

District of Columbia
Office of the State Superintendent of Education
Office of Dispute Resolution
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Confidential

Parent on behalf of Student,¹)	Case Nos. 2025-0149
)	
Petitioner)	Hearing Dates: December 3-4, 2025
)	
v.)	Conducted by Video Conference
)	
District of Columbia Public Schools,)	Date Issued: December 15, 2025
)	
Respondent)	Terry Michael Banks,
)	Hearing Officer

HEARING OFFICER DETERMINATION

INTRODUCTION

Petitioner is the mother of an X-year-old student (“Student”) attending School B. On August 22, 2025, Petitioner filed a due process complaint notice (“*Complaint*”) alleging that the District of Columbia Public Schools (“DCPS”) denied Student a free appropriate public education (“FAPE”) by failing to provide appropriate Individualized Education Programs (“IEPs”) and placements, failing to implement Student’s IEPs, and failing to conduct timely and comprehensive evaluations of Student. On August 29, 2025, DCPS filed *District of Columbia Public Schools’ Response to Petitioner’s Administrative Due Process Complaint* (“*Response*”), denying that it had denied Student a FAPE in any way.

SUBJECT MATTER JURISDICTION

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the Individuals with Disabilities Education Improvement Act (“IDEIA”), 20 U.S.C. Section 1400 *et seq.*, its regulations, 34 C.F.R. Section 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 in the Appendix and must be removed prior to public distribution.

PROCEDURAL HISTORY

On August 22, 2025, Petitioner filed her *Complaint* alleging that DCPS (1) failed to provide appropriate IEPs on July 11, 2023, December 18, 2023, January 23, 2024, and March 28, 2025. Petitioner asserted that some or all of these IEPs suffered from the following deficiencies: they (1) did not provide sufficient behavioral interventions (no behavior intervention plan (“BIP”) and insufficient Behavior Support Service (“BSS”) minutes), (2) were not based on updated evaluative data in that no assistive technology (“A/T”) evaluation, occupational therapy (“OT”) evaluation, comprehensive psychological evaluation, functional behavior assessment (“FBA”), or English Language Learner (“ELL”) screener had been conducted (3) did not provide sufficient specialized instruction hours or placement (4) did not provide appropriate related services (no occupation therapy (“OT”) or English Language Learner (“ELL”) services) and (5) did not provide classroom and statewide-assessment participation and accommodations. Petitioner also asserted that Student should have been placed in a self-contained class at the beginning of the 2024-25 school year that was not available at School B. Petitioner asserted further that DCPS failed to provide all of the academic and related services prescribed in Student’s IEPs during the 2023-24 and 2024-25 school years. Finally, Petitioner asserted that on or before August 22, 2023, DCPS should have conducted assistive technology (“A/T”), OT, and psychological evaluations as well as conducting a timely English Language (“EL”) screener such as the “Pre-IPT and K-WAPT screeners” in order to determine appropriate EL services for Student.

For relief, Petitioner requested, *inter alia*, (1) an order requiring DCPS to conduct or fund and review an Assistive Technology Evaluation and the Pre-IPT Oral English screener to identify the student as an EL Learner; (2) an order requiring DCPS to fund an Independent Functional Behavior Assessment-II (“FBA”), (3) an order requiring DCPS to reconvene the multidisciplinary (“MDT”)/IEP team to review, revise and/or amend the IEP as appropriate based upon the updated data from the aforementioned evaluations, (4) an order requiring DCPS to provide training for the student and staff on the A/T devices that the student will be utilizing to access her/his curriculum, (5) an order requiring DCPS to reconvene the MDT/IEP team to review and revise the IEP to provide for appropriate accommodations due to the students limited English proficiency, (6) DCPS shall provide the student with compensatory education and consideration of additional compensatory education shall be reserved pending completion of the above referenced evaluations, (7) an order requiring DCPS to amend the student’s IEP to increase the student’s BSS, and (8) attorney’s fees and costs in this matter.²

