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OSSE
Office of Dispute Resolution
August 19, 2025

Confidential

<p>Guardian on Behalf of Student, ¹</p> <p>Petitioner,</p> <p>v.</p> <p>District of Columbia Public Schools (Local Education Agency “LEA”)</p> <p>Respondent.</p> <p>Case # 2025-0052</p> <p>Date Issued: August 20, 2025</p>	<p>HEARING OFFICER’S DETERMINATION</p> <p>Hearing Dates: June 17, 2025 June 18, 2025 July 9, 2025 August 12, 2025 August 18, 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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¹ 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 mother. The District of Columbia Public Schools ("DCPS") serves as the Student's local education agency ("LEA"). The Student has been determined eligible for special education under IDEA, classified with an other health impairment (“OHI”), and attends a DCPS school (“School A”).

On March 13, 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 allegedly failing to provide the Student an appropriate individualized education program (“IEP”) and placement and/or location of services for the school year (“SY”) 2024-2025, failing to implement the Student’s IEP, and failing to provide Petitioner full access to the Student’s education records. The Petitioner seeks compensatory education for the alleged denial(s) of FAPE and that DCPS provide Petitioner additional educational records.

DCPS’s Response to the Complaint:

DCPS filed a response to the DPC on April 7, 2025. In its response, DCPS stated, inter alia, the following:

DCPS has not denied the Student a FAPE; therefore, the request for relief is unwarranted, and the DPC should be dismissed with prejudice. DCPS denies that it failed to develop an appropriate IEP and location of service during SY 2024-2025. The IEP team relied on various sources of information in developing the Student’s IEP, and it was appropriate when developed and reasonably calculated to enable the Student to make appropriate progress considering the Student’s circumstances. Pursuant to a prior settlement agreement in February 2024, Petitioner agreed for the Student to be enrolled in a DCPS Early Learning Support (“ELS”) classroom.

DCPS denies that it failed to implement all related services, dedicated aide, and supports and services from February 5, 2024, through the present. A dedicated aide was identified in February 2025, and all related services were implemented to the extent possible. DCPS denies that it failed to provide the Petitioner full access to educational records. Records have been provided, and Petitioner does not allege that the lack of receiving all educational records impeded Student’s right to a FAPE, caused a deprivation of educational benefit, or significantly impeded Petitioner’s opportunity to participate in the decision-making process.

Resolution Meeting and Pre-Hearing Conference:

Petitioners and DCPS participated in a resolution meeting on April 7, 2025. The parties did not mutually agree to shorten the 30-day resolution period. The DPC was filed on March 13, 2025. The 45-day period began on April 13, 2025, and ended, and the Hearing Officer’s Determination

("HOD") was originally due on May 27, 2025. DCPS counsel was not available on the hearing dates offered. Continuance motions were filed to extend the HOD and the HOD is now due on August 20, 2025.

The undersigned impartial hearing officer ("IHO") conducted a pre-hearing conference and issued a pre-hearing order ("PHO") on April 29, 2025, stating, inter alia, the issues to be adjudicated.

ISSUES:²

The issue adjudicated is:

1. Did DCPS deny the Student a FAPE by failing to provide the Student an appropriate IEP on April 30, 2024, and failing to provide an appropriate placement and/or location of services for SY 2024-2025?
2. Did DCPS deny the Student a FAPE by failing to fully implement the Student's IEP, from February 5, 2024?
3. Did DCPS deny the Student a FAPE by failing to allow Petitioner full access to the Student's educational records?

DUE PROCESS HEARING:

The Due Process Hearing convened on June 17, 2025, June 18, 2025, July 9, 2025, August 12, 2025, and August 18, 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 60 and Respondent's Exhibits 1 through 26) that were admitted into the record and are listed in Appendix 2.³ The witnesses testifying on behalf of each party are listed in Appendix B.⁴

² 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.

