

District of Columbia
Office of the State Superintendent of Education

Office of Dispute Resolution
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Parent, on behalf of Student,¹)	
Petitioner,)	
)	Hearing Date: 12/15/25
v.)	Hearing Officer: Michael Lazan
)	Case No. 2025-0173
District of Columbia Public Schools,)	
Respondent.)	

HEARING OFFICER DETERMINATION

I. Introduction

This case involves an X-year-old student (the “Student”) who is eligible for services as a student with autism. A due process complaint (“Complaint”) was received by District of Columbia Public Schools (“DCPS” or “Respondent”) pursuant to the Individuals with Disabilities Education Act (“IDEA”) on October 1, 2025. The Complaint was filed by the Student’s parent (“Petitioner”). On October 9, 2025, Respondent filed a response. The resolution period expired on October 31, 2025.

II. Subject Matter Jurisdiction

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the IDEA, 20 USC 1400 et seq., its implementing regulations, 34 CFR 300 et seq., Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-A, Chapter 30.

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

III. Procedural History

A prehearing conference was held on November 3, 2025. Attorney A, Esq., counsel for Petitioner, appeared. Attorney B, Esq., counsel for Respondent, appeared. A prehearing conference order was issued on November 14, 2025, summarizing the rules to be applied in the hearing and identifying the issues in the case. The hearing was conducted through the Microsoft Teams videoconferencing platform, without objection. Petitioner was again represented by Attorney A, Esq., and Respondent was again represented by Attorney B, Esq. This was a closed proceeding.

On December 9, 2025, Petitioner moved on consent to extend the Hearing Officer Determination (“HOD”) timeline from December 15, 2025, to December 31, 2025. An order was issued on December 10, 2025, extending the deadline for the HOD to December 31, 2025.

During the proceeding, Petitioner moved into evidence exhibits P-1 through P-24 without objections. Respondent moved into evidence exhibits R-3, R-4, R-11, R-12, R-22, R-26, R-28, R-32, R-34 through R-37, R-40, and R-46. Objections were raised with respect to exhibits R-35, R-36, and R-46. These objections were overruled. Exhibits R-3, R-4, R-11, R-12, R-22, R-26, R-28, R-32, R-34 through R-37, R-40, and R-46 were admitted. Petitioner presented as witnesses, in the following order: Witness A, an educational advocate (expert in special education and Individualized Education Program (“IEP”) programming); and herself. Respondent presented as a witness: Witness B, manager of special education at School A (expert in special education programming and placement). At the end of testimony, the parties presented oral closing arguments.

IV. Issues

As identified in the revised Prehearing Order and in the Complaint, the issue to be determined in this case is as follows:

Did DCPS fail to implement the Student's IEP for the 2025-2026 school year?

Petitioner contended that no dedicated aide was provided to the Student. For this issue, the burden of persuasion is on Petitioner. As relief, Petitioner seeks compensatory education, a non-public placement for the Student, and related relief.

V. Findings of Fact

1. The Student is an X-year-old who attends a Communication and Education Support ("CES") classroom at School B, a DCPS public school. The Student is eligible for services as a student with autism. The Student relies on a feeding tube for nutrition and a full complement of related services, including support from a full-time dedicated aide. Testimony of Witness A.

2. The Student has many behavioral challenges, many of which involve impulsive behaviors, including standing on tables, throwing objects, and aggression against school staff members. The Student has jumped off a school bus, and s/he has been handcuffed by the police as a result of his/her aggression. The Student also has toileting issues. Testimony of Petitioner.

3. The Student is nonverbal. The Student can communicate through an "AAC" device, but s/he did not have access to this device during the 2024-2025 school year due to issues with staffing and resources. Testimony of Petitioner.

4. Physically, the Student can navigate the school environment with little to no assistance or adaptations. However, s/he faces several challenges in the areas of

safety, awareness, socialization, and communication, as well as in completing academic tasks. The Student must have continuous supervision and support while in school.

Testimony of Witness A.

