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Confidential

Parent on Behalf of Student, ¹ Petitioner, v. District of Columbia Public Schools (Local Education Agency “LEA”) Respondent. Case # 2025-0152 Date Issued: December 3, 2025	HEARING OFFICER’S DETERMINATION Hearing Dates: November 4, 2025 November 5, 2025 November 6, 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 development delay ("DD"). During school year ("SY") 2023-2024, and 2024-2025, the Student attended a DCPS school ("School A"), and for SY 2025-2026, attends another DCPS school ("School B").

On August 28, 2025, the Student's grandparent, who is the Student's guardian ("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: (1) comprehensively and/or timely evaluate and/or re-evaluate the student during SY 2023-2024 and/or during SY 2024-2025; (2) provide Student with an appropriate individualized educational program ("IEP") from November 2023 through present and/or for SY 2025-2026; (3) hold a meeting and/or allow the parent meaningful participation in the IEP developed in May 2024 and/or in the change of the Student's disability classification; and (4) failed to fully implement the Student's IEP during SY 2023-2024 and SY 2024/2025.

Petitioner requests as relief an order directing DCPS to revise the Student's IEP to provide for 30 minutes a day specialized instruction outside of the classroom, 60 minutes a day of instruction inside the classroom; behavior support services ("BSS"); Direct occupational therapy ("OT") services inside (120 minutes) and outside the classroom (120 minutes), consultative OT and speech-language pathology ("SLP") (240 minutes) and BSS, academic goals in Reading, Written Expression, and Mathematics, conduct or fund an functional behavior assessment ("FBA") and assistive technology ("AT") evaluation, timely reconvene the IEP Team to review evaluation results, develop a BIP and/or amend the Student's IEP as appropriate, provide the Student with an AT device and training for both the parent and Student, provide the Student with compensatory education for denials of FAPE that have occurred and the parent's right to request additional compensatory education upon completion of outstanding evaluations, and provide the parent with transportation services to enable the Student to access compensatory education services.

DCPS's Response to the Complaint:

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

DCPS asserts that the Student was not denied a FAPE for SY 2023-2024, SY 2024-2025, and SY 2025-2026. The Student has been enrolled at School B for SY 2025-2026. Student is identified as a student with a DD disability classification. Before attending School B, Student was enrolled

at School A during SY 2023-2024 and SY 2024-2025. Prior to attending School A, Student attended OSSE's Strong Start DC Early Intervention Program.

On or about November 16, 2023, DCPS convened an IEP team meeting and developed an amended IEP with Petitioner's participation. The teams relied on various sources of information (progress reports, classroom-based assessments, observations) in developing the IEP. DCPS asserts that the Student's IEP was appropriate at the time developed and is reasonably calculated to enable the Student to make appropriate progress considering the Student's circumstances. Student's services included 1 hour per week of SLP inside a general education setting, and 2 hours monthly SLP outside the general education setting. The IEP also listed other appropriate Classroom Aids and Services based on Student's needs identified by the IEP team.

On or about March 19, 2024, DCPS convened an annual review and developed an IEP with Petitioner's participation. Student's services included 3 hours per week of SLP outside the general education setting. Student's IEP listed AT services for communication. The IEP also listed other appropriate Classroom Aids and Services based on the Student's needs identified by the IEP team. The IEP developed was appropriate.

On or about May 28, 2024, DCPS convened an annual review and developed an IEP with Petitioner's participation. Student's services included 2 hours weekly specialized instruction inside the general education setting, 30 minutes monthly specialized instruction outside the general education setting, 3 hours monthly of SLP outside the general education setting, 45 minutes monthly of OT outside the general education setting, 45 minutes monthly of OT inside the general education setting, and 30 minutes monthly OT consultation services. Student's IEP listed AT services for communication. The IEP also listed other appropriate Classroom Aids and Services based on Student's needs identified by the IEP team. The IEP developed was appropriate.

On or about June 5, 2025, DCPS issued a prior written notice ("PWN") to indicate DCPS' proposal to evaluate Student in Adaptive, Cognitive, Communication and Occupational Therapy, which were identified during the analysis of existing data ("AED") process. DCPS asserts that the evaluations conducted by DCPS were appropriate and timely for SY 2023-2024 and SY 2024-2025.