On August 29, 2025, DCPS filed its *Response* to the *Complaint* denying that it had denied Student a FAPE. DCPS asserted, *inter alia*, that Student was evaluated by Facility A before enrolling at School A and that evaluation remained current through the 2024-25 school year. On or about December 10, 2024, DCPS convened an IEP meeting in which Petitioner participated. At this meeting, Student’s specialized instruction was doubled to ten hours per week: five hours each inside and outside general education. On December 13, 2024, Petitioner signed a consent for reevaluation. After the evaluation procedure was completed, in February 2025, DCPS issued a PWN to Petitioner indicating DCPS’s proposal to increase Student’s hours of specialized instruction and behavior support services, and changed the Student’s placement to a full time self-contained Communication and Educational Support (“CES”)classroom. In February 2025, DCPS

² The *Prehearing Order* noted that hearing officers have no role in the awarding of attorneys’ fees in this jurisdiction.

convened a Final Eligibility Determination meeting in which Petitioner participated. At that meeting, the MDT determined the Student's disability classification to be Developmental Delay. On or about March 28, 2025, the IEP team held its annual IEP meeting and Student's annual IEP was developed with Parent's participation and agreement. The IEP team prescribed 22-hours per week of specialized instruction outside the education setting, three hours monthly of OT services, four hours monthly of speech language pathology ("SLP") services, and three hours monthly of behavior support services ("BSS"), all provided outside general education. Student was also determined to remain eligible for special education transportation services. DCPS asserted that Student's IEPs were appropriately implemented and developed for the 2023-2024 and 2024-2025 school years.

The parties conducted a resolution meeting on September 5, 2025 that did not result in a settlement. A prehearing conference was not conducted as the issues were virtually identical to those in Case No. 2025-0078 in which a *Prehearing Order* was issued before the complaint was withdrawn. A *Prehearing Order* was issued on October 16, 2025.

The due process hearing was conducted on December 3-4, 2025 by video conference facilities. The hearing was open to the public at Petitioner's request. Petitioner filed Five-day Disclosures on November 25, 2025, containing a witness list of seven witnesses and 70 documents. While DCPS did not file objections to Petitioner's Disclosures, the hearing officer ruled that admissibility of Petitioner's Exhibits P54-P57 and P59-P67 would be subject to authentication and/or a showing of relevance. Petitioner's Exhibits P1-P53, P57-P58, P61, P64, and P68-P70 were admitted into evidence.

Respondent also filed Disclosures dated November 25, 2025 containing a witness list of nine witnesses and 51 documents. On December 1, 2025, Petitioner filed objections to DCPS disclosures. Petitioner objected to expert testimony from five witnesses for whom DCPS apparently did not disclose resumes: Witness F, Witness G, Witness H, Witness J, and Witness K. The hearing officer ruled that if called to testify, these witnesses would be precluded from providing opinion testimony. Petitioner also objected to Respondent's Exhibits R9, 10, 12, 14, 35, 36, 45, and 51. Respondent's Exhibits R1-R11, R13, R15-R20, R23-R44, and R46-R51 were admitted into evidence.

Petitioner presented as witnesses in chronological order: Petitioner, Witness A, and Witness B. Witness B was admitted as an expert in special education. Respondent presented as witnesses in chronological order: Witness C, Witness D, and Witness E. Witness C was admitted as an expert in SLP, Witness D was admitted as an expert in school social work, and Witness E was admitted as an expert in special education. At the conclusion of testimony, the parties' counsel provided oral closing arguments. The hearing officer authorized the parties to submit authorities on which they rely no later than December 10, 2025. On December 10, 2025, both parties filed lists of authorities upon which they rely.

