

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

Office of Dispute Resolution  
1050 First Street, NE, Washington, DC 20002  
(202) 698-3819 www.osse.dc.gov

OSSE  
Office of Dispute Resolution  
August 16, 2025

<hr/> <b>Parent, on behalf of Student,<sup>1</sup></b>	)	
<b>Petitioner,</b>	)	
	)	<b>Hearings: 7/25/25; 8/8/25</b>
<b>v.</b>	)	<b>Date: August 16, 2025</b>
	)	<b>Hearing Officer: Michael Lazan</b>
	)	<b>Case No.: 2025-0089</b>
<b>District of Columbia Public Schools,</b>	)	
<b>Respondent.</b>	)	
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**HEARING OFFICER DETERMINATION**

**I. Introduction**

This case involves an X-year-old student who is currently eligible for services. On May 27, 2025, a Due Process Complaint (“Complaint”) was received by District of Columbia Public Schools (“DCPS” or “Respondent”) pursuant to the Individuals with Disabilities Education Act (“IDEA”). The Complaint was filed by the Student’s parent (“Petitioner”). On July 1, 2025, Respondent filed a response. The resolution period expired on June 26, 2025.

**II. Subject Matter Jurisdiction**

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

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

### **III. Procedural History**

On July 2, 2025, this Hearing Officer held a prehearing conference. Attorney A, Esq., counsel for Petitioner, appeared. Attorney B, Esq., counsel for Respondent, appeared. A prehearing conference order was issued on July 9, 2025, summarizing the rules to be applied in the hearing and identifying the issues in the case. The Hearing Officer Determination was due on August 16, 2025.

There were two hearing dates: July 25, 2025, and August 8, 2025. This was a closed proceeding. Petitioner was represented by Attorney A, Esq. Respondent was represented by Attorney B, Esq. Petitioner moved into evidence Exhibits P-1 through P-43, without objection. Exhibits P-1 through P-43 were admitted. Respondent moved into evidence Exhibits R-1 through R-12 and R-14, without objection. Exhibits R-1 through P-12 and R-14 were admitted.

After the hearing on August 8, 2025, the parties presented oral closing statements, on the record.

Petitioner presented as witnesses: Witness A, an educational advocate (expert in special education); and Petitioner. Respondent presented as a witness: Witness B, a local education agency (“LEA”) representative and teacher at School B (expert in specialized instruction and Individualized Education Program (“IEP”) programming and implementation).

### **IV. Issues**

As identified in the Prehearing Conference Summary and Order and in the Complaint, the Free and Appropriate Public Education (“FAPE”) issues to be determined in this case are as follows:

**1. Did DCPS fail to provide the Student with an appropriate IEP and/or placement and/or location of services during the 2024-2025 school year? If so, did DCPS deny the Student a FAPE?**

Petitioner contended that the Student's IEPs: (1) did not provide the Student with sufficient specialized instruction; (2) did not contain sufficient behavior support services; and (3) did not provide the Student with extended school year ("ESY") services.

The ESY claim was withdrawn on the first hearing date.

**2. Did DCPS fail to implement the Student's IEPs during the 2024-2025 school year? If so, did DCPS deny the Student a FAPE?**

Petitioner contended that specialized instruction services were not provided appropriately for the Student.

As relief, Petitioner is seeking an order directing DCPS to amend the Student's IEP to provide for placement in the Specific Learning Support ("SLS") program for all core academic courses, 240 minutes of behavior support services per month, compensatory education, and related relief.

**V. Findings of Fact**

1. The Student is an X-year-old who is eligible for services as a student with Specific Learning Disability. The Student is a follower and s/he can be easily influenced by peers. The Student functions at approximately the second-grade level academically. Testimony of Witness A.

