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**Confidential**

<p>Guardian on Behalf of Student, <sup>1</sup></p>  <p>Petitioner,</p>  <p>v.</p>  <p>District of Columbia Public Schools (Local Education Agency “LEA”)</p> <p>Respondent.</p>  <p>Case # 2025-0093</p> <p>Date Issued: August 17, 2025</p>	<p><b>HEARING OFFICER’S DETERMINATION</b></p> <p>Hearing Dates: August 7, 2025 August 12, 2025</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> Personally identifiable information is in the attached Appendices A & B.

## **JURISDICTION:**

The hearing was conducted, and the 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 5-A30.

## **BACKGROUND AND PROCEDURAL HISTORY:**

The student who is the subject of this due process hearing ("the Student") resides in the District of Columbia with the Student's parent. The District of Columbia Public Schools ("DCPS") serves as the Student's local education agency ("LEA"). The Student was determined eligible for special education pursuant to IDEA, classified with a speech-language impairment (“SLI”) on January 8, 2021, and DCPS last developed an individualized educational program (“IEP”) for the Student on March 24, 2023. The Student began attending a DCPS middle school (“School A”) in school year (“SY”) 2023-2024. DCPS conducted a speech-language reevaluation of the Student on February 12, 2024, and on February 26, 2024, determined the Student was no longer eligible for special education services and exited the Student from special education.

On June 3, 2025, the Student's parent ("Petitioner") filed a due process complaint ("DPC") claiming that DCPS ("Respondent") denied the Student a free appropriate public education ("FAPE") by inappropriately exiting the Student from special education, failing to timely and comprehensively evaluate the Student, and failing to develop an appropriate IEP.

Petitioner requests the following relief: that DCPS promptly conduct, fund, and review a comprehensive psychological evaluation, including cognitive, adaptive, social-emotional, behavioral, and academic assessments; a functional behavior assessment (“FBA”); and an occupational therapy (“OT”) evaluation, convene an IEP meeting to reinstate the Student’s special education services, review and revise the IEP as appropriate based on the updated data, provide suitable behavior support services and/or develop an effective behavioral intervention plan (“BIP”) for the Student, fund compensatory education, and reserve compensatory education for completion of the evaluations.

### **DCPS’s Response to the Complaint:**

DCPS filed a response to the complaint on June 13, 2025. In its response, DCPS stated, inter alia, the following:

The complaint does not provide any reason why the statute of limitations should be tolled. Therefore, claims made before the two-year period are barred. There is no information explaining why Petitioner waited more than two years to allege IEP failures and denials of FAPE. DCPS did not receive any information in January 2024 or earlier, indicating that the evaluations conducted were not comprehensive, as alleged by the Petitioner.

The Student was making progress in all expected areas by mid-year SY 2021-2022, and was receiving education in a virtual platform due to the COVID-19 school closures nationwide.

The IEP team met at the start of the SY 2023-2024 and agreed there was no need to conduct an FBA or develop a BIP. The Student was provided with authorization for six hours of speech-language services to compensate for learning loss incurred during distance learning, as determined at a meeting in April 2023. By mid-year, in January 2024, the second reporting period indicated that the Student continued to progress in speech-language services and was evaluated to determine any continued need for services.

The Student's IEP in March 2023 identified the Student as SLI, with no identified behaviors or cognitive concerns, either on this IEP or during the relevant time period. There is no information in the Student's records indicating any need to evaluate in the areas sought in the DPC. The IEP placement included speech-language services in both the general education setting and outside of it, with 60 minutes allocated per month in each setting.

In the January 2024 speech-language evaluation, the Student was reported to demonstrate age-appropriate communication skills in the classroom and to score at or above grade level. The Student was also reported to participate in group projects, answer questions, and ask for help, while continuing to benefit from general education instruction, with only differentiated instruction needed within the general education setting. The Student did not present with any need for special education support.

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

Petitioners and DCPS participated in a resolution meeting on June 12, 2025. The parties did not mutually agree to shorten the 30-day resolution period. The DPC was filed on June 3, 2025. The 45-day period began on July 4, 2025, and ends, and the Hearing Officer's Determination ("HOD") is due on August 17, 2025.

The undersigned impartial hearing officer ("IHO") conducted a pre-hearing conference on July 1, 2025, and issued a pre-hearing order ("PHO") on July 14, 2025, stating, inter alia, the issues to be adjudicated.

#### **ISSUES:**<sup>2</sup>

The issues adjudicated are:

1. Did DCPS deny the Student a FAPE by inappropriately exiting the Student from special education services on or about February 26, 2024?
2. Did DCPS deny the Student a FAPE by failing to timely and comprehensively conduct a comprehensive psychological evaluation, an OT evaluation, and an FBA from January 18, 2024, to the present?
3. Did DCPS deny the Student a FAPE by failing to provide an appropriate IEP (March 24, 2023, to present) because the IEP (1) was not based on updated evaluative data (2) did not

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<sup>2</sup> At the outset of the due process hearing, the IHO reviewed the issues to be adjudicated the parties agreed to the issue as stated herein.

provide appropriate services in all areas of need and (3) did not provide appropriate behavior support interventions or a BIP during the remainder of SY 2022-2023 and part of SY 2023-2024?

**DUE PROCESS HEARING:**

The Due Process Hearing was convened on August 7, 2025, and August 12, 2025, via video teleconference on the Microsoft Teams platform.