ISSUES

As identified in the *Complaint* and the *Second Amended Prehearing Order*, the issues to be determined in this case are as follow:

1. Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on July 11, 2023 for the 2023-24 school year. Specifically, Petitioner asserts that the IEP was inappropriate because it (1) did not provide sufficient behavioral interventions (no behavior intervention plan (“BIP”) and insufficient Behavior Support Service (“BSS”) minutes), (2) were not based on updated evaluative data in that no assistive technology (“A/T”) evaluation, occupational therapy (“OT”) evaluation, comprehensive psychological evaluation, functional behavior assessment (“FBA”), or English Language Learner (“ELL”) screener had been conducted (3) did not provide sufficient specialized instruction hours or placement (4) did not provide appropriate related services (no occupation therapy (“OT”) or English Language Learner (“ELL”) services) and (5) did not provide classroom and statewide-assessment participation and accommodations.
2. Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on December 18, 2023 for the 2023-24 school year. Specifically, Petitioner asserts that the IEP was inappropriate because it (1) did not include a BIP, (2) was not based on updated evaluative data in that no A/T evaluation, OT evaluation, or ELL screener had been conducted (3) did not provide sufficient specialized instruction hours or placement (4) did not provide appropriate related services (no OT or ELL services) and (5) did not provide classroom and statewide-assessment participation and accommodations.
3. Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on January 23, 2024 for the 2024-25 school year. Specifically, Petitioner asserts that the IEP was inappropriate because it (1) did not include a BIP, (2) was not based on updated evaluative data in that no A/T evaluation, OT evaluation, or ELL screener had been conducted (3) did not provide sufficient specialized instruction hours or placement (4) did not provide appropriate related services (no OT or ELL services) and (5) did not provide classroom and statewide-assessment participation and accommodations.
4. Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on March 28, 2025 for the 2024-25 school year. Specifically, Petitioner asserts that the IEP was inappropriate because it (1) was not based on updated evaluative data in that no A/T evaluation or ELL screener had been conducted, (2) did not provide classroom and statewide-assessment participation and accommodations, and (3) the A/T section of Consideration of Special Factors failed to address once again appropriate A/T tools that Student would benefit from due to the lack of evaluative data.

5. Whether DCPS denied Student a FAPE by failing to provide an appropriate placement. Specifically, Petitioner asserts that Student should have been placed in a self-contained class as of the beginning of the 2024-25 school year, which was not available at School B.
6. Whether DCPS denied Student a FAPE by failing to implement Student's IEP during the 2023-2024 and 2024-25 school years. Specifically, Petitioner asserts that DCPS failed to provide the student with all her/his academic and related services. The student's Service Trackers and IEP Progress Reports revealed significant gaps in the delivery of his/her cognitive, Adaptive Daily Living Skills, speech and language goals which have directly impacted his/her progress.
7. Whether DCPS denied Student a FAPE by failing timely to conduct timely and comprehensive evaluations of Student on or before August 22, 2023. Specifically, Petitioner asserts that after DCPS issued a Prior Written Notice on June 1, 2023 indicating the need to conduct assessments to determination of Student's eligibility for services, it conducted only a bilingual speech and language ("S/L") evaluation. Petitioner asserts that DCPS should also have conducted assistive technology ("A/T"), OT, and psychological evaluations as well as conducting a timely EL screener such as the "Pre-IPT and K-WAPT screeners" in order to determine appropriate EL services for Student.

FINDINGS OF FACT³

1. Student is an X-year-old student who was in grade R at School B during the 2024-25 school year and was eligible for special education services under the classifications of Developmental Delay ("DD").⁴

2. On April 28, 2023, when Student was Y years old, Facility A⁵ administered an Ages & Stages Questionnaire ("ASQ-3").⁶ Petitioner was concerned about what she perceived to be Student's delayed communication skills:

[Student] is only using a few words. [S/he] is very social, but [s/he] is the youngest of the group at the shelter. [S/he] has about 15-20 words in [his/her] vocabulary. [S/he] is speaking in one-word phrases. [S/he] is also using gestures or taking [her/his] parents to what [s/he] wants. The words [she] speaks [s/he] says very clearly. [S/he] understands everything and is very independent. Mom wants

³ The Findings of Fact includes all of the oral and written evidence that I considered material in rendering the decision in this matter. The quotations of oral testimony are from my notes during the hearing, not the transcript.

⁴ Petitioner's Exhibit ("P.") 22 at page 1. The exhibit number is followed by the exhibit page number and the digital page number in parentheses, i.e., P4:1 (297).