2. During the 2021-2022 school year, the Student attended School A. In or about this time, Petitioner was concerned about the Student's speech issues. Testimony of Witness A. The Student was evaluated by a comprehensive psychological evaluation through a report dated December 30, 2021. The evaluator used the Woodcock-Johnson IV Tests of Cognitive Abilities ("WJ-IV-C"); the Woodcock Johnson IV Tests of

Achievement, Form B (“WJ-IV-A”); the Behavior Assessment System for Children, Third Edition (“BASC-3”); Self-Report Scales (“SRP-C”); Parent Rating Scales (“PRS-C”); Teacher Rating Scales (“TRS-A”); and the Attention-Deficit/Hyperactivity Disorder Test (“ADHDT-2”). The evaluator also conducted teacher interviews. On the WJ-IV-C, the Student scored 83, in the low-average range. On the WJ-IV-A, the Student scored in the average range in reading and writing and in the low-average range in math. However, the evaluator concluded that the Student did not perform well on standardized tests administered by the school. The Student’s most recent i-Ready test scores indicated that s/he was functioning at the first-grade level in every area. The Student’s special education teacher indicated no concerns on the BASC-3 regarding behavior, but another teacher indicated “at risk” problems with conduct, attention, learning, problems, adaptability, social skills, leadership, and functional communication. That teacher indicated that the Student had clinically significant problems with study skills and somatization (complaining of bodily problems when nothing physically seems to be wrong). On the ADHD-T, all the rating scales completed did not suggest the presence of ADHD. P-5.

3. An IEP meeting was held for the Student on February 12, 2022. The team discussed the Student’s emerging behaviors involving work refusal and problems engaging in the classroom and concluded that the behaviors were a function of academic frustration. The IEP recommended that the Student receive six hours of specialized instruction per week outside general education (three hours in math, 1.5 hours in reading, and 1.5 hours in written expression), with 120 minutes per month of behavior support services. P-7.

4. The Student continued at School A during the 2022-2023 school year.

The Student's behaviors improved, and s/he made progress academically. During this approximate period, the Student also received outside tutoring. Testimony of Witness A.

5. The Student continued at School A for the 2023-2024 school year.

Another IEP meeting was held on October 19, 2023, and a triennial evaluation of the Student was conducted in or about October 2023. No additional testing was conducted. P-26. The IEP team decided to offer the Student five hours of specialized instruction per week outside general education (three hours in math, one hour in reading, and one hour in written expression), with no behavior support services. P-8.

6. Another IEP meeting was held for the Student on February 8, 2024.

Petitioner expressed concern that the Student would be transitioning to another school and that s/he was functioning well below grade level across all academic subjects. But the school reported that the Student had made significant gains between beginning-of-year testing and middle-of-year testing. The IEP reported that the Student increased his/her i-Ready score in math and reading so that s/he was on another grade level. The IEP also stated that, per teacher reports and observations, the Student was demonstrating inconsistent behavior in the classroom. The IEP team decided to offer the Student four hours of specialized instruction per week outside general education (three hours in math and one hour in reading), three hours of specialized instruction per week inside general education (one hour in written expression and two hours in reading), and 120 minutes of behavior support services per month outside general education (in a group). P-9.

7. The Student changed schools and attended School B at the start of the 2024-2025 school year. School B could not implement the Student's hours of specialized

instruction outside general education, as it does not offer such hours. The Student immediately had issues with material that s/he had learned during the prior school year. Teachers called Petitioner at home because of the Student's poor performance. The Student expressed that s/he did not get enough support in the classroom and did not understand some of the work. The Student especially displayed disruptive behavior after the winter break. Testimony of Witness A; Testimony of Petitioner.

8. The Student's IEP progress report from November 15, 2024, indicated that s/he was making progress on two of three math goals, all three reading goals, and the lone writing goal. However, one math goal was not introduced and the two emotional, social, and behavioral development goals were "just introduced." R-7.

9. The Student's IEP progress report for the second reporting period of the 2024-2025 school year indicated that s/he was not making progress on two of three math goals, though s/he was considered to be progressing on one math goal. The Student was also deemed to be progressing on the one written expression goal, the two emotional, social, and behavioral development goals, and one reading goal, but making no progress on the other reading goal. R-8.