On or about August 8, 2025, DCPS sent Petitioner a letter of invitation to attend a scheduled IEP meeting, scheduled for August 15, 2025. DCPS asserts that the Student was provided with an appropriate IEP from November 2023 and for SY 2024-2025 and SY 2025-2026.

DCPS asserts that during the 2023-2024 school year to present, Student's IEP was appropriately implemented. DCPS asserts that it did not fail to hold any required meetings and allowed Petitioner to meaningfully participate in the IEP developed for Student in May of 2024. DCPS asserts that the Students' disability classification is appropriate at all times alleged in the DPC. DCPS asserts that it appropriately implemented the Student's IEP during SY 2023-2024 and SY 2024-2025.

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 August 28, 2025. The 45-day period began on September 27, 2025, and ended on November 11, 2025, with the Hearing Officer’s Determination (“HOD”) originally due on that date. The parties were not available on the hearing dates offered and filed a motion to extend the HOD due date to account for the change in hearing dates requested. With the granting of the motion, the HOD was then due on November 21, 2025. The parties filed subsequent motions to continue, and the HOD is now due on December 3, 2025.

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.

ISSUES:²

The issues adjudicated are:

1. Did DCPS deny the Student a FAPE by failing to comprehensively and/or timely evaluate and/or re-evaluate the Student during SY 2023-2024 and/or during SY 2024-2025?
2. Did DCPS deny the Student a FAPE by failing to provide the Student with an appropriate IEP from November 2023 through the present and/or for SY 2025-2026?
3. Did DCPS deny the Student a FAPE by failing to comply with IDEA and DC regulations by not holding a meeting and/or allowing the parent meaningful participation in the IEP developed in May 2024 and/or in the change of the Student’s disability classification?
4. Did DCPS deny the Student a FAPE by failing to fully implement the Student’s IEP during SY 2023-2024 and SY 2024-2025 by failing to provide the full extent of related OT services and/or SLP services and/or access to an AT device in school?

DUE PROCESS HEARING:

The Due Process Hearing was convened on November 4, 2025, November 5, 2025, and November 6, 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 72 and DCPS’s Exhibits 1 through 37) that were admitted into the record and are listed in Appendix 2.³ The witnesses testifying on behalf of each

² 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.

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

party are listed in Appendix B.⁴

SUMMARY OF DECISION:

DCPS held the burden of persuasion on issue #2 after Petitioner presented a *prima facie* case on that issue. Petitioner held the burden of persuasion on all other issues adjudicated. DCPS did not sustain the burden of persuasion by a preponderance of the evidence on issue #2. Petitioner sustained the burden of persuasion on issue #2, but did not sustain the burden of persuasion by a preponderance of the evidence on the remaining issues. 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

1. The Student resides in the District of Columbia with his/her maternal grandmother, who is the Student’s legal guardian. DCPS serves as the Student’s LEA. The Student has been determined eligible for special education pursuant to IDEA with a DD disability classification. During the school year SY 2023-2024 and SY 2024-2025, the Student attended School A, a DCPS school. Student began attending a different DCPS school, School B at the start of SY 2025-2026. (Petitioner’s testimony, Petitioner’s Exhibit 21)
2. Prior to being given an IEP, the Student received services from Strong Start and her/his individualized family service plan (“IFSP”) indicated that the Battelle Developmental Inventory-2 (BDI-2) had been administered on September 16, 2022, the results indicated scores in the significant developmental delay range in the areas of Cognitive Function (Attention and Memory and Perception and Concepts); Communication; and Personal-Social Development (Adult Interaction and Self Concept), and the Student was identified as a student with a developmental delay. (Petitioner’s Exhibit 16)
3. The Student has a history of speech disorder, microcephaly, expressive language disorder, global developmental delays, PICA, Trichotillomania, and has been diagnosed with having

Appendix A.

⁴ Petitioner presented four witnesses: (1) Petitioner’s special education advocate employed by the law firm representing Petitioner, designated as an expert witness and (2) the Student’s grandmother (Petitioner), (3) a DCPS school psychologist and (4) a DCPS speech-language pathologist. DCPS presented five witnesses, all who testified as expert witnesses: (1) the School A manager of specialized instruction, (2) the School A speech-language pathologist, (3) the School B LEA representative, (4) the Student’s School B teacher, and (5) 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.

