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Office of the State Superintendent of Education
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Confidential

Parent on Behalf of Student, ¹ Petitioner, v. District of Columbia Public Schools (Local Education Agency “LEA”) Respondent. Case # 2025-0163 Date Issued: December 2, 2025	HEARING OFFICER’S DETERMINATION Hearing Dates: November 10, 2025 November 12, 2025 Counsel for Each Party listed in Appendix A <u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u>
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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 parent. 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 pursuant to IDEA under the disability classification of Other Health Impairment ("OHI") and attends a DCPS school ("School A").

On September 18, 2025, the Student's parent ("Petitioner") filed a due process complaint ("DPC") claiming that DCPS denied the Student a free appropriate public education ("FAPE"). Petitioner alleged that DCPS failed to fully implement the Student's IEP. Petitioner requests as relief an order directing DCPS to fund compensatory education for the denials of FAPE alleged, and immediately provide the Student with a dedicated aide with appropriate medical training and/or place the Student in a therapeutic non-public placement.

DCPS's Response to the Complaint:

DCPS filed a response to the complaint on September 29, 2025. DCPS denies the allegation that it failed to provide the Student a FAPE. DCPS asserted, inter alia, the following in its response:

The Student has been enrolled at School A from the beginning of school year ("SY") 2023-2024. On or about March 26, 2025, an individualized education plan ("IEP") was developed for Student. For the SY 2024-2025, the Student was absent more than 75 days. The Student attendance has affected service delivery. According to the school, a dedicated aide has been made readily available to the Student. DCPS did not fail to provide the Student a FAPE, and Petitioner's request for relief should be denied.

Resolution Meeting and Pre-Hearing Conference:

Petitioner and DCPS participated in a resolution meeting on October 1, 2025. The parties did not mutually agree to shorten the 30-day resolution period. The due process complaint ("DPC") was filed on September 18, 2025. The 45-day period began on October 18, 2025, and ends on December 2, 2025, with the Hearing Officer's Determination ("HOD") due on that date.

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

ISSUE: ²

The issue adjudicated is:

Did DCPS deny Student a FAPE by failing to implement the Student’s IEPs during SY 2024-2025 and SY 2025-2026?

DUE PROCESS HEARING:

The Due Process Hearing was convened on November 10, 2025, and November 12, 2025, via video teleconference on the Microsoft Teams platform.

RELEVANT EVIDENCE CONSIDERED:

The IHO considered the testimony of the witnesses, and the documents submitted in each party’s disclosures (Petitioner’s Exhibits 1 through 23 and DCPS’s Exhibits 1 through 9) 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

SUMMARY OF DECISION:

Petitioner bore the burden of persuasion on the contested issue and met this burden by a preponderance of the evidence. The IHO ordered DCPS to either provide the awarded compensatory education or authorize an independent educational evaluation (“IEE”) to determine the appropriate compensatory education.

FINDINGS OF FACT: ⁵

² At the outset of the due process hearing, the IHO reviewed the issue 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 Petitioner presented two witnesses: (1) Petitioner’s special education advocate employed by the law firm representing Petitioner, designated as an expert witness and (3) the Student’s mother (Petitioner). DCPS presented two witnesses, both of whom testified as expert witnesses: (1) the assistant principal of School A, and (2) DCPS’s manager for paraprofessional support. 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.

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 or the page number within the entire disclosure submission. When citing an exhibit submitted by more than one party separately, the IHO may only cite one exhibit.

1. The Student resides in the District of Columbia with the Student's parent, and DCPS is the Student's LEA. The Student has been determined eligible for special education with a disability classification of OHI, and attends School A, a DCPS school. (Mother's testimony, Petitioner's Exhibit 5)
2. The Student has been diagnosed with epilepsy and has both a medication/treatment plan and a seizure action plan signed by the Student's physician and provided to and used by DCPS in the event the Student experiences a seizure during the school day. (Petitioner's Exhibits 10, 11)
3. The Student first attended School A for SY 2023-2024, and was placed in the specific learning support ("SLS") classroom. In November 2025, Petitioner emailed School A to express her concerns that the Student's seizure activity was not being properly monitored and that other students were being physically aggressive towards the Student. School A convened a meeting in December 2025 with Petitioner and her representative(s) to address her concerns. (Mother's testimony, Petitioner's Exhibit 17-183)
4. The Student is a patient of the Neuroscience Clinic and Children's National Medical Center ("CNMC") where she/he is treated for focal unaware epilepsy to bilateral tonic-clonic seizure. On December 11, 2024, the Student's physician at CNMC wrote a letter stating, inter alia the following: "It is my medical opinion that the ongoing stress [the Student] has experienced, particularly from bullying and physical aggression at school, could provoke or contribute to the onset of seizures...Additionally, it is not uncommon for individuals experiencing seizures to exhibit physical symptoms such as loss of bladder control, which may explain the soiling of [the Student's] clothing following [his/her] seizure at school." (Petitioner's Exhibit 7)
5. On March 13, 2025, CNMC wrote another letter noting the Student's increase in seizure activity, occurring three to four times per month at school. The letter noted that the Student's seizures present as behavioral arrest, unresponsiveness, and urinary incontinence and pose a significant risk to the Student's safety and well-being. The letter went on to state that the Student requires a dedicated one-on-one aide to ensure constant monitoring, immediate intervention, injury prevention, assistance with toileting, and post-seizure care. (Petitioner's Exhibit 9)
6. On March 26, 2025, DCPS convened an IEP for the Student, which Petitioner and her educational advocate attended. The CNMC letter(s) were discussed during the meeting. The resulting IEP noted that the Student has epilepsy and has had an increase in absent seizures and quoted the language from the CNMC letter(s). The IEP provided for the following special education and related services outside general education: 20 hours per week of specialized instruction and 2 hours per month each of group occupational therapy ("OT"), group speech-language pathology ("SLP"), and group behavioral support services ("BSS"). The IEP also provided for a dedicated aide with medical training for 20 hours per week. (Witness 1's testimony, Petitioner's Exhibit 5-72, 5-73)

