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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 # 2025-0086</p> <p>Date Issued: August 21, 2025</p>	<p>HEARING OFFICER’S DETERMINATION</p> <p>Hearing Dates: August 14, 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 specific learning disability ("SLD") on April 8, 2025, and DCPS developed an individualized educational program ("IEP") for the Student on the same date. The Student was attending a DCPS school ("School A") during school year ("SY") 2024-2025.

On May 16, 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 failing to provide the Student with an appropriate IEP/placement and/or location of service ("LOS"), and failing to implement the Student's IEP by failing to provide all required occupational therapy ("OT") services. Petitioner requests the following relief: a finding of a denial of a FAPE and an award of compensatory education.

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

DCPS filed a response to the complaint on May 26, 2025. In its response, DCPS stated, inter alia, the following:

The Student has been enrolled at School A from the beginning of SY 2022-2023 to present. Student was eligible for special education under the disability classification of developmental delay ("DD"). On February 11, 2024, the Student's IEP team conducted an analysis of existing data ("AED") meeting, and on April 11, 2025, the IEP team developed an IEP for Student. The IEP increased the Student's specialized instruction hours. The IEP team relied on various sources of information, and the IEP was reasonably calculated to enable the Student to make appropriate progress considering the Student's circumstances. On May 15, 2025, DCPS sent Parent a letter identifying Student's new LOS. School A has provided all of the Student's service hours in OT. However, the Student's attendance has impacted the consistent delivery of services. DCPS did not fail to provide the Student a FAPE.

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

Petitioners and DCPS participated in a resolution meeting on June 2, 2025. The parties did not mutually agree to shorten the 30-day resolution period. The DPC was filed on May 16, 2025. The 45-day period began on June 16, 2025, and ended [and the Hearing Officer's Determination ("HOD") was originally due on July 30, 2025. The parties filed a motion to extend the HOD due date, and the HOD is now due on August 23, 2025.

The undersigned impartial hearing officer (“IHO”) conducted a pre-hearing conference on June 23, 2025, and issued a pre-hearing order (“PHO”) on July 2, 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 failing to provide the Student with an appropriate IEP/placement and/or LOS as of September 6, 2024, until the DPC was filed because the Student should have had an increase to at least 20 hours per week of specialized instruction?
2. Did DCPS deny the Student a FAPE by failing to implement the Student’s IEP during SY 2024-2025 by not providing 90 minutes of OT services?

**DUE PROCESS HEARING:**

The Due Process Hearing was convened on August 14, 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 52 and Respondent’s Exhibits 1 through 27 ) 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:**

DCPS did not sustain the burden of persuasion on issue #1 once Petitioner presented a prima facie case on that issue. Petitioner sustained the burden of persuasion on issue #2. The IHO ordered DCPS to provide the Student compensatory education.

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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 issues as stated herein. Petitioner’s counsel withdrew one of the three issues stated in the PHO that was related Petitioner’s access to the Student’s records.

<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 two witnesses: (1) Petitioner’s educational advocate who testified as an expert witness, and (2) the Student’s mother (Petitioner). Respondent presented two witnesses, both who testified as expert witnesses: (1) a DCPS occupational therapist, and (2) School A’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.

## 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. While the Student was attending School A, where she/he has been enrolled since August 2022, DCPS determined the Student eligible for special education under IDEA, classified with DD on January 5, 2023. DCPS developed the Student's initial IEP on January 30, 2023. (Mother's testimony, Petitioner's Exhibit 10)
2. The Student's initial IEP prescribed the following services: 5 hours per week of specialized instruction inside general education, 5 hours per week of specialized instruction outside general education, and 90 minutes per month each of speech-language pathology ("SLP") and OT. At the Student's initial IEP meeting, Petitioner raised the possibility of a more restrictive environment ("MRE") due to the Student's general cognitive ability measuring within the significantly below-average range of intellectual functioning. The DCPS team members urged that the initial IEP services be tried before considering an MRE, and Petitioner agreed. (Witness 1's testimony, Petitioner's Exhibit 10)
3. In March 2024, DCPS conducted a psychological reevaluation of the Student with an evaluation report date of or about April 5, 2024. The Woodcock-Johnson IV (WJ-IV), Tests of Achievement, was administered as a measure of the Student's academic functioning. The Student's scores were low and very low in all academic areas. The evaluator also administered the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V), and the results showed that the Student's cognitive functioning was in the very low range (FSIQ=77). (Petitioner's Exhibit 5)
4. On May 16, 2024, School A convened the Student's annual IEP review meeting. The Student's disability classification was changed to SLD. The Student's specialized instruction was increased to 12.5 hours per week inside general education, and 12.5 hours per week outside general education.<sup>6</sup> The Student's related services remained at 90 minutes per month, each of SLP and OT. Although the Student's services were increased, Petitioner did not believe the services were enough to meet the Student's needs, as the Student did not make sufficient progress. The team discussed changing the Student's placement to an MRE. School A staff noted that it was beyond DCPS' deadline for identifying self-contained program for the Student for SY 2023-2024, and the team would revisit the Student's placement at the start of SY 2024-2025. (Witness 1's testimony, Petitioner's Exhibit 11)