**RELEVANT EVIDENCE CONSIDERED:**

The IHO considered the testimony of the witnesses, and the documents submitted in each party’s disclosures (Petitioner’s Exhibits 1 through 56 and Respondent’s Exhibits 1 through 35 ) that were admitted into the record and are listed in Appendix 2.<sup>3</sup> The witnesses testifying on behalf of each party are listed in Appendix B.<sup>4</sup>

**SUMMARY OF DECISION:**

The IHO concluded that Petitioner did not sustain the burden of persuasion by a preponderance of the evidence of a denial of a FAPE on issues #1 and #2, but presented sufficient evidence of a procedural violation on issue #2. DCPS sustained the burden of persuasion on issue #3. The IHO directed that DCPS grant Petitioner authorization to obtain an independent educational evaluation (“IEE”), complete pending evaluations, and conduct an eligibility meeting.

**FINDINGS OF FACT:**<sup>5</sup>

1. The Student resides with Petitioner, the Student’s parent, in the District of Columbia. DCPS is the Student's LEA. The Student currently attends School A, where he/she began attending at the start of SY 2023-2024. (Mother’s testimony)
2. Prior to attending School A, the Student attended another DCPS school (“School B”). While attending School B, the Student was last determined to be eligible for special

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<sup>3</sup> Any item disclosed and not admitted or admitted for limited purposes was noted on the record and is noted in Appendix A.

<sup>4</sup> The Petitioner presented four witnesses: (1) an independent speech-language pathologist who testified as an expert witness, (2) an educational advocate who testified as an expert witness, (3) the Student's mother (Petitioner), and the Student. Respondent presented two witnesses, both who testified as expert witnesses: (1) a DCPS occupational therapist who evaluated the Student, and (2) School B’s LEA representative and special education coordinator. The IHO found the witnesses credible unless otherwise noted in the conclusions of law. Any material inconsistencies in the witnesses' testimony that the IHO identified are addressed in the conclusions of law.

<sup>5</sup> The evidence (documentary and/or testimony) that is the source of the Findings of Fact (“FOF”) is noted within parentheses following the finding. A document is noted by the exhibit number. If there is a second number following the exhibit number, that number denotes the page of the exhibit from which the fact was obtained. When citing an exhibit submitted by more than one party separately, the IHO may only cite one exhibit.

education on January 8, 2021, and was classified with SLI. DCPS last developed an IEP for the Student on March 24, 2023. (Mother’s testimony, Petitioner’s Exhibit 13 )

3. The Student’s March 24, 2023, IEP noted the following regarding the Student’s communication: “[The Student] is a \_\_\_\_ grade student at [School B] that receives 120 minutes a month for speech and language services outside the general education setting. [The Student] presents with expressive language, articulation skills, voice, and fluency skills within the average range of functioning. [The Student] presents with a receptive language skill difficulty, which impacts [the Student]’s understanding of classroom content. Currently, [the Student] presents with difficulties with receptive language skills such as answering WH questions (who, what, when, where, & why) about age-appropriate content and reading passages. [The Student] demonstrates progress towards answering WH questions; however, [the Student] still requires a moderate level of assistance, inclusive of visuals, verbal prompting, and rereading information from the text to assist with answering questions. Additionally, [the Student] presents with difficulties with sequencing and recalling information from the text in sequential order without rereading the information. For Progress Report Period 2 of the 2022-2023 school year, [the Student] achieved the following progress: During Progress Report Period 2, [the Student] answered Wh questions related to age-appropriate reading passages with 78% accuracy. During Progress Report Period 2, [the Student] sequenced story events in sequential order with 75% accuracy when given minimal to moderate verbal prompts or visuals.” (Petitioner’s Exhibit 13)
  
4. The Student’s March 24, 2023, IEP did not prescribe specialized instruction and prescribed the following speech-language services and classroom and testing accommodations:

Service	Setting	Begin Date	End Date	Time/Frequency
Speech-Language Pathology	Outside General Education	03/24/2023	03/23/2024	60 min per mon.
Speech-Language Pathology	General Education	03/24/2023	03/23/2024	60 min per mon.

Classroom Accommodations	Statewide or Alternate Assessment Accommodations
<i>Presentation</i>	<i>Presentation</i>
Clarification/ Repetition of Directions	Clarification/ Repetition of Directions
Redirect Student to Test	Redirect Student to Test
<i>Setting</i>	<i>Setting</i>
Small group testing	Small group testing

5. The Student’s March 24, 2023, IEP included the following description of how the Student’s disability affects his/her access to the general education curriculum: [the Student]’s difficulties in the area of communication negatively affect her/his access to the general education curriculum by limiting his/her ability to actively participate in classroom activities and socialize with peers and adults within the classroom setting. Moreover, [the Student]’s receptive language skills will be the primary focus so that she/he may be able to participate in classroom discussions and demonstrate understanding of learned information. Addressing [the Student]’s receptive language skills delays may allow

him/her to access grade-level content by enabling [the Student] to demonstrate understanding of information presented verbally, to participate in classroom discussions, to socialize with adults and peers and to communicate her/his wants, needs, and ideas in an age-appropriate manner. (Petitioner's Exhibit 13)

6. The IEP included the following description of how the Student's disability her/his progress in the general education curriculum: [the Student] presents with delays in receptive language skills, which will negatively impact functional ability to independently demonstrate progress as he/she attempts to access the general education curriculum in the classroom setting. [The Student]'s receptive language skills may impact [the Student]'s ability to clearly ask/answer questions to gain understanding and improve his/her overall communication effectiveness in the classroom environment with adults and peers, as well as access the general education curriculum. (Petitioner's Exhibit 13)
7. The Student's March 24, 2023, IEP, had two speech-language goals:

Goal 1: By the end of the IEP, [the Student] will answer WH questions (who, what, when, where, & why) questions related to age-appropriate reading passages with 80% accuracy when given minimal verbal prompts and visuals over three consecutive sessions. The IEP noted the following baseline relative to Goal 1: Currently, [the Student] exhibits difficulties with answering WH questions and requires rereading content and highlighting or underlining important information in order to correctly answer the WH question presented. [the Student] is performing at 89% accuracy when given a moderate level of verbal prompts, visuals, and models. (Petitioner's Exhibit 13)

Goal 2: By the end of the IEP, [the Student] will sequence story events in sequential order with 80% accuracy when given minimal verbal prompts, visuals, and modeling over three consecutive sessions. Baseline: Currently, [the Student] presents with difficulties with sequencing and recalling information from age-appropriate passages/texts and requires rereading information to recall a sequence of events.

8. In the Student's second quarter of SY 2023-2024 progress report (January 26, 2024), the Student's speech-language service provider noted the following regarding the Student's progress on the IEP goals:

Goal 1: The following progress report for communication/speech and language has been completed by \_\_\_\_\_. CCC-SLP. Last quarter, [the Student] had mastered part of this goal for "who", "what", "when", and "where" questions (more than 80% accuracy). It was reported that for "why" questions, she/he was 25% accurate. This quarter, [the Student] has been 70-75% accurate with simple "why" questions. We will continue to monitor this goal. Testing is also being completed to determine if there is a continued need for services.

Goal 2: This goal continues to be mastered. During Quarter 1 of SY 23-24, [the Student] sequenced story events in sequential order with 90% accuracy, given 1 – 2 verbal prompts.

[The Student] continues to demonstrate mastery of this goal. This quarter, [the Student] has maintained this level of accuracy. (Petitioner's Exhibit 16)

9. The Student's end-of-year report card for SY 2022-2023 reflected that she/he was meeting grade-level standards in all reading and math categories; however, the report also noted that, regarding standardized assessments, the Student scored below grade level in both reading and math. (Petitioner's Exhibit 22)
10. On or about January 18, 2024, DCPS sent Petitioner a PWN stating that they would move forward with re-evaluating the Student in the area of speech-language. DCPS did not consider any additional disability classifications or assessments. (Petitioner's Exhibit 32)
11. On February 12, 2024, DCPS conducted a speech-language reevaluation of the Student. The evaluated determined: "[The Student] is an \_\_\_-year-old student who was seen for a speech and language evaluation in order to determine [her/his] current level of communicative functioning and eligibility for special education services, specifically related to receptive and expressive language. [The Student] benefitted from verbal encouragement in order to maintain attention throughout the testing session. [The Student] was able to complete all test items administered during the evaluation process. Current testing revealed improved language and vocabulary skills compared to [his/her] 2015 speech language evaluation. Voice, fluency, articulation, and pragmatic skills are average based on current observations. Updated language testing (OWLS-2 Oral Language Composite SS: 88) revealed scores in the average range. Receptive and expressive vocabulary skills are also in the average range, per the ROW-PVT 4 (SS: 100) and EOW-PVT-4 (SS: 96). Expressive and receptive language and vocabulary skills were reportedly below average in March 2015. Results of this evaluation suggest that [the Student] will not require support in the area of social communication to effectively communicate within the classroom." (Petitioner's Exhibit 6)
12. On February 26, 2024, DCPS issued a PWN that stated the following:  
Description of each evaluation procedure, assessment, record, or report used as a basis for the proposed or refused Action: Formal speech language evaluation, teacher report, observations, session data, progress reports.  
Description of other options considered by the IEP Team and reason(s) for rejecting those options: No other options were considered. Description of other factors related to the proposal or refusal: No other factors are relevant at this time.  
(Petitioner's Exhibit 33)
13. On February 26, 2024, determined the Student was no longer eligible for special education services and exited the Student from special education. DCPS issued a PWN that stated the following: "This document serves as prior written notice to inform you that the LEA is proposing to change your student's eligibility for special education and related services because the student was determined ineligible by the IEP Team. The LEA will terminate the provision of special education and related services on February 27, 2024." (Petitioner's Exhibits 7, 8)

14. The Student earned As and Bs in all subjects on her/his end of year report card for SY 2023-2024, which was his/her first year at School A; however, the report card also noted that on the SRI, which is a test that helps understand a student's reading (lexile) level a 6<sup>th</sup> grade reading level is Lexile level 925 or above. SRI results as of 1/26/2023 suggest that [the Student] was reading at lexile level 757, which is a 4th grade reading level. Regular reading practice at home helps students to progress. (Petitioner's Exhibit 23)
15. During the first quarter of SY 2024-2025, the Student was failing some of his/her classes, and Petitioner emailed School A regarding the Student's difficulties. A school A staff member responded to one of the Student's parent's emails stating, among other things, the following about the Student's classroom performance: "...[the Student] has so much academic potential, but [her/his] biggest obstacle is [his/her] executive functioning. What I've observed is that [she/he] is extremely spacey and disorganized, and often moves without a sense of purpose or urgency." (Petitioner's Exhibits 30, 36, 37)
16. On February 10, 2025, Petitioner sent DCPS an email noting the Student had Attention Deficit Hyperactivity Disorder ("ADHD"), and requesting that the Student be provided an IEP or 504 plan. (Petitioner's Exhibit 42-295)
17. On February 25, 2025, DCPS issued a PWN that stated the following: DCPS proposes to begin an initial evaluation of [the Student], effective 02/25/2025, and will review various educational data and convene an IEP Team including the parent/guardian or adult student to determine whether they are a student with a disability who qualifies for specialized instruction and related services under IDEA. (Petitioner's Exhibit 34)
18. Petitioner obtained an independent OT evaluation on March 11, 2025, which she provided to DCPS. DCPS initiated a review of the evaluation and determined that additional evaluations were necessary. (Respondent's Exhibit 22)
19. On or about April 17, 2025, Petitioner, through her counsel, requested to schedule a 504 meeting as an interim measure due to the ongoing behavioral issues and decline in the Student's grades. A 504 meeting was held on May 14, 2025, to request an interim plan while evaluations are conducted. (Mother's testimony, Witness 2's testimony)
20. On May 21, 2025, DCPS developed a 504 plan for the Student that provided the following accommodations:

<b>Classroom and In-School Accommodations</b>			R	Yes
Does the student's disability make it necessary to provide <b>classroom and in-school accommodations</b> ?			<input type="checkbox"/>	No
	<b>Accommodation</b>	<b>Time and Location for Accommodation</b>	<b>Person Responsible</b>	
	Redirection from teacher	All, In the classroom	Teacher	
<b>Specify the accommodation</b>	Redirect [the Student] when distracted			

	Flash pass to meet with trusted adult	Throughout the school day	Counselor
<b>Specify the accommodation</b>	Flash pass to counselor		
	Planner	Throughout the school day	Teacher
<b>Specify the accommodation</b>	Check to be sure [the Student] wrote in [his/her] planner. If [she/he] loses planner, mother will buy a new one.		
	Sit close to teacher	In the classroom	Teacher
<b>Specify the accommodation</b>	Sit close to teacher in front of class away from distractions		
	Teacher check for understanding	All, In the classroom	Teacher
<b>Specify the accommodation</b>	Teacher check for understanding.		
	Extended Time	All, In the classroom	Teacher
<b>Specify the accommodation</b>	50% extended time on assignments and tests.		

(Petitioner’s Exhibit 51)

21. June 6, 2025, DCPS acknowledged the referral for special education evaluation. (Respondent’s Exhibit 17)
22. On June 12, 2025, DCPS convened an AED meeting. (Respondent’s Exhibit 21)
23. Petitioner’s education advocate, who attended the AED meeting sent DCPS a dissent letter stating Petitioner’s disagreement with the decision by the DCPS members of the team not to include a speech-language evaluation in the evaluations that the team agreed to conduct. She reiterated the Petitioner’s request that DCPS conduct a comprehensive speech-language evaluation to evaluate the Student’s expressive and receptive aspects of written language and language factors that may be compromising reading comprehension. (Petitioner’s Exhibit 52)
24. On June 13, 2025, DCPS issued a PWN that stated the following:

Description of the proposed or refused action: DCPS proposes to proceed with evaluation for [the Student], who will be assessed through a Comprehensive Psychological Evaluation, Occupational Therapy Evaluation, and Functional Behavior Assessment/Behavior Intervention Plan, which was identified during the AED process. This proposal is effective as of 06/12/2025. Explanation of why the LEA is proposing or refusing the action: The team conducted an AED meeting on 06/12/2025 and determined that more information is needed to determine whether [the Student] qualifies as a student with a disability who is eligible for special education and related services under IDEA.

Description of each evaluation procedure, assessment, record, or report used as a basis for the proposed or refused action: The team reviewed data that included but were not limited to attendance records, current and previous grades, teacher narrative/observations, previous

eligibility history, benchmark assessments (NWEA MAP Reading Assessment, iReady Math Diagnostic), DC CAPE Scores (May 2024), Achievement Network (ANET), parent input, Strengths and Difficulties Questionnaire, Section 504 plan with Accommodations and MTSS intervention plan, ADHD Medical Diagnosis (Children's Hospital, 2016). The team also reviewed observations by Occupational Therapist and Speech Language Pathologist and DCPS school social worker. Results of this review indicated the need for additional information, which could only be gained through completion of formal assessments.

Description of other options considered by the IEP Team and reason(s) for rejecting those options: [Name] (educational advocate) requested that DCPS complete a speech-language evaluation due to concerns with reading and writing. DCPS rejected this request. Reading and writing concerns may be addressed through educational testing, which is a component of the Comprehensive Psychological evaluation. After reviewing [the Student]'s previous eligibility history for speech/language (evaluation reports from 2016 and 2024), DCPS does not need any further evaluations to determine eligibility for speech services.

Description of the proposed or refused action: DCPS proposes to proceed with evaluation for [the Student], who will be assessed through a Comprehensive Psychological Evaluation, Occupational Therapy Evaluation, and Functional Behavior Assessment/Behavior Intervention Plan, which was identified during the AED process. This proposal is effective as of 06/12/2025.