⁵ Facility A is an evaluation center administered by DCPS. A child need not be enrolled in a DCPS school to be evaluated by Facility A. <https://www.earlystagesdc.org/>

⁶ P4:1 (46).

[her/him] to speak in longer phrases and sentences. When [s/he] isn't understood [s/he] will get frustrated...⁷ Speech is only concern.⁸

3. On June 1, 2023, DCPS issued a Prior Written Notice (“PWN”) indicating its intent to conduct an initial evaluation of Student due to concerns with her/his communication skills. “[S/he] does not have an adequate amount of words in [her/his] vocabulary.”⁹

4. On June 2, 2023, DCPS conducted an Analysis of Existing Data (“AED”) meeting.¹⁰ The AED team considered the findings from the ASQ in assessing Student’s Adaptive-Daily Living Skills, Cognitive skills, Communication Skills, Emotional/Social/and Behavioral Development. With respect to Student’s communication skills, the AED team noted the following deficiencies: “saying [her/his] first and last name, describing actions by pictures, saying two things about common objects, following three consecutive, unrelated directions, using all of the words in a sentence, decreased expressive vocabulary, using phrases and sentences,” and indicated that Student would be evaluated “to determine areas of strength and need.”¹¹

5. On June 23, 2023, Witness C, a speech and language therapist at Facility A, completed an Initial Bilingual Speech and Language Assessment of Student. Student was referred to Facility A by her/his family due to concerns about his/her communication development.¹² Student’s parents reported that Student was born in Columbia. The family traveled between Columbia and Ecuador. Eventually the family migrated through Mexico, where they lived on the streets for 10 days, and across the Rio Grande River, which experiences traumatized Student. Student was exposed to Spanish since birth and English only recently. S/he reportedly was not communicating in either language. Student typically used gestures and vocalizations to communicate his/her wants and needs. Her/his vocabulary consisted of less than 10 words. The assessment was conducted in Spanish.¹³ Student’s hearing, voice, and fluency were observed to be within normal limits. Witness C attempted to assess Student’s Articulation on the PLS-5 Articulation Screener. However, Student was unable to label pictures or imitate verbal models necessary to obtain a raw score. Therefore, Witness C derived Student’s articulation skills from clinical observation of spontaneous verbalization. She concluded that due to Student’s limited vocalizations and expressive vocabulary, his/her articulation skills could not be adequately assessed.¹⁴ The PLS-5 “was administered in order to assess Student’s language abilities in Spanish and English. This test was designed to provide information about the developmental language skills of monolingual or bilingual Spanish-English speaking children by utilizing a dual language score.”¹⁵ Based on formal testing and clinical observation, Witness C concluded that “[Student’s] receptive language skills were moderately delayed when compared to bilingual Spanish-English speaking peers. [His/her] receptive language skills should allow [her/him] to listen to, understand, and retain information presented to [her/him] verbally (such as directions, discussions regarding

⁷ *Id.* at 2 (47).

⁸ *Id.* at 6 (51).

⁹ P47:1 (453).

¹⁰ P10:1 (123).

¹¹ *Id.* at 1-3 (123-25).

¹² P5:1 (61).

¹³ *Id.* at 1-2 (61-2).

¹⁴ *Id.* at 3-4 (63-4).

¹⁵ *Id.* at 4 (64).

the content of the curriculum, stories read aloud, etc.).”¹⁶ On the Expressive Communication subtest, Student used three word/word approximations during the evaluation and relied on gestures and jargon (e.g. “mah-doh”) rather than words to communicate her/his wants and needs, and s/he could not name objects presented in pictures or his/her environment, imitate verbal models, or combine two words. Witness C concluded that “[Student] presents with a severe expressive language delay. Reduced expressive language skills may impact [his/her] ability to formulate responses to questions and communicate [her/his] wants and needs within [her/his] classroom.” Witness C concluded that Student’s Receptive Vocabulary and Expressive Vocabulary were below age-expectations. However, Student’s non-verbal pragmatic language skills (eye contact, gestures, jargon) were judged to be age-appropriate “and should support [her/his] ability to create and maintain meaningful relationships with teachers and peers.”¹⁷ Witness C recommended that Student “enroll in a DC Public School, consult with the school to determine appropriate support services for English Language Learners, as determined by the Office of Bilingual Education.”¹⁸