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.

the HECTD1 gene associated with HECTD1-related neurodevelopmental disorder (NDD). Symptoms include global developmental delay, autism, Attention Deficit Hyperactivity Disorder (“ADHD”), behavioral concerns, seizures, brain differences, and a small head size (microcephaly). (Petitioner’s Exhibits 4, 16)

4. The Student initial IEP was developed on April 28, 2024, by DCPS Early Stages. At the time, the Student’s disability classification was speech-language impairment (“SLI”), as the Student presented with delays in expressive and receptive language skills. The IEP provided the Student with two (2) hours of SLP outside the general education setting and one (1) hour per month of SLP in general education. (Petitioner’s Exhibit 17)
5. On November 16, 2023, the Student IEP was amended to include an AT device, a “dynamic voice output communication device” to support in all areas of the school day. (Petitioner’s Exhibit 18)
6. Petitioner obtained outside services for the student through Children’s National Medical Center (“CNMC”), and there were recommendations for the Student to receive additional evaluation, including but not limited to a developmental evaluation, a functional behavioral assessment, an occupational therapy evaluation that addressed sensory and fine motor delays, and an AAC evaluation. Petitioner raised concerns with DCPS about whether additional support and services were needed for the Student, including, but not limited to, OT. DCPS advised Petitioner that the Student’s disability classification would have to be changed before added supports could be considered and that an evaluation was needed before a change in classification could be considered. (Petitioner’s testimony, Witness 1’s testimony, Petitioner’s Exhibits 10, 11)
7. The Student’s School attendance at School A was problematic. Petitioner made efforts to get doctor letters to have the absences excused. DCPS explained to the Petitioner that Pre-K attendance was neither required, and that school attendance would be mandatory for beyond Pre-K. The Student was ill and had many medical appointments, resulting in school absences. (Petitioner’s testimony)
8. The Student’s IEP was updated in an annual review meeting on March 19, 2024, while the Student was attending School A. Service hours were modified to provide for all three (3) hours of SLP outside the general education setting. (Petitioner’s Exhibit 19)
9. At the time Petitioner signed a consent to evaluate to receive an OT evaluation and a comprehensive psychological evaluation to assess what additional supports the Student required based on recommendations from outside providers. (Petitioner’s testimony, Witness 1’s testimony)
10. The parent followed up with DCPS regarding the outstanding evaluations for the student throughout the SY 2024-2025 school year. DCPS completed an OT evaluation on or about May 24, 2024, but the school did not complete the psychological evaluation. The OT evaluation noted severe-to-moderate sensory concerns in all areas except hearing. (Petitioner’s Exhibit 9)

11. DCPS convened an eligibility meeting at School A on May 24, 2024, and determined the Student eligible under the DD disability classification, and developed an IEP for the Student dated May 28, 2024. DCPS revised the Student's IEP changing the disability classification to DD and adding two hours of specialized instruction inside the general education setting and 30 minutes of specialized instruction outside of the general education setting per week, as well as, goals in adaptive skills, and cognitive skills; 45 minutes of OT inside and outside the general education setting per month, as well as, 30 minutes consultative services. (Petitioner's Exhibit 20)
12. The student's annual IEP meeting was held on or about April 8, 2025, at which time concerns were raised about the student having access to AT and the parent needing training and access to the device to help her use it at home. DCPS reduced the student's service hours over the parent's objection to only 1 hour a week of specialized instruction in the general education setting, 1 hour a month of speech and language services, and removed direct OT services, but added consult. (Witness 1's testimony, Petitioner's Exhibit 21)
13. On April 8, 2025, DCPS convened an annual review meeting at School A. (Petitioner's Exhibit 21)
14. At the April 8, 2025, meeting, it was shared that DCPS had not been implementing the Student's speech or OT services due to attendance issues. Petitioner acknowledged that there were some attendance issues for the Student based on health issues. The Student's teacher also advised the parent that the Student was not required to attend because he/she was not of the mandatory school age. (Petitioner's testimony, Witness 1's testimony)
15. A comprehensive psychological was conducted on about July 18, 2025, that indicated clear evidence of developmental delays that adversely affect his/her educational performance and the need for specialized instruction and related services. It also indicated difficulty with attention, hyperactivity, and impulsivity that suggested struggles to maintain focus during structured learning activities, and the need for frequent repetition of instructions indicates that simplified language, visual supports, and extra processing time will be essential for her/his understanding and task completion. (Petitioner's Exhibit 16)
16. An updated OT evaluation was completed on or about July 17, 2025, and indicated that the Student has concerns in the areas of fine motor strength, shoulder stability, and postural control. He/She also has concerns in the areas of visual motor integration, fine motor precision, visual perception, motor planning and sensory processing. These areas may impact access to the curriculum and student may struggle with routines following and attending to complex or novel motor tasks. The Student may struggle with writing tasks and may require support or modifications and have difficulty copying or forming letters with accuracy, with tasks that require fine motor coordination and precision (writing, manipulation of tools, drawing, crafts, coloring, etc.) and with attending to academic tasks and complete tasks with efficiency and/or due to limited attention/focus may miss academic instruction. (Petitioner's Exhibit 15)