Explanation of why the LEA is proposing or refusing the action:

The team conducted an AED meeting on 06/12/2025 and determined that more information is needed to determine whether [the Student] qualifies as a student with a disability who is eligible for special education and related services under IDEA. (Petitioner's Exhibit 35)

25. Since the Student was exited from special education services he/she began demonstrating significant academic and behavioral challenges in the general education setting. Student struggles with task initiation, organization, and memory. Symptoms that have caused problems during school time. Teachers have expressed frustration with the symptoms and behaviors, and his/her difficulty turning in assignments. This has resulted in teachers not providing additional copies after the Student inevitably loses the class work paper copy due to the inability to keep up with the organizational requirements without the support he/she needs. (Mother's testimony)
26. The Student finds it difficult to focus in class and often loses his/her student guide and notebooks, and loses track of the assignments that she/he is working on. If the Student asks for copies, the teachers often say no, and the Student perceives the teacher as having an attitude or ignoring the Student. If the Student had additional copies of assignments, the Student believes he/she would perform better on assignments. (Student's testimony)

## **CONCLUSIONS OF LAW:**

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 the 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 5A DCMR 3053.6, the burden of proof is the responsibility of the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005). To the extent that Petitioner argued that issue #3 was not barred by the statute of limitations, once Petitioner presented a prima facie case on that issue, DCPS would have had the burden of persuasion on that issue. Petitioner clearly held the burden of persuasion on the remaining issues.<sup>6</sup> The burden of persuasion shall be met by a preponderance of the evidence. The normal standard is 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).

**ISSUE 1:** Did DCPS deny the Student a FAPE by inappropriately exiting the Student from special education services on or about February 26, 2024?

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<sup>6</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 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.

**Conclusion:** Petitioner did not sustain the burden of persuasion by a preponderance of the evidence that DCPS inappropriately exited the Student from special education services on or about February 26, 2024.

The Individuals with Disabilities Education Act ("IDEA") was enacted to ensure that all disabled students receive a "free appropriate public education." 20 U.S.C. § 1400(d)(1)(A). "Commonly referred to by its acronym 'FAPE,' a free appropriate public education is defined as 'special education and related services that' are 'provided at public expense, under public supervision ...;' and that 'meet the standards of the State educational agency;' as well as 'conform[ ] with [each disabled student's] individualized education program.'" *Charles H. v. District of Columbia*, 2021 WL 2946127 (D.D.C. June 16, 2021) (quoting 20 U.S.C. § 1401(9)) (alterations in original). "Special education" is defined as "specially designed instruction, at no cost to parents, [that] meet[s] the unique needs of a child with a disability." 20 U.S.C. § 1401(29). "Related services," on the other hand, are defined as "such developmental, corrective, and other supportive services ... as may be required to assist a child with a disability to benefit from special education." *Id.* § 1401(26)(A).

"Under [the] IDEA and its implementing regulations, students with disabilities ... are entitled to receive [a] FAPE through an Individualized Education Program (or IEP)." *Charles H.*, 2021 WL 2946127 (quoting 20 U.S.C. § 1401(9)(D)). An IEP is a written document that lays out how the student will obtain measurable annual goals and that mandates specific special education and related services that the student must receive. 20 U.S.C. § 1414(d)(1)(A)(i). It is created for each student by a special "IEP Team," consisting of the child's parents, at least one regular-education teacher, at least one special-education teacher, and other specified educational experts. *Id.* § 1414(d)(1)(B). An IEP is the main tool for ensuring that a student is provided a FAPE. See *Charles H.*, 2021 WL 2946127 (quoting *Lofton v. District of Columbia*, 7 F. Supp. 3d 117, 123 (D.D.C. 2013)). " (*Robles v. District of Columbia* 81 IDELR 183 D.D.C. August 26, 2022)

IDEA requires that upon completion of an eligibility evaluation, the LEA eligibility team, including the parents, determines whether the child is a child with an IDEA disability who, by reason thereof, needs special education and related services. See 34 C.F.R. § 300.8. Regardless of the disability classification for special education eligibility relied upon by the LEA, the LEA must ensure that IEP special education and related services are tailored to the unique needs of each child. See *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017).

IDEA does not require school districts to classify a student with a disability in a particular category or categories. See, e.g. *Letter to Anonymous*, 48 IDELR 16 (OSEP 2006) (Child's identified needs, not the child's disability category, determine the services that must be provided to her); *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); *Lauren C. by & through Tracey K. v. Lewisville Indep. Sch. Dist.*, 904 F.3d 363, 377 (5th Cir. 2018) (IDEA promises--a FAPE--regardless of child's diagnosis.)

The IDEA regulations define "Child with a disability" to mean a child evaluated as having one of 13 enumerated disability categories, including Speech or Language Impairment (SLI) "and who,

by reason thereof, needs special education and related services." 34 C.F.R. § 300.8(a)(1). Speech or Language Impairment (SLI) means "a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance." 34 C.F.R. § 300.8(c)(11); 5A DCMR § 3011.12(a).

As far as the identification of the student's disability classification is concerned, "the particular disability diagnosis affixed to a child in an IEP, will, in many cases, be substantively immaterial because the IEP will be tailored to the child's specific needs." *Fort Osage R-I School District v. Sims*, 641 F.3d 996, 1004 (8th Cir. 2011).

34 CFR § 300.306 provides: (a) General. Upon completion of the administration of assessments and other evaluation measures— (1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in § 300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and (2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. (b) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this part— (1) If the determinant factor for that determination is— (i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA); (ii) Lack of appropriate instruction in math; or (iii) Limited English proficiency; and (2) If the child does not otherwise meet the eligibility criteria under § 300.8(a). (c) Procedures for determining eligibility and educational need. (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under § 300.8, and the educational needs of the child, each public agency must— (i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and (ii) Ensure that information obtained from all of these sources is documented and carefully considered. (2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§ 300.320 through 300.324.

