); *Eley v. District of Columbia*, 2012 WL 3656471, 11 (D.D.C. Aug. 24, 2012) (citing *Branham v. District of Columbia*, 427 F.3d at 11–12.) The Hearing Officer has concluded that Student was denied a FAPE by DCPS and has directed that DCPS, in the order below, remedy that denial.

Under the theory of compensatory education, "courts and hearing officers may award educational services to be provided prospectively to compensate for a past deficient program. The inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid*, 401 F.3d 522 & 524. To aid the court or hearing officer's fact-specific inquiry, "the parties must have some opportunity to present evidence regarding [the student's] specific educational deficits resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits." *Id.* at 526.

### **ORDER:** <sup>6</sup>

1. DCPS shall, within ten (10) business days of the date of this order, convene an IEP meeting to review Student's transportation services to determine if additional accommodations are needed, including an escort to assist Student in descending and ascending stairs at Student's home in getting on and off the school bus.
2. DCPS shall, within thirty (30) calendar days of its receipt of the final of the IEEs that DCPS has authorized Petitioner to obtain, convene an IEP meeting to review the evaluations and to update Student's IEP as appropriate.

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<sup>6</sup> Any delay in Respondent meeting the timelines of this Order that is the result of action or inaction by Petitioner shall extend the timelines on a day for day basis.

3. Petitioner shall have the right to pursue, in due process hearing if need be, a compensatory education award based the denials of FAPE determined in this HOD for failure to comprehensively evaluate Student by conducting an appropriate comprehensive psychological evaluation in 2019.
4. Petitioner's claim of the inappropriateness of Student's February 2019 IEP because a comprehensive psychological evaluation was not conducted in 2019 as a part of Student's triennial review is hereby dismissed without prejudice.
5. All other relief requested by Petitioner is denied.

#### **APPEAL PROCESS:**

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have ninety (90) days from the date of the decision of the Hearing Officer to file a civil action with respect to the issues presented at the due process hearing in a District Court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2).

*/S/ Coles B. Ruff*

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**Coles B. Ruff, Esq.**

**Hearing Officer**

**Date: August 27, 2020**

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