10. An IEP meeting was held for the Student on February 3, 2025. Petitioner sought an increase in service hours, ESY services, a Functional Behavior Assessment ("FBA"), a Behavior Intervention Plan ("BIP"), and transportation. Petitioner noted that the Student's reading and math levels had dropped one grade level. A history teacher indicated that the Student was having issues with writing and reading comprehension, and a math teacher said that the Student could not do the work and would "stare into space" during class. The team discussed the Student's behavior problems. Teachers

reported that the Student was talking out of turn, swearing, arguing, and getting asked to leave the classroom. Teachers also indicated that the Student had been excessively absent. Transportation was added to the IEP. School B felt that the Student could do the work but simply was not attending enough. DCPS decided not to conduct an FBA, write a BIP, or provide ESY services. DCPS also changed the Student's specialized instruction to eight hours per week, all delivered inside general education, because the school did not offer specialized instruction outside general education and could not implement the Student's prior IEP. The IEP team also recommended a decrease in behavior support services to ninety minutes per month, without specifically discussing this issue at the meeting. Testimony of Witness A; Testimony of Witness B; P-10.

11. On February 19, 2025, Petitioner, through Witness A, sent a letter of dissent, asking for an increase in specialized instruction to ten hours per week inside general education and ten hours per week outside general education. Petitioner also objected to the reduction of behavior support services and reiterated the request for ESY services. P-35.

12. On February 27, 2025, another IEP meeting was held between the parties. During this meeting, because of an uptick in the Student's behaviors, DCPS decided to conduct an FBA, and the IEP team said that they would adjust the behavior support services back to 120 minutes per month. The DCPS members of the team also decided to consider the request for ESY. The new IEP was sent to Petitioner on March 27, 2025. Testimony of Witness A; Testimony of Witness B; P-11; P-12; R-6.

13. An FBA was written for the Student on April 13, 2025. This FBA indicated that the Student presented with oppositional or defiant behavior ten times daily.

It said the Student had begun to exhibit a wide array of behaviors that were disruptive to the learning environment. The FBA said that the Student frequently arrived late to class, was easily distracted, and was physically aggressive toward peers and verbally aggressive and oppositional toward faculty and staff. It indicated that when the Student was verbally redirected/reprimanded in the presence of peers, his/her behaviors often escalated. R-10.

14. A BIP was written for the Student on April 20, 2025. The BIP recommended interventions to address the Student's behavior issues, including a daily check-in/check-out system, preferred seating near positive role models, timed breaks with clear expectations, modified assignments, positive peer engagement, verbal praise, and rewards. R-11.

15. Another meeting was held between the parties on April 23, 2025, to discuss the Student's FBA and BIP. The team felt the Student's severe behaviors had decreased over the preceding month, but they also said the Student exhibited attention-seeking behaviors, like tampering with classroom equipment and noncompliance. School staff suggested the self-contained Behavior & Education Support ("BES") program for the Student. The SLS program was also discussed. P-20; Testimony of Witness A; Testimony of Witness B. After the meeting, Witness A said that she did not believe the BES program was appropriate for the Student because s/he mimics negative behaviors. P-39. Between February 3, 2025, and June 12, 2025, the Student engaged in twelve behavioral incidents that led to discipline. P-39.

## **VI. Conclusions of Law**

Based on the preceding Findings of Fact, the arguments of counsel, and this Hearing Officer's legal research, the Conclusions of Law in this case are as follows:



The burden of proof in District of Columbia special education cases was changed by the local legislature through the District of Columbia Special Education Student Rights Act of 2014. That burden is expressed in statute as the following:

Where there is a dispute about the appropriateness of the child's individual educational program or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided, that the party requesting the due process hearing shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence.

See D.C. Code § 38-2571.03(6)(A)(i).

Issue #1 does not directly involve the formulation of the Student's existing IEP or program. Schaffer v. Weast, 546 U.S. 49 (2005). The burden of proof therefore lies with Petitioner. For Issues #2, the burden of persuasion is on Respondent if Petitioner presents a *prima facie* case.

**1. Did DCPS fail to provide the Student with an appropriate IEP and/or placement and/or location of service during the 2024-2025 school year? If so, did DCPS deny the Student a FAPE?**

Petitioner contended that the Student's IEPs: (1) did not provide sufficient specialized instruction and (2) did not contain sufficient behavior support services.