In this case, the Student was last determined eligible for special education pursuant to IDEA, on January 8, 2021, classified with an SLI. DCPS last developed an IEP for the Student on March 24, 2023. The Student's March 24, 2023, IEP prescribed speech-language services of 60 minutes per month in general education and 60 minutes per month outside of general education, and prescribed classroom and testing accommodations. The IEP did not prescribe specialized instruction. The IEP noted that the Student presented with difficulty in receptive language skills, which impacted the student's understanding of classroom content. Additionally, the IEP stated that the Student presented with difficulties with sequencing and recalling information from text in sequential order without rereading the information.

The IEP noted that the Student's receptive language deficits affected the Student's access to the general education curriculum negatively impacting the Student's functional ability to independently demonstrate progress in attempts to access the general education curriculum and his/her ability to clearly ask/answer questions to gain understanding and improve his/her overall communication effectiveness in the classroom environment with adults and peers.

To address these deficits, the IEP included two targeted speech-language goals: (1) answering questions related to age-appropriate reading passages with 80% accuracy when given minimal verbal prompts and visuals over three consecutive sessions, and (2) sequencing story events in sequential order with 80% accuracy when given minimal verbal prompts, visuals, and modeling over three consecutive sessions.

In the Student's second quarter of SY 2023-2024 progress report (January 26, 2024), the Student's speech-language service provider noted that the Student had mastered part of this goal for "who", "what", "when", and "where" questions (more than 80% accuracy), and the Student had been 70-75% accurate with simple "why" questions and the goal would continue to be monitored. The progress report also noted that testing was being completed to determine if there is a continued need for services. The Student's second goal continued to be mastered, noting that the Student sequenced story events in sequential order with 90% accuracy, given one to two verbal prompts, and maintained this level of accuracy.

On or about January 18, 2024, DCPS sent Petitioner a PWN stating that they would move forward with re-evaluating the Student in the area of speech-language.

Petitioner contends that DCPS inappropriately exited the Student from special education services on February 26, 2024, because the Student was not comprehensively evaluated. In this proceeding, Petitioner sought a determination that DCPS's decision to exit Student from special education was erroneous, resulting in a denial of FAPE.

On February 12, 2024, DCPS conducted a speech-language reevaluation of the Student. The evaluator noted that Student benefitted from verbal encouragement in order to maintain attention throughout the testing session and was able to complete all test items administered. The assessment revealed improved language and vocabulary skills compared to [his/her] 2015 speech language evaluation. Voice, fluency, articulation, and pragmatic skills were average based on OWLS-2 Oral Language Composite SS: 88) which in the average range. The Student's receptive and expressive vocabulary skills were also in the average range, per the ROW-PVT 4 (SS: 100) and EOW-PVT-4 (SS: 96). The Student's expressive and receptive language and vocabulary skills were reportedly below average in March 2015. Results of the evaluation suggested that the Student did not require support in social communication to effectively communicate within the classroom.

On February 26, 2024, DCPS issued a PWN noting its speech-language evaluation, teacher report, observations, session data, progress reports, and stating that no other options were considered or refused. DCPS then issued a PWN to inform the Petitioner of the change in the Student's eligibility for special education and related services and the termination of those services on February 27, 2024.

Petitioner asserts that although at the time the Student did not have a formal diagnosis of ADHD, she/he had demonstrated difficulties in his/her ability to access the general education classroom, and the accommodations in the Student's IEP directly addressed his/her ADHD. Petitioner asserts that DCPS knew or should have known that the Student required these additional assessments before exiting him/her from special education services. The IHO is unconvinced by Petitioner's assertion. There was insufficient evidence presented to support this assertion.

Although the student's IEP included testing and classroom accommodations, the student's disability at the time of evaluation was SLI, and the IEP and accommodations were designed to address characteristics associated with that disability. The evidence demonstrates that the Student had mastered her/his IEP goals and that, based on the speech-language evaluation conducted by DCPS, the Student no longer had a SLI for which special education and related services were required. Although Petitioner asserts now that the Student should have been evaluated at the time in other areas of disability in addition to speech-language, there was no indication at the time that the Student had been diagnosed with ADHD or any other disabling condition that warranted evaluation, and there was no request by any team member, including Petitioner for any other area to be evaluated.

Petitioner's speech-language expert testified that she did not see accuracy data in the Student's reported performance on the IEP goals. However, she could not confirm that the Student had not made progress or mastered the IEP goals. She also stated that the speech-language evaluation only assessed the Student's listening comprehension, not reading comprehension, and that the Student's pragmatic language was evaluated informally rather than formally. She also mentioned that a specific speech-language assessment tool was not administered by DCPS. Additionally, she pointed out that no formal evaluation of the Student's written expression had been conducted. However, there was no indication that the Student's reading comprehension or written expression in academic testing needed to be conducted at the time, as the Student was not receiving any specialized instruction. Although this witness may have selected other or additional assessment tools, the IHO notes that assessment tools are selected at the evaluator's discretion, and there is no testimony from this witness indicating that the evaluator used an incorrect assessment tool to evaluate the Student.

She expressed the opinion that the evaluation did not address all of the Student's needs and that there was not enough data to conclude the Student no longer required special education. However, the evidence of the Student's progress relative to his/her IEP goals and the Student's academic performance showed otherwise. There was no indication, even from the Student's mother's testimony, that supported the idea that the Student continued to demonstrate speech-language deficits after the February 24, 2024, reevaluation was conducted. The IHO did not find Petitioner's expert witness's testimony convincing in this regard. She had never met the Student, observed him/her in an educational setting, participated in any meetings regarding the Student's education, or conferred with any of the Student's teachers or service providers.