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

⁴ The Petitioner presented seven witnesses: (1)The Student's mother ("Petitioner") and six other witnesses who all testified as experts: (2) Petitioner's special education advocate employed by the law firm representing Petitioner, (3) an independent psychologist, (4) an independent occupational therapist (5) an independent speech-language pathologist, (6) an independent physical therapist, and (7) a supervising special education advocate also employed by the law firm representing Petitioner. Respondent presented four witnesses, all of whom testified as expert witnesses: (1) the Student's School A special education teacher, (2) a DCPS speech-language pathologist, (3) a DCPS physical therapist, and (4) a DCPS occupational therapist. 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.

SUMMARY OF DECISION:

DCPS did not sustain the burden of persuasion by a preponderance of the evidence on issue #1 after Petitioner presented a prima facie case on that issue. Petitioner sustained the burden of persuasion on issue #2, but not issue #3. The IHO ordered DCPS to provide Petitioner with authorization to obtain an independent education evaluation to determine the appropriate compensatory education for the Student due to the denials of FAPE found.

FINDINGS OF FACT:⁵

1. The Student resides with Petitioner, the Student's mother, in the District of Columbia. DCPS is the Student's LEA. The Student has been determined eligible for special education pursuant to IDEA with an OHI disability classification. The Student attends School A, a DCPS school, where he/she began attending in March 2024. The Student attended several schools during SY 2023-2024, prior to attending School A. (Mother's testimony, 10, 11)
2. The Student has a rare genetic disorder and suffered from a stroke and multiple seizures at seven months of age, leading to global developmental delays. The Student is in a wheelchair, is nonverbal, nonmobile, and is bottle-fed. The Student is not independent in self-care tasks related to feeding, dressing, and grooming, does not initiate social interaction, and has profound delays in the areas of receptive and expressive language. (Mother's testimony, Petitioner's Exhibits 5)
3. In October 23, 2023, prior to the Student attending School A, DCPS developed an IEP for the Student that prescribed 24 hours per week of specialized instruction outside general education and the following related services: 240 minutes (4 hours) per month of occupational therapy ("OT") 6 hours per month of speech-language pathology ("SLP"), and 240 minutes (4 hours) per month of physical therapy ("PT"). (Petitioner's Exhibit 10)
4. Petitioner filed a prior DPC against DCPS that resulted in a settlement agreement executed on February 5, 2024. Pursuant to that agreement, the parties agreed, inter alia, that Student would be placed in a DCPS ELS classroom, and DCPS granted Petitioner authorization to obtain the following independent evaluations: a comprehensive psychological, speech-language, OT, PT, and assistive technology ("AT"). DCPS also authorized Petitioner to obtain 100 hours of independent tutoring. Pursuant to the settlement agreement, DCPS placed the Student in the ELS classroom at School A starting in March 2024. (Respondent's Exhibits 21, 31)
5. When the Student began attending School A in March 2024, the Student's IEP included goals in the following areas: four goals in Adaptive Daily Living Skills, five goals in Communication/Speech, four goals in Health/Physical, and four goals in Motor

⁵ 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.

Skills/Physical Development. The IEP did not include any academic goals. (Petitioner's Exhibit 10)