7. On March 27, 2025, the Student's School A special education teacher sent Petitioner a copy of the Student's finalized IEP that included the dedicated aide. (Petitioner's Exhibit 18-189)
8. Although the Student's special education teacher finalized the Student's IEP on March 26, 2025, she did not send a copy of the finalized IEP to the other School A team members. As a result, School A administrators were unaware that the IEP had been finalized with the dedicated aide. They believed that the IEP team needed more data collection and input from the DCPS central office before confirming that the Student required a dedicated aide. Once School A administrators learned near the end of SY 2024-2025 that the March 26, 2025, IEP had been finalized with the dedicated aide, they contacted the DCPS central office to secure a dedicated aide for the Student for SY 2025-2026. The School A administrator discussed with the central office the additional training required for the classroom staff, nurse, and dedicated aide regarding the Student's medical protocols. (Witness 2's testimony)
9. DCPS made no arrangements to have a dedicated aide available to the Student during SY 2024-2025. Petitioner therefore held the Student out of school due to her concern for the Student's safety. As a result, the Student did not attend school at all from May 2, 2025, to the end of the school year on June 18, 2025, and she/he did not receive special education and related services during that period. The Student made no progress on her/his IEP goals, because he/she was not at school for the remainder of SY 2024-2025. The Student's parent was in touch with the Student's special education teacher about the Student's absence from school, as she was unwilling to risk sending the Student to school due to safety concerns. She picked up schoolwork packets for the Student from the teacher for the Student to complete at home. Petitioner did not communicate with anyone else at School A about the Student's absences. (Mother's testimony, Petitioner's Exhibit 6)
10. August 6, 2025, School A's assistant principal sent an email to Petitioner that stated, inter alia, the following: "I would like to clarify that [the Student's absences from school were not due to unresolved concerns. [Petitioner] made the decision to keep [the Student] home, despite those concerns being addressed during our meeting. As previously communicated, a dedicated aide cannot be assigned until the required process has been completed. To proceed, please confirm whether [the Student] will be attending school at the start of the year so we can initiate the necessary steps to determine [his/her] eligibility. Additionally, I want to reiterate that the presence or absence of a dedicated aide does not impact a student's attendance. As you are aware, our SLS program is staffed with both a classroom teacher and a special education aide, ensuring appropriate support is available." (Witness 2's testimony, Petitioner's Exhibit 18-186)
11. The DCPS central office personnel assigned a dedicated aide to the Student at the beginning of SY 2025-2026. On Tuesday, August 26, 2025, School A's assistant principal sent an email to the Student's School A team members informing them that the Student's dedicated aide began that day. School A has a dedicated nurse, and the Student's dedicated aide has been provided the medical training required by the Student's IEP from the School A nurse. The aide has copies of the Student's IEP and the medical protocols, including the seizure action plan and the rescue medication, which is kept with the School A nurse. The

aide has been consistently present during SY 2025-2026. (Witness 2's testimony, Witness 3's testimony, Petitioner's Exhibits, 5-73, 19-192, Respondent's Exhibit 5)

12. On September 12, 2025, the Student soiled his/her clothes at school. The Petitioner did not learn of this incident until several hours later and believed that the Student had a seizure; however, this was not the case. The Student was at recess playing a game with friends and did not want to stop. As a result, the Student wet himself/herself. The School A staff had the Student change clothes, and the Student stated she/he was fine and did not need to see the nurse, but just needed to change clothes. (Witness 2's testimony)
13. Petitioner believes that the Student has not made academic progress since the beginning of SY 2024-2025 due to a stressful environment, resulting in health issues and causing the Student to focus less on learning. Petitioner also believes that the Student has regressed in speech and can no longer pronounce words he/she once could. The Student's handwriting was a challenge, but she/he has made progress, with improvements in spacing and legibility. (Mother's testimony)
14. Petitioner's educational advocate developed a compensatory education proposal. In addition to the dedicated aide with medical training in seizure protocols, the advocate proposed that the Student be provided with 200 hours of independent tutoring to address the Student's academic deficits, 30 hours of independent OT, 30 hours of independent SLP, and 30 hours of independent BSS with a psychologist. (Witness 1's testimony, Petitioner's Exhibit 23)

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). Petitioner held the burden of persuasion on

issue adjudicated.⁶ 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: Did DCPS deny Student a FAPE by failing to implement the Student’s IEPs during SY 2024-2025 and SY 2025-2026?