5. A psychological evaluation of the Student was conducted in May and June 2024, and a corresponding report was issued on June 9, 2024. The evaluator attempted to administer the Test of Non-Verbal Intelligence-Fourth Edition (“TONI-4”) and the Woodcock-Johnson Tests of Achievement-Fourth Edition, Form A (“WJ-IV ACH”), but the Student would not tolerate the testing. The evaluator did complete the Vineland Adaptive Scales, which showed that the Student was functioning at below the 1st percentile in adaptive skills. The evaluator also completed the Behavior Assessment Scale for Children-Third Edition (“BASC-3”), which showed that the Student had clinically significant concerns in many behavioral domains. The Autism Spectrum Rating Scales (“ASRS”) indicated that the Student’s autism-related issues were severe. The evaluation included an interview with the Student’s teacher, who indicated that the Student had issues with attention that prevented him/her from completing tasks compared to classmates. The teacher said that the Student’s processing of information took a while, and that there was usually a lag in his/her response time. The teacher indicated that it was difficult to assess what the Student actually knew and to determine his/her ability to retain information. The teacher also indicated that it was difficult to assess whether the Student could actually identify words. The report indicated that the Student did best in an environment with small-group or 1:1 instruction. P-11; Testimony of Witness A.

6. For the 2024-2025 school year, the Student attended School A. In a June 30, 2025, HOD pertaining to the Student, a hearing officer observed that the Student had

had five different dedicated aides during the school year, with the last aide assigned in January 2025. P-1.

7. An IEP was written for the Student on May 8, 2025. The IEP provided the Student with twenty-four hours of specialized instruction per week outside the general education setting, two hours of speech-language pathology per month, two hours of occupational therapy per month outside general education, and two hours of behavioral support services per month. The IEP required a dedicated aide to be assigned to the Student for seven hours each school day. P-15.

8. For the 2025-2026 school year, the Student has attended School B. The Student was not assigned a dedicated aide until October 9, 2025. Other staff in the Student's classroom filled in to provide the Student with services during this period. Before the dedicated aide was assigned, the Student exhibited severe behavioral challenges, including standing on furniture and throwing objects. At one point, the Student ended up "flooding" a nurse's office. Testimony of Petitioner; Testimony of Witness A; Testimony of Witness B.

9. Since the date that a dedicated aide was assigned to the Student, his/her problematic behaviors have declined. Testimony of Petitioner. Aides have been difficult to retain at school sites, generally, because of the Student's aggressive behaviors. Testimony of Petitioner.

VI. Conclusions of Law

Based upon the above findings of fact, the arguments of counsel, and this Hearing Officer's legal research, the conclusions of law of this Hearing Officer are as follows:

The burden of proof in District of Columbia special education cases was changed by the local legislature through the District of Columbia Special Education Student Rights Act of 2014. That burden is expressed as the following: “Where there is a dispute about the appropriateness of the child’s individual educational program or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement” provided that “the party requesting the due process hearing shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the public agency.” D.C. Code Sect. 38-2571.03(6)(A)(i). Accordingly, the burden of persuasion in this case is on Petitioner.

Did DCPS fail to implement the Student’s IEP for the 2025-2026 school year?

Petitioner contended that no dedicated aide was provided to the Student.

The IDEA was enacted to “ensure that children with disabilities have available to them free appropriate public education [“FAPE”] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” M.G. v. Dist. of Columbia, 246 F. Supp. 3d 1, 7 (D.D.C. 2017) (citing 20 USC Sect. 1400(d)(1)(A); 34 CFR 300.300). In Hendrick Hudson Bd. of Educ. v. Rowley, 458 U.S. 176 (1982), the Court explained that an IEP must be reasonably calculated to enable the child to receive benefit. Id. at 204. The Court’s decision in Andrew F. ex rel. Joseph F. v. Douglas County School District RE-1, 580 U.S. 386 (2017), elaborated on the doctrine established in Rowley, reasoning that “a student offered an educational program providing merely more than *de minimis* progress from year to year can hardly be said to have been offered an education