In Endrew F. v. Douglas County School District, 580 U.S. 386 (2017), the Court held that an IEP must be reasonably calculated "in light of the child's circumstances." Id. At 399. The Court also held that parents can fairly expect school authorities to offer a "cogent and responsive explanation" for their decisions, and that its ruling "should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of school authorities, to whose expertise and professional

judgment deference should be paid.” Id. at 404. However, the “educational program must be appropriately ambitious in light of...circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.” Id. at 402. The District of Columbia Circuit Court of Appeals has accordingly found that Endrew F. raised the bar on what counts as adequate education under the IDEA. Z.B. v. District of Columbia., 888 F.3d 515, 517 (D.C. Cir. 2018).

The school district’s approach in this case got it backwards. Here, the school district based the Student’s IEP on the availability of classes at the Student’s school. In fact, a school district should first develop an IEP for a student with a disability and then decide on that child’s placement setting and location. The placement team should consider a continuum of placement options where the IEP could be implemented. What is relevant in making a placement determination differs greatly, depending on the individual needs of the particular student. Letter to Anonymous, 21 IDELR 674 (OSEP 1994). In other words, when a school district develops an IEP for the express purpose of shoehorning a student into a program at a school, simply because that is the only program that exists at that school, the IEP is not reasonably calculated, and the school district cannot offer a cogent and responsive explanation for its actions.

Still, courts in this circuit have held that this kind of “shoehorning” scenario is a procedural violation, unless the record shows that the student’s performance was substantively impacted. Shipley v. District of Columbia, No. CV 18-2550 (CRC/RMM), 2020 WL 13669941, at \*14 (D.D.C. Mar. 6, 2020), report and recommendation adopted in part, No. 18CV2550CRCRMM, 2020 WL 13669870 (D.D.C. Mar. 24, 2020). In this

case, Petitioner has presented convincing evidence of a substantive performance impact on the Student: declining test scores, as reported in the February 2025 IEP; lack of progress on many of the goals in the February 2024 IEP; and increased behavior issues stemming, at least in part, from the lack of one-on-one interaction that the Student has received over the course of the 2024-2025 school year.

Moreover, this Hearing Officer agrees with Petitioner that, in light of the Student's escalating behaviors, it was unreasonable and inappropriate for the IEP team to reduce his/her behavior support services in the February 2025 IEP, especially since the issue was not even discussed at the IEP meeting. DCPS later reversed this decision.

DCPS denied the Student a FAPE through its February 2025 IEP.

**2. Did DCPS fail to implement the Student's IEPs during the 2024-2025 school year? If so, did DCPS deny the Student a FAPE?**

Petitioner contended that specialized instruction services were not provided appropriately for the Student.

"Failure to implement" claims are actionable if a school district cannot materially implement an IEP. A party alleging such a claim must show more than a *de minimis* failure, and must show that material, or "substantial or significant," portions of the IEP could not be implemented. Savoy v. District of Columbia, 844 F. Supp. 2d 23 (D.D.C. 2012) (holding no failure to implement where school setting provided ten minutes less of specialized instruction per day that was in the IEP); see also Van Duyn ex rel. Van Duyn v. Baker School Dist. 5J, 502 F.3d 811 (9th Cir. 2007). Courts applying the materiality standard have focused on the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was withheld. Garmany v. Dist. of Columbia, 935 F. Supp. 2d 177, 181 (D.D.C. 2013).

Respondent argued that it provided the right amount of service hours, only that the hours were provided in a different setting. But the difference in setting from a special education classroom to a general education classroom is material. This case is similar to Wade v. District of Columbia, 322 F. Supp. 3d 123, 131 (D.D.C. 2018), where a student required 27.5 hours of specialized instruction per week outside general education, in a small-class setting where he could get one-on-one teacher attention. Instead, that student received twenty hours of specialized instruction per week and participated in electives in general education. The hearing officer in that case deemed the violation to be *de minimis* and denied the claim, but the court reversed the hearing officer. The court found that, “DCPS essentially admits, by considering 20 hours of specialized education to be ‘full-time’, that the school system may regularly fail to fulfill the special needs of its children despite the hard work of IEP teams to identify those needs. If [the school] cannot provide more than 20 hours of special education outside a general education setting, a fact that seems demonstrated on this record but as to which the Court makes no specific finding, DCPS cannot place students at [the school] who have such needs.” Id.