6. In April 2024, School A issued an IEP progress report for the Student. The Student showed progress on only one of the Adaptive Daily Living Skills goals; two of the goals were not introduced, and one was "just introduced." Four of the five Communication/Speech-Language goals were "just introduced," and one was not introduced. The Student was progressing on one of the four Health/Physical goals, with no progress on the other three. The Student was making progress on two of the Motor Skills/Physical Development goals, had no progress on one, and the other goal was "just introduced." (Petitioner's Exhibit 17)
7. On April 30, 2024, School A convened an IEP review meeting for the Student after the Student had been attending School A for approximately 30 days. Petitioner participated in the meeting by telephone. School A increased the Student's specialized instruction by 1 hour per week to 25 hours per week outside general education and reduced the Student's related services to the following: 2 hours per month of OT, 2 hours per month of SLP, and 2 hours per month of PT. The related service goals were reduced, and many of the related service goals that the Student had not yet mastered were removed. The IEP provided for a dedicated aide, an AT device, a physical stander, an activity table, and seated positional supports. (Petitioner's Exhibit 11)
8. DCPS issued a prior written notice ("PWN") dated April 30, 2024, regarding the Student's IEP. The PWN stated, inter alia, that the team proposed goals, supports, and services that are reflective of the Student's present levels of academic achievement and functional performance and will continue to push their progress in Adaptive Skills, Fine and Gross Motor Skills, and Communication. In developing the IEP, the team utilized a variety of formal and informal assessments. The team utilized data, including, but not limited to, report card and progress report information, informal observations, teacher input, input from related service providers, notes, and input from the family. The team utilized classroom and school-based assessment data, as well as results of previous cognitive and academic evaluations. (Petitioner's Exhibit 37)
9. The Student depends on adults for her/his care, requires specialized feedings and cannot manage personal hygiene needs independently. The school nurse has been the primary adult providing these supports, including feedings and toileting/changing. The Student's ELS classroom at School A has 11 children, one teacher, and one aide. Substitute teachers occasionally work in the classroom, but there has never been consistent coverage. The Student did not have a dedicated aide in the classroom until February 2025. The Student has severe needs, and the classroom teacher did her best to include the Student in academic lessons using low-tech visuals and pictures. The classroom teacher had to gauge the Student's abilities on her own, believed that the Student's IEP goals were somewhat appropriate, and only implemented the Student's adaptive and daily living goals. DCPS has provided the Student with a bean bag chair as the only alternative seating from the Student's wheelchair. (Witness 7's testimony)

10. According to the June 14, 2024, IEP progress report, the comments state, the Student did not have an activity chair and spent most of the day in her/his manual tilt in space wheelchair. (Petitioner's Exhibit 18)
11. Petitioner obtained an independent comprehensive psychological evaluation on April 18, 2024, with an evaluation report dated June 6, 2024. The comprehensive psychological indicated that the Student scored below the first percentile in every domain of the Vineland III Adaptive Behavior Scale, placing him/her in the Low range for each domain. The Rating Scale of Impairment ("RSI") was utilized, and concluded that the Student's overall score is Considerable Impairment. The evaluator concluded that based on her/him deficient cognitive, as well as his/her underdeveloped adaptive skills and history of genetic disorder, that the Student meets the criteria for Other Genetic Related Intellectual Disability (Intellectual Developmental Disorder), Severe. The report indicated that the Student should be considered for disability classification of Multiple Disabilities (Intellectual Disability and Other Health Impairment). It also indicated that the Student should have a dedicated aide and be placed in a small, self-contained setting. The IEP team met once the comprehensive psychological evaluation report was issued in the summer of 2024. The team reviewed the comprehensive psychological evaluation. (Petitioner's Exhibit 5)
12. The Student's related services were not provided with fidelity. The service trackers indicate that from February 7, 2024, through April 23, 2024, the Student missed 50% of OT services, 83% of PT services, and 72% of SLP services. There are no documented physical therapy consultation services. According to the April 30, 2024, IEP, the service trackers indicate that the Student missed 43% of OT services, 23% of PT services, and 43% of SLP services through January 30, 2025. Some, but not all, of the missed services were due to the Student's absences. (Petitioner's Exhibits 27, 28, 29)
13. In April 2025, the Petitioner obtained the remaining independent evaluations that had been authorized by DCPS, and DCPS reviewed these evaluations, convening an IEP meeting in May 2025. DCPS proposed a draft IEP; however, the Student's IEP had not yet been finalized at the time of the due process hearing. There was a pending IEP meeting to finalize the IEP, and the Student has been assigned a location of service at a different DCPS school starting in SY 2025-2026. (Mother's testimony, Petitioner's Exhibits 6, 7, 8, 12, 13)

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). DCPS held the burden of persuasion on issue adjudicated once Petitioner presented a prima facie case on that issue.⁶ DCPS held the burden of persuasion on issue #1 once Petitioner presented a prima facie case on that issue. Petitioner held the burden of persuasion on the remaining issues. 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 failing to provide the Student an appropriate IEP on April 30, 2024, and failing to provide an appropriate placement and/or location of services for SY 2024-2025?