at all.” Id. at 1001. The Court held that the IDEA “demands” a higher standard—“an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Id. The Court stated that its ruling “should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities.” Id. But the court also said that parents can fairly expect school authorities to offer a “cogent and responsive explanation” for their decisions, and that a student’s program should be “appropriately ambitious,” a standard “markedly more demanding than the ‘merely more than *de minimis*’ test applied by the Tenth Circuit.” Id. at 1000-1002. Finding that “instruction that aims so low” would be tantamount to “sitting idly...awaiting the time when they were old enough to drop out,” the Court held that the IDEA “demands” a higher standard. Id. (citing to Rowley). The District of Columbia Circuit Court of Appeals has accordingly found that Andrew F. raised the bar on what counts as adequate education under the IDEA. Z. B. v. District of Columbia., 888 F.3d 515, 517 (D.C. Cir. 2018).

The IDEA is violated when a school district materially deviates from a student’s IEP. Wilson v. District of Columbia, 770 F. Supp. 2d 270, 275 (D.D.C.2011). A material failure occurs when there is “more than a minor” discrepancy between services a school provides to a disabled child and services required by the child’s IEP. Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811, 822 (9th Cir. 2007).

Here, the record indicates that the Student, who is non-verbal and aggressive, with very poor adaptive skills, requires a dedicated aide every minute of the school day to be able to learn and be safe in school. It is inappropriate for a student like this to be without an aide for a single day, much less for over a month. Courts in this jurisdiction have held

that the failure to implement an IEP over the course of a month can result in FAPE denial. Wilson, 770 F. Supp. 2d at 276.

Witness B argued that the Student's school was able to mitigate the lack of a dedicated aide by utilizing other personnel in the Student's small classroom, and that the school district ensured that someone was assigned to the Student throughout the school day. Witness B argued that someone always maintained close contact with the Student in the classroom for behavior and academic support, to escort him/her to the nurse's office daily for feeding, and to take him/her on restroom breaks. However, the record suggests that the IEP team intended for the same aide to attend to the Student each day, so that the aide would be able to establish a strong, 1:1 relationship with the Student and develop a deep understanding of the Student's unique profile and behaviors. However, no regular aide was provided to the Student until October 9, 2025.

Moreover, Witness B was in the Student's classroom for a total of only two hours during the entire school year. No witness was called from the Student's classroom to make it clear that the Student in fact was provided with a "replacement" 1:1 aide for every minute of the day, or to even to generally describe the classroom during this period. No witness was called to explain exactly how the Student's situation changed after the dedicated aide arrived. Additionally, there is testimony that the Student's problematic behaviors began to diminish after about five or six weeks, which corresponds to when the dedicated aide arrived. Finally, the caselaw on failure-to-implement claims indicates that the main inquiry relates to the percentage of services received, not to the actual harm. As one court put it, "it is the proportion of services mandated to those provided that is the crucial measure for purposes of determining whether there has been a material failure to

implement.” Turner v. District of Columbia, 952 F. Supp. 2d 31, 41 (D.D.C. 2013) (citing Wilson, 770 F. Supp. 2d at 275); Holman v. District of Columbia, 153 F. Supp. 3d 386, 393 (D.D.C. 2016). Another court stated that “the materiality standard does not require that the child suffer demonstrable education harm in order to prevail.” Wilson, 770 F. Supp. 2d at 275 (quoting Van Duyn, 502 F.3d at 822).

Here, the record indicates that the Student did not receive any of the dedicated aide services that his/her IEP required until October 9, 2025. DCPS therefore denied the Student a FAPE when it failed to provide the Student with a dedicated aide until October 9, 2025.

RELIEF

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

As relief, Petitioner seeks placement of the Student in a non-public school. Petitioner characterized this request as a claim for compensatory education, but compensatory education awards are ordinarily in the form of tutoring or evaluations. Only in an extreme case will a hearing officer order that a student be awarded tuition as compensatory education, such as when a student went without services over a period of five years. Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275, 1280 (11th Cir. 2008).