Other courts in this jurisdiction have ruled similarly to the Wade court, deeming IEP deviations to be material when an approximately 20% shortfall in service delivery occurs. In Middleton v. District of Columbia, 312 F. Supp. 3d 113, 145 (D.D.C. 2018), the parent argued that either 40% or 20% of the student’s instruction was not performed in conformity with the student’s IEP. The court ruled that such a deviation was not *de minimis* and determined that the student was denied a FAPE because of the 20% shortfall.

In this case, DCPS’s School B clearly did not provide the Student with any of the four hours per week of specialized instruction outside general education that his/her

February 2024 IEP required. This failure denied the Student a FAPE from the start of the 2024-2025 school year through the date of the February 2025 IEP.

### **RELIEF**

When school districts deny students a FAPE, courts have wide discretion to ensure that students receive a FAPE going forward. As the Supreme Court stated, the statute directs the Court to “grant such relief as [it] determines is appropriate.” School Committee of the Town of Burlington v. Dep’t of Education, Massachusetts, 471 U.S. 359, 371 (1985). The ordinary meaning of these words confers broad discretion on a hearing officer, since the type of relief is not further specified, except that it must be “appropriate.” 20 U.S.C. Sect. 1415(i)(2)(C)(iii).

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.” Reid v. District of Columbia, 401 F.3d 516, 521-23 (D.C. Cir. 2005). In every case, however, the inquiry must be fact-specific and, to accomplish the 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. Id., 401 F.3d at 524; see also Friendship Edison Public Charter School v. Nesbitt, 532 F. Supp. 2d 121, 125 (D.D.C. 2008) (compensatory award must be based on a “‘qualitative, fact-intensive’ inquiry used to craft an award tailored to the unique needs of the disabled student”). A petitioner need not “have a perfect case” to be entitled to a compensatory education award. Stanton v. District of Columbia, 680 F. Supp. 201 (D.D.C. 2011). Some students may require only short,

intensive compensatory programs targeted at specific problems or deficiencies. Reid, 401 F.3d at 524.

During closing argument, Petitioner sought 180 hours of academic tutoring as compensatory education, together with eighteen hours of counseling. Petitioner also sought placement of the Student in an SLS classroom. Because the Student was denied a FAPE for a full year, this Hearing Officer finds that Petitioner's request for compensatory relief, based on a credible expert witness's well-formulated written plan, is reasonable. This Hearing Officer is also convinced by the testimony of Witness A that the Student's academic and behavioral deficits warrant placement in a DCPS SLS program for the 2025-2026 school year, and such a program shall be ordered. However, the record does not clearly support requiring the Student to receive 240 minutes of behavior support services per month for the 2025-2026 school year, so this request will be denied.

## **VII. Order**

As a result of the foregoing, this Hearing Officer hereby orders the following:

1. Respondent shall pay for 180 hours of tutoring services for the Student, to be provided by a certified special education teacher at a rate that is usual and customary in the community;
2. Respondent shall pay for eighteen hours of counseling for the Student, to be provided by a qualified professional with at least five years of experience at a rate that is usual and customary in the community;
3. Respondent shall place the Student in an SLS program for the 2025-2026 school year and revise the Student's IEP accordingly;
4. Petitioner's other requests for relief are denied.

Hearing Officer Determination  
Michael Lazan, Hearing Officer  
Case # 2025-0089

Dated: August 16, 2025

Michael Lazan  
Impartial Hearing Officer

cc: Office of Dispute Resolution  
Petitioner's Representative: Attorney A, Esq.  
Respondent's Representative: Attorney B, Esq.

### **Notice of Appeal Rights**

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 USC §1415(i).

Date: August 16, 2025

Michael Lazan  
Impartial Hearing Officer