Conclusion: Respondent did not sustain the burden of persuasion by a preponderance of the evidence that the Student's April 30, 2024, was reasonably calculated to enable the Student to make progress appropriate in light of the Student's circumstances at the time it was developed.

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

⁶ 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.

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.

Removing a child with disabilities "from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes cannot be achieved satisfactorily." 34 C.F.R. § 300.550; 34 C.F.R. §300.114 see also 20 U.S.C. § (a)(5)(A) (a disabled child is to participate in the same activities as non-disabled children to the "maximum extent appropriate"); *Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006)

"The IDEA requires that children with disabilities receive education in the regular classroom whenever possible" *Z.B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018) citing *Andrew F.*, supra, 137 S. Ct. at 999 (quoting Rowley, 458 U.S. at 202)

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."

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.

The evidence demonstrates that when the Student arrived at School A in March 2024, the Student had an IEP that was developed in October 2023, and was slated to be implemented for an entire calendar year. The IEP prescribed the following services: 24 hours per week of specialized instruction outside general education and the following related services: 4 hours per month of OT, 6 hours per month of SLP, and 4 hours per month of PT.

On April 30, 2024, after the Student had only been at School A for a little over thirty days, School A revised the Student's IEP to decrease the related services significantly. The services were changed to the following: 2 hours per month of OT, 2 hours per month of SLP, and 2 hours per month of PT. Although the DCPS witnesses testified that the reduction in services was justified, the IHO did not find their testimony credible in this regard.

The PWN that DCPS issued following the IEP changes stated the following: "In developing the IEP, the team utilized a variety of formal and informal assessments. The team utilized data, including, but not limited to, report card and progress report information, informal observations, teacher input, input from related service providers, notes, and input from the family. The team utilized classroom and school-based assessment data, as well as results of previous cognitive and academic evaluations." However, there was no evidence presented by DCPS that any of these

were used by the DCPS team members, other than observations by the service providers.

The DCPS witnesses testified that the Student's related services were reduced, and goals were eliminated because in their opinion because the Student could not tolerate that level of related services and or the goals were unattainable. The IHO was not convinced by their testimony. First, the Student had only been at School A a little over thirty days, which is an inordinate time to determine that the Student could not tolerate the level of service or that the goals were unattainable. In addition, the progress reports prior to the services being reduced indicated that many of the goals had not been introduced or were only recently introduced.

On the other hand, Petitioner's expert witnesses credibly testified that the Student's services should not have been reduced and that the Student needed more related services than the April 30, 2024, IEP prescribed. They also credibly testified that typically the justification for any reduction of services is when a student masters a goal or an evaluation is administered. The Student had not mastered any of the goals that were eliminated, and the DCPS related service providers did not conduct evaluations of the Student before reducing the Student's services. The IHO credits the testimony and opinions of the Petitioner's expert witnesses over DCPS witnesses because they conducted formal evaluations of the Student.

Consequently, the IHO concludes that the IEP that DCPS developed for the Student on April 30, 2024, was not reasonably calculated to enable the Student to make progress appropriate in light of the Student's circumstances at the time it was developed. Thus, DCPS denied the Student a FAPE.