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<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.

<sup>6</sup> The Student's initial 5 hours per week each of specialized instruction inside and outside general education was to expire on August 25, 2024, with the increase of hours of 7.5 hours per week each of specialized instruction inside and outside general education expiring with the rest of the IEP on May 15, 2025.

5. On September 30, 2024, School A held a meeting to discuss the Student's slow progress and that the Student was performing well below grade level. School A staff agreed to arrange a pre-consultation meeting with DCPS to consider a change in the Student's placement. Since it was the start of the school year, the School A staff wanted to see if the Student would improve with the increased specialized instruction outlined in the Student's May 16, 2024, IEP, which included skill-based small group instruction and both push-in and pull-out instruction. (Witness 1's testimony, Witness 3's testimony)
6. DCPS authorized Petitioner to obtain an independent psychological evaluation ("IEE"), which was completed on December 2, 2024. Petitioner provided DCPS a copy of the IEE. School A did not have an assigned DCPS, and it took until February 2025 for School A to meet to review the IEE. During the meeting, the DCPS school psychologist requested further testing. A DCPS psychologist collected additional data and conducted observations of the Student and completed her review of the IEE on March 29, 2025. (Witness 3's testimony, Petitioner's Exhibits 7, 39)
7. DCPS convened an eligibility and IEP meeting on April 8, 2025, and increased the Students' specialized instruction hours to 27.5 hours per week. The IEP was updated and reflected a least restrictive environment ("LRE") for a proposed placement in a specific learning support ("SLS") program where the Student would continue to have access to engage with nondisabled peers during common periods such as lunch and recess, and during inclusion time in her/his non-academic classes. On June 18, 2025, DCPS amended the Student's IEP to reduce the hours of specialized instruction to 20 hours per week outside general education to coincide with the requirements of the SLS program. (Witness 3's testimony, Petitioner's Exhibit 8, 9, 12, 13, 37)
8. On May 1, 2025, DCPS sent Petitioner an LOS letter identifying another DCPS school for the Student's placement at the start of SY 2025-2026 in which the Student would be in an SLS classroom. (Petitioner's Exhibit 48)
9. The Student missed OT services during SY 2024-2025. Petitioner's educational advocate reviewed the DCPS OT service trackers and determined that the Student missed 360 minutes, which is equivalent to 40%. Some of the missed services resulted from the Student's tardiness to school when the Student's OT provider had scheduled services. The Student's School A OT provider concluded that the Student did not suffer any significant harm from missing OT services. Therefore, DCPS did not offer any make-up OT services at the end of SY 2024-2025. Petitioner's educational advocate proposed a compensatory education plan to address the missed OT services and the lack of an appropriate IEP and placement in a self-contained special education program from the start of SY 2024-2025. The plan includes 200 hours of independent tutoring in literacy and math, and 6 hours of independent OT services. (Witness 1's testimony, Witness 2's testimony, Petitioner's Exhibit 21, 22, 23, 44)

## 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 #1 once Petitioner presented a prima facie case on that issue. Petitioner held the burden of persuasion on issue #2. <sup>7</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 failing to provide the Student with an appropriate IEP/placement and/or location of service (LOS) as of September 6, 2024, until the DPC was filed

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<sup>7</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.

because the Student should have had an increase to at least 20 hours per week of specialized instruction?