Those are not the facts here, where the issue is whether the school system can retain a dedicated aide for the Student. As a result, it is more appropriate to assess the proposed relief as a claim for non-public school placement, per Branham v. District of Columbia, 427 F.3d 7, 12 (D.C. Cir. 2005).

In Branham, the District of Columbia Circuit Court of Appeals found that parents may seek a student's prospective placement at a non-public school if it is determined that the school district cannot service the student in the future. Courts must consider "all relevant factors," including the nature and severity of the student's disability, the student's specialized educational needs, the link between those needs and the services offered by the private school, the placement's cost, and the extent to which the placement represents the least restrictive educational environment.

Petitioner's claim for relief was partly based on the contention that DCPS will be unable to provide the Student with a regular dedicated aide in the coming months. However, Petitioner did not submit any convincing proof that DCPS will be unable to provide the Student with a regular dedicated aide going forward. Although the Student's school apparently had issues keeping an aide last year, the Student attends a different school this year. While the record does suggest that the Student is a difficult child for some aides to handle, the record does not suggest that the Student is so difficult to manage that no DCPS aide could regularly manage him/her on a regular basis going forward.

Petitioner also suggested that several non-public schools might be a better fit for the Student, generally, than a DCPS public school. Witness A explained that a non-public school would be able to provide the Student with a self-contained classroom that

focuses on behavioral support. But nothing in the record suggests that DCPS does not have such a school, or that the School B program is different from the proposed non-public placement. Nor did Petitioner or her expert clearly explain why the difficulty in getting an aide for the Student would be ameliorated by placing the Student in a non-public school. No representatives from any non-public school were called as witnesses to allow DCPS to question them on how the non-public school would be able to provide an aide more readily than DCPS could, or how the non-public school could provide the Student with more individual attention than a public placement.

Still, the Student should receive relief to compensate for the school district's failure to provide him/her with a dedicated aide during the first six or so weeks of the current school year. Hearing officers may award "educational services to be provided prospectively to compensate for a past deficient program." Reid v. District of Columbia, 401 F.3d 516, 521-23 (D.C. Cir. 2005). The award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. Id., 401 F.3d at 524; see also Friendship Edison Public Charter School v. Nesbitt, 532 F. Supp. 2d 121, 125 (D.D.C. 2008) (compensatory award must be based on a "qualitative, fact-intensive" inquiry and "tailored to the unique needs of the disabled student"). A petitioner need not "have a perfect case" to be entitled to a compensatory education award. Stanton v. District of Columbia, 680 F. Supp. 201 (D.D.C. 2011).

Courts often find that individual instruction is an appropriate remedy for the failure of a school district to deliver a FAPE to a student. Kelsey v. District of Columbia, 85 F. Supp. 3d 327 (D.D.C. 2015) (hearing officer's award calculation based on an

assessment of the record). The record in this case makes it clear that this Student has significant needs, benefits from 1:1 attention, and would likely benefit from an award of 1:1 instruction. The June 2024 psychological evaluation of the Student says that 1:1 or small-group instruction “will be required” because of the Student’s difficulties with attention to adult-directed tasks and understanding and following instructions, as well as his/her need for behavioral supervision. The Student’s current IEP says that s/he is more likely to use limited verbal speech (single-word level, often reported to be “faint” and after a model) in a 1:1 setting to meet his/her needs and wants. Accordingly, as relief for the Student, this Hearing Officer will order sixty hours of 1:1 instruction, which corresponds to about two hours of 1:1 instruction per day that the Student went without a dedicated aide.

VII. Order

As a result of the foregoing:

1. DCPS shall pay for sixty hours of 1:1 instruction for the Student by a certified teacher who specializes in working with students with autism, at a reasonable and customary rate in the community;
2. All other requests for relief are denied.

Dated: December 30, 2025

Michael Lazan
Impartial Hearing Officer

cc: Office of Dispute Resolution
Attorney A, Esq.
Attorney B, Esq.

VIII. Notice of Appeal Rights

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

Dated: December 30, 2025

Michael Lazan
Impartial Hearing Officer