Although Petitioner asserted additional reasons why she believed that the Student's IEP, placement, and location of services were inappropriate, the IHO did not find that there was sufficient evidence to meet a prima facie case regarding those other contentions. The IHO notes that the Student's placement in an ELS classroom was agreed to by Petitioner in a settlement agreement, and there was insufficient evidence to support a basis that a change in the Student's disability classification or placement in another type of self-contained classroom would have been any more beneficial to the Student.

ISSUE 2: Did DCPS deny the Student a FAPE by failing to fully implement the Student's IEP, from February 5, 2024?

Conclusion: Petitioner sustained burden of persuasion by a preponderance of the evidence that DCPS denied the Student a FAPE by failing to fully implement the Student's IEP.

For a failure to implement claim, the IDEA is violated only when a school district deviates materially from a student's IEP. See *James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 139 (D.D.C. 2016); The IDEA is violated when a school district deviates materially from a student's IEP. *Wilson v. District of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011) (citation omitted). A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by that child's IEP. *Holman v. District of Columbia*, No. 14-1836, 2016 WL 355066 (D.D.C. 2016) (citing *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811, 822 (9th Cir. 2007)). In other words, for the court to find a failure to implement an IEP, the school board or local authorities must have "failed to implement

substantial or significant provisions of the IEP." *Wilson*, 770 F. Supp. 2d at 274 (citing *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000)). There is no requirement that the child suffer educational harm in order to find a violation; rather, the proportion of services mandated compared with those provided is "the crucial measure for purposes of determining whether there has been a material failure to implement" an IEP.

A school district "must ensure that ... special education and related services are made available to the child in accordance with the child's IEP." 34 C.F.R. § 300.323(c)(2). A material failure to implement a student's IEP constitutes a denial of a FAPE. *Johnson v. District of Columbia*, 962 F.Supp.2d 263, 268 69 (D.D.C. 2013). To meet its burden, the moving party "must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP." *Beckwith v. District of Columbia*, 208 F.Supp.3d 34, 49 (D.D.C. 2016) (quoting *Hous. Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000)). "Generally, in analyzing whether a student was deprived of an educational benefit, 'courts ... 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.' " *Id.* (quoting *Wilson v. District of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011)). *Middleton v. District of Columbia*, 312 F. Supp. 3d 113 at 144 (D.D.C. 2018)

The evidence demonstrates that the Student's ELS classroom at School A has 11 children, one teacher, and one aide and substitute teachers occasionally work in the classroom. Although the Student's April 30, 2024, IEP prescribed a dedicated aide, the Student did not have a dedicated aide in the classroom until February 2025. The evidence also demonstrates that although the Student's IEP stated the Student would benefit from AT, there was only low-tech AT provided and no AT evaluation to determine if higher-tech devices could be used by the Student. In addition, although the IEP prescribed an activity chair and a stander, neither of these was provided to the Student.

The Student's April 30, 2024, IEP service trackers indicate that the Student missed 43% of OT services, 23% of PT services, and 43% of SLP services through January 30, 2025. Although some, but not all, of the missed services were due to the Student's absences, there was sufficient evidence that significant amounts of related services were not provided, despite the Student's absences.

Based on the DCPS's failure to provide the Student with the required dedicated aide, equipment, and all related services, the IHO concludes that there was a material failure to implement the Student's IEP, resulting in a denial of a FAPE to the Student.

ISSUE 3: Did DCPS deny the Student a FAPE by failing to allow Petitioner full access to the Student's educational records?

Conclusion: Petitioner did not sustain the burden of persuasion by a preponderance of the evidence that the Student a FAPE by failing to allow Petitioner full access to the Student's educational records.

IDEA regulations provide that each agency "must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under [IDEA]." 34 CFR § 300.613 (a). "The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing ... or resolution session ... , and in no case more than 45 days after the request has been made." *Id.* In addition, a parent's right to inspect and review includes: (1) the "right to a response from the participating agency to reasonable requests for explanations and interpretations of the records"; (2) the "right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records"; and (3) the "right to have a representative of the parent inspect and review the records." *Id.* § 300.613 (b).