6. On July 11, 2023, DCPS conducted a eligibility meeting for Student. Student’s father attended the meeting, Petitioner did not. DCPS issued a Final Eligibility Determination Report for Student. DCPS found Student eligible for special education services: “[Student’s] speech/language impairment adversely affects [her/his] education performance. [S/he] presents with expressive and receptive language delays. [S/he] will benefit from speech/language therapy, accommodations, and modifications in order for [him/her] to access the education curriculum.” Student’s disability classification was Speech or Language Impairment (“SLI”).¹⁹

7. On July 11, 2023, DCPS conducted Student’s Initial IEP meeting. Student’s disability classification was SLI. Petitioner attended the meeting.²⁰ In Consideration of Special Factors, the IEP team determined that Student’s behavior did not impede her/his learning or that of others. In Limited English Proficiency, the team recommended that Student receive English Second Language (“ESL”)/English Language Learner (“ELL”) services. In Communication, the team stated that Student’s communication delays require direct speech-language therapy. In Assistive Technology (“A/T”), the team recommended the use of low-tech (“A/T”) to support her/his receptive and expressive language and increase her/his attention to tasks (visual schedules, picture symbols, and core vocabulary boards).²¹ In Communication, the Present Levels of Academic Achievement and Functional Performance (“PLOP”) reported the result of Witness C’s Speech and Language Evaluation. The goals were: (a) given no more than one verbal or visual cue, Student will follow 1-2 step directions related to classroom routines or language-based activities, (b) given no more than one verbal or visual cue, Student will follow one-step directions including basic concepts (quantitative, spatial, descriptive concepts), (c) using a total communication approach (word approximations/signs/pictures), Student will express five basic needs (e.g. label, request items, request action, request assistance, request repetition, answer yes/no questions), and (d) by the end of the IEP period, Student will label (imitatively or spontaneously) 10+ items (word approximations are acceptable) from each of the following categories: body parts/clothing items,

¹⁶ *Id.*

¹⁷ *Id.* at 4-5 (64-5).

¹⁸ *Id.* at 6 (66)

¹⁹ P12:1 (136).

²⁰ P11:1 (127).

²¹ *Id.* at 2 (128).

common objects, food, animals and actions.²² The IEP team prescribed four hours per month of SLP services outside general education. Other Classroom Aids and Services included: consulting with the Office of Bilingual Education to determine appropriate support services for bilingual learners, providing models or three-word phrases s/he can use to label or request, utilizing language expansion and extension strategies to support expressive language development, implementation of a total communication approach, providing Student with short, simple directions, providing visual or gestural cues as necessary, and preferential seating in a position that facilitates the use of prompts, cues or other strategies during learning and teaching.²³

8. On July 28, 2023, Student was matched at School A in the My School D.C. Lottery for the 2023-24 school year. Petitioner was informed by Facility A that School A could implement Student's IEP.²⁴