17. An updated speech-language evaluation was completed on July 9, 2025, which found that based on the Goldman-Fristoe Test of Articulation-3rd Edition (GFTA-3) was administered to assess sound production in single words and sentences. The Student's speech articulation was in the severely delayed range at the single-word level and significantly impacted by the presence of many phonological processing errors, with a standard score of 69. Errors were noted for the following sounds: deletion of /k/ initial position, /w/ for /kw/ initial, deletion of /t/ initial position, /p/ for /f/ initial position, deletion of s-blends in the initial position, deletion of /g/ initial position, /sh/ for /ch/ initial position, /n/ for /fr/ initial position, /d/ for /sw/ initial position, deletion of /s/ initial position, deletion of /r/ initial position. [The Student] was stimulable for /ch/, l-blends, /g/, and /k/. (Petitioner's Exhibit 14)
18. DCPS has not yet conducted a functional behavioral assessment (FBA) or an assistive technology (AT) evaluation despite the prior medical recommendations and requests. (Witness 1's testimony)
19. A meeting to review evaluations was held with DCPS' summer team on August 7, 2025, to review evaluation results and amend the Student's IEP as appropriate. At that meeting it was recommended that Student's SLP services should be increased to 30 minutes of direct service outside of the general education setting and consultation be added, that the 120 minutes of direct OT outside the general education setting, as well as additional services be provided inside the general education setting and consultation services, that BSS services be added to his/her programming and that specialized instructional hours be increased. (Petitioner's Exhibit 22)
20. At the August 7, 2025, meeting, 60 minutes of specialized instruction inside the general education setting and 30 minutes of specialized instruction outside the general education setting per day were added to the Student's IEP. Given given his/her transition to the next grade this school year, his/her IEP was amended to include academic goal sections in reading, written expression, and mathematics. (Petitioner's Exhibit 22)
21. At the August 7, 2025, meeting DCPS did not complete the IEP. Petitioner wanted a finalized IEP in place prior to the start of the school year to determine where to enroll the Student for the upcoming school year, given that several options were made available to her via the My School Lottery. (Petitioner's testimony, Witness 1's testimony)
22. DCPS scheduled an IEP meeting for August 15, 2025, but did not proceed with the meeting on that date because Petitioner had not yet enrolled the Student in a DCPS school for the upcoming school year, despite the fact that the parent had not withdrawn the student from School A and expressly stated her intent to enroll the Student in a DCPS school. (Petitioner's testimony, Witness 1's testimony)
23. Petitioner's educational advocate claimed that the Student missed approximately 35 hours of SLP services, approximately 8 hours of OT services and proposed that the Student be provided 86 hours of academic tutoring, 20 hours of independent OT, 40 hours of independent SLP, 20 hours of independent counseling, transportation to secure the

recommended services, and that an FBA and AT evaluation be conducted. She asserted that the Student missed over 13 hours of speech services during the 2023-2024 school year and 27 hours of speech and 13.5 hours of OT during the 2024-2025 school year. (Witness 1's testimony, Petitioner's Exhibit 58)

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). Respondent held the burden of persuasion on issue #2 after Petitioner presented a *prima facie* case on that issue. Petitioner held the burden of persuasion on all other issues 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,

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.