IDEA regulations afford parents and their legal representatives an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the student and the provision of a FAPE to the student. See 34 CFR § 300.501(a); *Friendship Edison Public Charter School Collegiate Campus v. Murphy* 2006 WL 2711524, 4 (D.D.C.2006). DCPS must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency. See 34 CFR § 300.613(a).

The District of Columbia Municipal Regulations ("DCMR") provide that DCPS must honor the records request as soon as possible, but in no case in more than 45 calendar days. 5E DCMR § 2600.6. Failure to timely comply with a parent's request to inspect education records is a procedural violation of the IDEA. See, e.g., *N.P. v. E. Orange Bd. of Educ.*, No. CIV. 06-5130 DRD, 2011 WL 463037 at 7 (D.N.J. Feb. 3, 2011) (procedural violations of the IDEA by failing to timely respond to parent's requests for records.)

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)

The evidence shows that DCPS provided substantial educational records to Petitioner in response to record requests. Nonetheless, Petitioner's counsel maintains that there were still records outstanding. However, there was insufficient evidence that any of the records Petitioner claimed were missing exist, and no evidence was presented that the failure to receive any other educational records affected Student's right to a FAPE, resulted in a loss of educational benefits, or significantly hindered Petitioner's ability to participate in decision-making. Therefore, the IHO concludes that Petitioner did not meet the burden of persuasion by a preponderance of the evidence on this issue.

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.... ⁷[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. ⁸ However, the IHO did find that the level of services recommended adequately reflected the level of services missed. The Petitioner's educational advocate testified that she did not recall if the service trackers included the Student's absences and whether she accounted for absences in her count of missed services. Therefore, the IHO currently lacks enough evidence to determine what compensatory education is appropriate and would place the Student in the position he/she would have been in but for the FAPE denials. Therefore, the IHO in the order below grants the Petitioner authorization to obtain an evaluation to determine the appropriate compensatory education.

⁷ The advocate recommended the following: occupational therapy: 880 minutes of OT provided 1:1 outside of regular school hours. Physical Therapy: 870 minutes of PT provided 1:1 outside of regular school hours. Speech Language Pathology: 1130 minutes provided by licensed speech language pathologist outside of school hours PT consultation services of 90 minutes AAC Device: 50 hours of AAC- specific compensatory speech language service to focus on device usage, expressive/receptive language development and functional communication. Counseling- 80 hours of 1:1 behavior support Therapeutic Horseback riding- 24 sessions.

⁸ The advocate asserted that the Student had not been provided with a dedicated aide, increased specialized instruction, and/or placement in a full-time BES classroom and the Student would have been able to make at least a year's worth of academic and behavioral progress, and mastered his/her IEP goals but for the denial of FAPE. The advocate proposed the following: 100 hours of tutoring, , completion of a new FBA and BIP and 30 hours of behavioral support/social-emotional services completed by a licensed psychologist. (Witness 1's testimony, Petitioner's Exhibit 32)

ORDER:⁹

1. DCPS shall, within thirty (30) calendar days of the issuance of this order, if it has not already done so, convene an IEP meeting to review any and all recent evaluations and review and revise the Student's IEP as appropriate.
2. DCPS shall, within ten (10) business days of the issuance of this order, provide Petitioner with authorization to obtain an IEE at the OSSE-prescribed rate to determine the appropriate compensatory education for the denials of FAPE determined in this HOD. If necessary, Petitioner is authorized to seek appropriate compensatory education for the Student from DCPS based on this evaluation in a subsequent due process hearing.
3. All other relief requested by the Petitioner is denied.

APPEAL PROCESS:

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

/S/ Coles B. Ruff

Coles B. Ruff, Esq.
Impartial Hearing Officer
Date: August 19, 2025

Copies to: Counsel for Petitioner
 Counsel for LEA
 ODR hearing.office@dc.gov

⁹ 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.