Based on the evidence presented, the IHO concludes that the Petitioner did not sustain the burden of persuasion by a preponderance of the evidence that the Student was inappropriately exited from special education services on or about February 26, 2024.

**ISSUE 2:** Did DCPS deny the Student a FAPE by failing to timely and comprehensively conduct a comprehensive psychological evaluation, an OT evaluation, and an FBA from January 18, 2024, to present?

**Conclusion:** Petitioner proved that a procedural violation occurred, specifically DCPS's failure to evaluate the student in a timely manner after Petitioner's February 10, 2025, request for an IEP for the Student.

IDEA guarantees children the right to receive a free, individually appropriate, public education. 20 U.S.C. § 1400(d)(1)(A). A free individually appropriate public education or a FAPE "consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child 'to benefit' from the instruction." See *Board of Educ. Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 188-89 (1982). District of Columbia municipal regulations have placed the burden on the local educational agencies to "ensure that procedures are implemented to identify, locate, and evaluate all children with disabilities residing in the District who are in need of special education and related services, including children with disabilities attending private schools, regardless of the nature or severity of their disabilities." 5-A DCMR § 3003.

IDEA's regulations define a child with a disability as follows: Child with a disability means a child evaluated in accordance with 34 CFR §§ 300.304 through 300.311 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services. 34 C.F.R. § 300.8(a)(1).

IDEA requires local education agencies to identify and evaluate all students suspected of having disabilities to determine their eligibility for special education services: All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services. 20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111(a)(1)(i).

The public agency's child find obligation is an affirmative one. *Lincoln County Sch. Dist. A.*, 39 IDELR 185 (D. Or. 2003). *Wise vs. Ohio Dept of Education*, 80 F.3d. 177, 181 (6th Cir. 1996); *Robertson County School System vs. King*, 24 IDELR 1036 (6th Cir. 1996) (affirmative obligation on states and local school districts-not parents-to identify, locate and evaluate all children, including migrants and the homeless, with disabilities residing within the jurisdiction who have disabilities and are in need of special education or related services.)

The District of Columbia regulations impose strict timelines once a child is referred for evaluation for services: An LEA shall: (a) Make and document reasonable efforts, as defined in this chapter, to obtain parental consent within thirty (30) days from the date on which the child is referred for an initial evaluation, and begin such efforts no later than ten (10) business days from the referral date; and (b) Evaluate and make an eligibility determination for a student who may have a disability and who may require special education services within sixty (60) days from the date that the student's parent or guardian provides consent for the evaluation. 5-A DCMR § 3005.4.

Pursuant to 34 CFR § 300.15 Evaluation means procedures used in accordance with §§ 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. (Authority: 20 U.S.C. 1414(a) (c))

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."

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 5A § 3006.7(a).

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. The evaluations must be "sufficiently comprehensive to identify all of the child's special education and services needs." D.C. Mun. Regs. Title 5A § 3006.7(f).

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).

As noted above, 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 the 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)

In issue #1 above, the IHO concluded that DCPS was not obligated to conduct any additional evaluations in February 2024, when the Student's continued eligibility under SLI was reconsidered. There is also no evidence that would have put DCPS on notice to evaluate the Student for special education after the Student was determined ineligible in February 2024, until Petitioner's request in February 2025. DCPS issued a PWN acknowledging the request and initiating the evaluation and eligibility process, which included an AED meeting. However, DCPS has not acted promptly in conducting the evaluations. At the time of the due process hearing, nearly seven months after Petitioner's request, the evaluations had not been completed and reviewed by a team, and the Student has not yet been determined to be eligible or ineligible. Because there has not been an eligibility determination, there is currently insufficient basis for the IHO to yet conclude that the Student has been denied a FAPE.

As a result, the IHO, in the order below, is dismissing the Petitioner's claim in this regard without prejudice. This will allow Petitioner to reassert the claim of untimely evaluation if or when the Student is determined eligible based on the evaluations that DCPS will conduct. However, in the order below, the IHO directs, as a remedy for the procedural violation noted above, that DCPS authorize Petitioner to obtain an independent speech-language evaluation.

**ISSUE 3:** Did DCPS deny the Student a FAPE by failing to provide an appropriate IEP (March 24, 2023, to present) because the IEP (1) was not based on updated evaluative data (2) did not provide appropriate services in all areas of need and (3) did not provide appropriate behavior support interventions or a BIP during the remainder of SY 2022-2023 and part of SY 2023-2024?

**Conclusion:** Respondent sustained the burden of persuasion by preponderance of the evidence that the Student's May 21, 2024, IEP was appropriate.

The Individuals with Disabilities Education Act ("IDEA") was enacted to ensure that all disabled students receive a "free appropriate public education." 20 U.S.C. § 1400(d)(1)(A). "Commonly referred to by its acronym 'FAPE,' a free appropriate public education is defined as 'special education and related services that' are 'provided at public expense, under public supervision ...;' and that 'meet the standards of the State educational agency;' as well as 'conform[ ] with [each disabled student's] individualized education program.'" *Charles H. v. District of Columbia*, 2021 WL 2946127 (D.D.C. June 16, 2021) (quoting 20 U.S.C. § 1401(9)) (alterations in original). "Special education" is defined as "specially designed instruction, at no cost to parents, [that] meet[s] the unique needs of a child with a disability." 20 U.S.C. § 1401(29). "Related services," on the other hand, are defined as "such developmental, corrective, and other supportive services ... as may be required to assist a child with a disability to benefit from special education." *Id.* § 1401(26)(A).