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 comprehensively and/or timely evaluate and/or re-evaluate the Student during SY 2023-2024 and/or during SY 2024-2025?

Conclusion: Petitioner sustained the burden of persuasion by a preponderance of the evidence on this issue.

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

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

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

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

The District of Columbia regulations impose strict timelines once a child is referred for evaluation for services: An LEA shall: (a) Make and document reasonable efforts, as defined in this chapter, to obtain parental consent within thirty (30) days from the date on which the child is referred for

an initial evaluation, and begin such efforts no later than ten (10) business days from the referral date; and (b) Evaluate and make an eligibility determination for a student who may have a disability and who may require special education services within sixty (60) days from the date that the student's parent or guardian provides consent for the evaluation. 5-A DCMR § 3005.4.

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

Pursuant to 34 C.F.R. § 300.304 (c) a school district must ensure that a student has been appropriately evaluated in all areas of suspected disability. D.C. law requires that "a full and individual evaluation is conducted for each child being considered for special education and related services."

The evaluators shall utilize "a variety of assessment tools and strategies [to] gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum ... that may assist in determining whether the child is a child with a disability." D.C. Mun. Regs. Title 5A § 3006.7(a).

All areas "related to the suspected disability" should be assessed, including academic performance, health, vision, hearing, social and emotional status, general intelligence (including cognitive ability and adaptive behavior), communicative status, and motor abilities. The evaluations must be "sufficiently comprehensive to identify all of the child's special education and services needs." D.C. Mun. Regs. Title 5A § 3006.7(f).

As noted above, pursuant to IDEA §1415 (f)(3)(E)(ii), in matters alleging a procedural violation, a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE, or caused the child a deprivation of educational benefits. An IDEA claim is viable only if [DCPS'] procedural violations affected the student's substantive rights." *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

The evidence demonstrates that DCPS failed to conduct the psychological evaluation that the parent signed a consent to evaluate on or about March 19, 2024, until July 18, 2025, and DCPS failed to conduct either an FBA or AT evaluation despite the clear need for such evaluations and the parent's request for such evaluations at the April 28, 2025, meeting.

The student has not yet been provided with an AT evaluation or an FBA, despite recommendations from the Student's outside medical providers and a clear need for such evaluations based on the Student's educational data. Evaluations were agreed upon by the MDT based on concerns about Student's behavior and progress. Typically, DCPS's policy is to complete evaluations within 45 days of the signed consent following an AED meeting. That did not happen here. Nor has the team reviewed the evaluation results in a timely manner and revised the student's IEP. This should have occurred well before the end of the 2023-2024 school year. As a result, the student has been denied a FAPE.

ISSUE 2: Did DCPS deny the Student a FAPE by failing to provide the Student with an appropriate IEP

from November 2023 through the present and/or for SY 2025-2026?

Conclusion: DCPS did not sustain the burden of persuasion by a preponderance of the evidence that the on April 8, 2025, because the IEP was not based on current evaluations. The Student's initial IEP and subsequent IEP prior to April 8, 2025, were reasonably calculated to enable the Student to make progress appropriate in light of the Student's circumstances.

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

As stated above, pursuant to *Schaefer v. Weast*, 554 F.3d 470 (U.S. App. 2009), the Hearing Officer must “focus on the adequacy of the IEP at the time it was created, and ask if it was reasonably calculated at that time to enable the student to receive educational benefits.”

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The evidence demonstrates that the Student's November 16, 2023, and March 19, 2024, IEPs were based on a valid evaluation conducted and considered by Early Stages. There was sufficient testimony to support a conclusion that the initial evaluation of the Student was sufficiently comprehensive to identify the Student's needs and appropriately program for the Student. The resulting IEPs, based on those evaluations, appropriately addressed the Student's needs. There was no credible testimony presented by Petitioner to support a finding that the services prescribed by these IEPs were not sufficient to meet the Student's needs at the time they were developed.