Conclusion: Petitioner sustained the burden of persuasion by a preponderance of the evidence that DCPS failed to implement the Student’s IEP from March 27, 2025, to June 18, 2025, by failing to provide the Student a dedicated aide after the Student’s IEP was finalized.

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).

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*

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.

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)

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 Student's March 26, 2025, IEP entitled him/her to 20 hours per week of specialized instruction outside of general education; 2 hours per month of OT, SLP, and BSS, and a dedicated aide with medical training. After the March 26, 2025, IEP meeting, DCPS did not make a dedicated aide available for the remainder of SY 2024-2025. As a result of this failure, Petitioner declined to send the Student to school as she justifiably considered the absence of a dedicated aide an unsafe environment for the Student. The Student, therefore, did not receive the specialized instruction and related services to which he/she was entitled for at least the last six weeks of SY 2024-2025. The missed services resulting from the Student not being provided with a dedicated aide constituted a material deviation from the Student's IEP and denied the Student FAPE.

Petitioner asserted that the Student continues to face increased risk of seizure activity in his/her classroom because of stress associated with loud and unpredictable behavior by other students and claimed that, although a dedicated aide has been provided to the Student since the start of SY 2025-2026, there was an indication that the aide was not medically trained. However, this notion was dispelled by the credible testimony of the DCPS witnesses who stated that the staff who works with the Student has been trained on the medical protocols in the Student's seizure plan and that School A nurse has trained the dedicated aide on the protocol and to bring the Student to the nurse

to administer medication. Although Petitioner alleged the Student had a seizure since the dedicated aide was assigned, there was credible testimony from a DCPS witness that the Student soiled her/his clothes because she/he did not want to stop playing, and not because of a seizure.

At the beginning of the 2025-2026 school year, DCPS provided the Student a dedicated aide. Because the evidence demonstrates that the Student has a dedicated aide sufficiently trained in the medical protocols of the Student's seizure and medication treatment plans, the IHO concludes that the Student's current placement at School A is appropriate and no change in the Student's placement is warranted.

Remedy:

A hearing officer may award appropriate equitable relief when there has been an actionable violation of IDEA. *See* 20 U.S.C. § 1415(f)(3)(E)(ii)(II); *Eley v. District of Columbia*, 2012 WL 3656471, 11 (D.D.C. Aug. 24, 2012) (citing *Branham v. District of Columbia*, 427 F.3d at 11–12.)

Under the theory of compensatory education, "courts and hearing officers may award educational services to be provided prospectively to compensate for a past deficient program. The inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid*, 401 F.3d 522 & 524. To aid the court or hearing officer's fact-specific inquiry, "the parties must have some opportunity to present evidence regarding [the student's] specific educational deficits resulting from his/her loss of FAPE and the specific compensatory measures needed to best correct those deficits." *Id.* at 526.

When a hearing officer finds denial of FAPE, he has "broad discretion to fashion an appropriate remedy, which can go beyond prospectively providing a FAPE, and can include compensatory education.... [A]n award of compensatory education must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *B.D. v. District of Columbia*, 817 F.3d 792, 797-98 (D.C. Cir. 2016) (internal quotations and citations omitted.)

The Petitioner requested the compensatory education included in her educational advocate's proposal.⁷ However, the IHO did find that the level of services recommended adequately reflected the level of services missed. Although the IHO currently lacks sufficient evidence to precisely determine the appropriate compensatory education, there was sufficient evidence presented for the IHO to conclude that the Student would benefit from some independent tutoring and related services to help place the Student in the position he/she would have been in but for the FAPE denial. Therefore, the IHO grants Petitioner the option of receiving the compensatory education

⁷ The advocate requested the Student be provided 200 hours of independent tutoring to support the Student's academic deficits, 30 hours of independent OT, 30 hours of independent SLP and 30 hours of independent BSS with a psychologist.

awarded below or authorization to obtain an evaluation to determine the appropriate compensatory education.

ORDER: ⁸

1. DCPS shall, within ten (10) business days of the issuance of this order, grant Petitioner authorization to obtain 100 hours of independent tutoring, and 10 hours each OT, SLP, and BSS at the OSSE-prescribed rates, or instead, at Petitioner's option, DCPS shall authorize an independent educational evaluation ("IEE") at the OSSE prescribed rate to determine the appropriate compensatory education.
2. If Petitioner chooses the IEE rather than the compensatory education awarded, Petitioner is authorized to seek appropriate compensatory education for the Student from DCPS, based on the IEE, at a subsequent due process hearing if necessary.
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: December 2, 2025

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

⁸ 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.