"Under [the] IDEA and its implementing regulations, students with disabilities ... are entitled to receive [a] FAPE through an Individualized Education Program (or IEP)." *Charles H.*, 2021 WL 2946127 (quoting 20 U.S.C. § 1401(9)(D)). An IEP is a written document that lays out how the student will obtain measurable annual goals and that mandates specific special education and related services that the student must receive. 20 U.S.C. § 1414(d)(1)(A)(i). It is created for each student by a special "IEP Team," consisting of the child's parents, at least one regular-education teacher, at least one special-education teacher, and other specified educational experts. *Id.* § 1414(d)(1)(B). An IEP is the main tool for ensuring that a student is provided a FAPE. See *Charles H.*, 2021 WL 2946127 (quoting *Lofton v. District of Columbia*, 7 F. Supp. 3d 117, 123 (D.D.C. 2013)). " (*Robles v. District of Columbia* 81 IDELR 183 D.D.C. August 26, 2022)

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 second substantive prong of the *Rowley* inquiry is whether the IEP developed was reasonably calculated to enable Student to make progress appropriate in light of Student’s individual circumstances. In *Andrew 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 into 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. *Andrew F.*, supra, 137 S. Ct. at 999–1000 (citations omitted).

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 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 *Andrew F.*, supra, 137 S. Ct. 988.

As stated above, 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.”

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DCPS asserted that Petitioner was barred from challenging the appropriateness of the Student’s 2023 IEP because that was developed beyond the two-year statute of limitations. In an email to the IHO and copied to the DCPS counsel, dated July 8, 2025, Petitioner’s counsel stated the regarding DCPS’s objection that occurred during the pre-hearing conference on whether issue #3 is outside the statutory period, “Petitioner’s position is that, while the IEP in question may have been developed outside the statutory period, the Student did not have an appropriate IEP in place for the entirety of the SY 2023–2024 which does fall within the two year statutory period. As such,

we maintain that the issue is timely insofar as it applies to the denial of FAPE during SY 2023–2024, which falls within the applicable statute of limitations.”

Petitioner, however, presented no case law or other authority to support this contention. As the case law cited above points out, 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.” *Schaefer v. Weast*, 554 F.3d 470 (U.S. App. 2009), 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....” *Z.B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018) citing *Andrew F.*, supra, 137 S. Ct. 988. Based upon this legal authority, the IHO concludes that judging the appropriateness of the Student’s February 2023 IEP should be done as of the date the IEP was developed, which was more than two years prior to when Petitioner’s DPC was filed.

Nonetheless, the IHO will review the evidence presented by Petitioner regarding that IEP. Petitioner presented a speech-language pathologist whose testimony regarding the IEP was limited to stating that the Student received a speech-language evaluation in 2015 and should have been reevaluated every three years, and noted that the IEP goals were repeated from the previous year's IEP. Petitioner’s other witness regarding the IEP was also limited. Neither of these witnesses participated in the development of the Student’s IEP. There was no evidence regarding the Student’s behavior or academic performance that would have indicated that the Student’s IEP should have addressed any academic or behavior concerns.

On the other hand, the DCPS witness testified that she was a member of the IEP team and was familiar with the student and the Student's academic progress when the IEP was developed. Her testimony was more credible because she was familiar with the Student’s academic performance and behavior at that time and credibly testified regarding the Student’s academic progress and the IEP’s effectiveness in addressing the Student’s needs.

As a result, although an IEP’s appropriateness should be judged as of the date it was developed and Petitioner presented no testimony, evidence, or authority to warrant review of the IEP beyond the two statutory period, the evidence provided by DCPS convincingly countered any claims that the Student's IEP was inappropriate throughout the remainder of the IEP period until the Student was exited from special education in February 2024.

### **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.)

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/her loss of FAPE and the specific compensatory measures needed to best correct those deficits." *Id.* at 526.

When a hearing officer finds denial of FAPE, he has "broad discretion to fashion an appropriate remedy, which can go beyond prospectively providing a FAPE, and can include compensatory education.... [A]n award of compensatory education 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." *B.D. v. District of Columbia*, 817 F.3d 792, 797-98 (D.C. Cir. 2016) (internal quotations and citations omitted.)

The Petitioner requested the compensatory education included in her educational advocate's proposal. However, the IHO did not conclude based on the claims in the Petitioner's current DPC that DCPS has yet denied the Student a FAPE; therefore, no compensatory services are being granted.

**ORDER: 7**

1. Petitioner's claim that DCPS denied the Student a FAPE by failing to timely evaluate the Student and determine his/her eligibility following Petitioner's February 10, 2025, request is hereby dismissed without prejudice.
2. DCPS shall, within ten (10) business days of the issuance of this order, provide Petitioner authorization to obtain an IEE, namely, an independent speech-language evaluation.
3. DCPS shall, within thirty (30) calendar days of the start of SY 2025-2026, complete the pending evaluations of the Student, convene an eligibility meeting to review the evaluations, including any provided by Petitioner, and determine the Student's eligibility or ineligibility for special education services. If the Student is found eligible, DCPS shall promptly develop an appropriate IEP and determine whether the Student is entitled to any compensation for the delay in conducting timely evaluations following the parental request made on February 10, 2025, that the Student be provided an IEP.
4. All other relief requested by the Petitioner is denied.

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<sup>7</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.

**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.**  
**Impartial Hearing Officer**  
**Date: August 17, 2025**

Copies to: Counsel for Petitioner  
Counsel for LEA  
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