However, based on the team's determination in the spring of 2024 that the Student should be evaluated, the fact that those evaluations were not completed and considered when the Student's April 8, 2025, IEP was developed clearly indicates that the IEP was not reasonably designed to help the Student make progress appropriate for their circumstances. Therefore, DCPS denied the Student a FAPE.

DCPS subsequently evaluated the Student and developed an updated IEP based on those assessments, which is being implemented at School A in SY 2025-2026. Although Petitioner

alleged these IEPs were inappropriate, the was insufficient evidence presented by Petitioner to meet a *prima facie* case as to the IEP that is currently in place for the Student.

ISSUE 3: Did DCPS deny the Student a FAPE by failing to comply with IDEA and DC regulations by not holding a meeting and/or allowing the parent meaningful participation in the IEP developed in May 2024 and/or in the change of the Student's disability classification?

Conclusion: Petitioner did not sustain the burden of persuasion by a preponderance of the evidence on this issue.

The purpose of IDEA is to "ensure that all children with disabilities have available to them a free and appropriate public education 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. District of Columbia*, 246 F.Supp.3d 1,7 (D.D.C. 2017) (citing 20 U.S.C. § 1400(d)(1)(A)).

Parents must have an opportunity to participate in the IEP process, and "procedural inadequacies that "seriously infringe upon the parents' opportunity to participate in the IEP formulation process ... clearly result in the denial of a FAPE." *Cooper v. District of Columbia*, 77 F.Supp.3d 32, 37 (D.D.C. 2014) (*quoting A.I. 3ex rel. Iapalucci v. District of Columbia*, 402 F.Supp.2d 152, 164 (D.D.C. 2005)) (alteration in original). To ensure these requirements are followed, IDEA established procedural safeguards that allow parents to seek a review of IEP decisions they disagree with. *See Middleton v. District of Columbia*, 312 F.Supp.3d 113, 122 (D.D.C. 2018). Section 1415(f)(1)(A) provides "the parents or the local education agency involved in such a complaint shall have an opportunity for an impartial due process hearing ..."

The evidence demonstrates that Petitioner and her representatives had a full and unbridled opportunity to contribute to the development of Student's IEPs at each meeting. Petitioners' educational consultant provided feedback on the draft IEP and testified that the Student's needs were addressed in the Student's most recent IEP. Although Petitioner alleged that she was not allowed to participate in or consult about the change in the Student's disability classification, there is no indication that the change has resulted in harm to the Student. Although ideally, IDEA requires the LEA to ensure that the parent can participate in every IEP meeting, the evidence does not support a finding that this procedural violation significantly impeded the parent's opportunity to participate, 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.

ISSUE 4: Did DCPS deny the Student a FAPE by failing to fully implement the Student's IEP during SY 2023-2024 and SY 2024-2025 by failing to provide the full extent of OT services and/or SLP services and/or access to an AT device in school?

Conclusion: Petitioner did not sustain the burden of persuasion by a preponderance of the evidence on this issue.

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 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)

Although Petitioner's advocate asserted that the Student missed over 13 hours of speech services during the 2023-2024 school year and 27 hours of speech and 13.5 hours of OT during the 2024-2025 school year, the evidence demonstrates that the Student missed a significant amount of services during both SY 2023-2024 and SY 2024-2025 due to excessive absenteeism. The evidence demonstrates that the Student's school attendance at School A was problematic. Although Petitioner made efforts to get doctor letters to have the absences excused, the Student was ill and had many medical appointments, resulting in school absences. The evidence presented by Petitioner was insufficient to demonstrate that the related services that the Student missed were not due to the Student's excessive absences. Consequently, the IHO concludes that Petitioner did not sustain the burden of persuasion by a preponderance of the evidence on this issue. Nonetheless, the IHO directs in the order below that the Student be awarded independent related services as part of the remedy for the denials of FAPE determined above.

Remedy:

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

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

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

The Petitioner requested the compensatory education included in her educational advocate's proposal. However, the IHO did not 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 awarded below or authorization to obtain an evaluation to determine the appropriate compensatory education.

ORDER: ⁷

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. DCPS shall, within forty-five (45) calendar days of the issuance of this order, conduct an FBA and AT evaluation of the Student and convene an IEP team to review those assessments and review and revise the Student's IEP as appropriate.
4. 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 3, 2025

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

⁷ 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.