**Conclusion:** Respondent did not sustain the burden of persuasion by a preponderance of the evidence that provided the Student with an appropriate IEP/placement and/or location of service (LOS) as of September 6, 2024, until the DPC was filed.

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.

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.

In March 2024, DCPS conducted a psychological reevaluation of the Student which revealed that the Student’s scores were low and very low in all academic areas and the Student’s cognitive functioning was in the very low range (FSIQ=77). On May 16, 2024, School A convened the Student’s annual IEP review meeting and changed the Student’s disability classification to SLD. Although the Student’s specialized instruction was increased to 12.5 hours per week inside general

education, and 12.5 hours per week outside general education, Petitioner reiterated her request that the Student be in a self-contained special education program, but School A staff noted that it was beyond DCPS' deadline for identifying self-contained program for the Student for SY 2023-2024, and the team would revisit the Student's placement at the start of SY 2024-2025.

On September 30, 2024, School A held a meeting to discuss the Student's slow progress and that the Student was performing well below grade level. Although the School A staff wanted to see if the Student would improve with the increased specialized instruction outlined in the Student's May 16, 2024, IEP, it was clear that based on the Student's lack of academic performance that the Student that as of the start of SY 2024-2025, the Student should have been in a self-contained special education program where the Student would have received at least 20 hours of specialized instruction per week. It took until April 8, 2025, for DCPS to finally amend the Student's IEP to reflect the needed level of services and until May 2025, to identify an appropriate self-contained program for the Student. Based on the evidence presented, the IHO concludes that the IEP that DCPS developed for the Student on May 16, 2024, and the Student continued placement at School A, particular after the Student's IEP team met in September 2024, was not reasonably calculated to enable the Student to make appropriate progress considering the Student's circumstances and denied the Student a FAPE.

**ISSUE 2:** Did DCPS deny the Student a FAPE by failing to implement the Student's IEP during SY 2024-2025 by not providing 90 minutes of OT services? <sup>8</sup>

**Conclusion:**

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

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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 Student's IEP created around May 16, 2024, provided for 90 minutes of direct OT services per month. The Student was to receive a total of 900 minutes of OT during the 2024-2025 school year. Petitioner initially alleged that the Student missed 90 minutes of OT services, and at the hearing, the Petitioner's educational advocate testified that, based on her review of the service trackers, the Student had actually missed 360 minutes, which is 40%. Conversely, the DCPS OT provider testified that many of the Student's missed services were due to the Student's tardiness.

However, this witness also testified that she concluded the Student did not suffer any harm from missed OT services and therefore DCPS did not offer to make up any services at the end of SY 2024-2025. The measure of whether there is a denial of FAPE for missed services is not whether a student suffers harm. There is no requirement that the child suffer educational harm 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.

Based on the evidence presented, the Student missed 360 minutes of OT services, which is 40% of the scheduled services. Although the DCPS OT provider testified that some missed services were due to the student's tardiness, no counter-evidence was provided by DCPS regarding the specific instances of tardiness to effectively challenge the testimony and calculations of the educational advocate. As a result, the IHO concludes that the Student's missed OT services represented a material failure to implement the Student's IEP and therefore constituted a denial of a FAPE.

### **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.)

Petitioner requested the compensatory education included in her educational advocate's proposal. Petitioner credibly testified that the Student has made significant progress with prior independent tutoring that DCPS has authorized, and the Student would have made even more progress with additional independent tutoring. Petitioner's educational advocate, who testified as an expert witness, opined that but for the denial of FAPE, the Student would have experienced more focused development, stronger foundational skills, and more repetition and reinforcement of those skills, leading to greater progress. There was sufficient evidence that providing the Student with the proposed compensatory tutoring will place the Student at or near the position she/he would have been in but for the denial of a FAPE as determined herein.

**ORDER: 9**

1. DCPS shall, within ten (10) business days of the issuance of this order, provide Petitioner authorization to obtain the following services as compensatory education at the OSSE-prescribed rates: 200 hours of independent tutoring in literacy and math, and 6 hours of independent OT services.
2. All other relief requested by the Petitioner is denied.

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<sup>9</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 21, 2025**

Copies to:     Counsel for Petitioner  
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