9. On October 25, 2023, when Student was in grade R at School A, DCPS conducted an AED meeting, indicating that it was conducting a reevaluation of Student.²⁵ It was reported that Student began school for the first time at School A on August 31, 2023. His/her teachers were concerned about her/his ability to participate in classroom activities and learning, as well as his/her ability to engage appropriately and safely with his/her peers. "Due to difficulties sustaining attention, [Student] has not completed most classroom activities." Difficulties cited included but were not limited to: having a difficult time transitioning to a new task s/he does not want to do; often times is unable to stick to one task for more than 2 minutes; in PE class, s/he will go to her/his cot, then roll on the floor, then run to random places in the gym, then run and get on the stage, then jump off the stage, then join what other students are doing for a short period of time, then walk around the gym making different sounds); the majority of the time s/he requires distraction or a compromise to transition to a new task or location; if items are taken from her/him, s/he does not want to transition; s/he will run around screaming or s/he will drop to the ground screaming; s/he struggles with communication; s/he seems to understand simple Spanish phrases, words and directions, however, his/her responses include "no, no" "yeah" and "mama," or s/he will respond with gibberish, mumbling or buzzing sounds; even when s/he understands the direction, often times s/he will not follow it; s/he is able to point to some pictures to communicate her/his needs or a behavior or action, however, this depends on if s/he wants to give his/her attention to those pictures; s/he takes things from his/her peers and most times does not seem to understand that they are upset with her/him; very few times s/he has demonstrated the ability to share with his/her peers and console her/his peers; during meal times, s/he will walk around the tables and try to take other students' food; s/he will randomly move around the room or the gym and hit his/her peers in the head or push them out of the way; s/he elopes from the classroom, from the gym or from coming in from outside at least once a day, sometimes 3+ times a day; s/he will run away from teachers; when adults catch him/her, s/he will laugh; if adults try to guide her/him back to class, s/he usually screams and falls to the ground; when we had a fire drill. s/he transitioned outside safely, but when we got outside, s/he tried to run away from multiple staff members and had to be carried back inside for his/her safety; s/he does not join many group activities on the carpet, even after multiple

²² *Id.* at 3-4 (129-30).

²³ *Id.* at 5 (131).

²⁴ Respondent's Exhibit ("R.") 12 at page 1. The exhibit number is followed by the exhibit page number and the digital page number in parentheses, i.e., R12:1 (29).

²⁵ P13:1 (144).

efforts to get her/him there are tried; sometimes s/he will walk around the classroom, playground or gym spitting; s/he refuses to nap on his/her own. S/he has been rocked to sleep every single day of school. If s/he is not rocked, s/he will not stay on her/his cot; s/he also sometimes tries to elope at this time; s/he will sometimes grab female teacher's chest; s/he has attempted to bite a staff member and other students; s/he pushed a student down; on September 19th, s/he bit a staff member on the leg two times. Student received one-on-one push-in support from Teacher A every day for two hours per day from August 31 to October 6, 2023.²⁶

The team reported that Student obtained the following scores on her/his April 28, 2023 ASQ: 40/60 on personal social domain, 30/60 on problem solving, and 20/60 on communication. Student's communication skills were evaluated, and the evaluation summary stated that Student presented with a moderate receptive language delay characterized by difficulties with the following: understanding spatial, descriptive, and quantitative concepts, making inferences, and following directions without gestural cues.²⁷ A Strengths and Difficulties Questionnaire ("SDQ") was conducted on October 23, 2023. Teacher B, Student's grade R teacher, completed the questionnaire. Her responses yielded Very High range scores in Stress, Behavioral Difficulties, Hyperactivity and Concentration Difficulties, and in the High range in Difficulties getting along with other children.²⁸ Petitioner's father attended the meeting, and it was interpreted to him in Spanish.²⁹ On October 26, 2023, the AED team ordered the administration of a psychological evaluation.³⁰

10. On December 1, 2023, Examiner A, the School Psychologist at School A, completed a Psychological Evaluation of Student. Student's father reported to Examiner A that Student is unable to articulate words. S/he mostly babbles. At home, Student is easily upset when s/he does not get her/his way; s/he starts to scream, slaps her/his forehead, and throws him/herself down on the floor. Student migrated to the United States with her/his family in April 2023. S/he began school for the first time in the United States on August 31, 2023 at School A.

Due to difficulties sustaining attention, [Student] has not completed most classroom activities. [Student] currently receives individualized instruction in the area of communication due to a Speech and Language Impairment. When focused and motivated, [Student] will use a low tech communication board given maximal prompts from the Speech Therapist. Otherwise, [Student] is not able to express words. [S/he] does babble and uses gibberish. Since starting school, [Student] has been observed to infrequently participate in whole group activities. [S/he] often wanders the room going to different centers, even when [her/his] peers are seated for circle time. During mealtimes, [Student] grabs other students' food with [his/her] hands. [His/her] teachers are concerned that [s/he] does not participate in small group whole group activities unless the aide is next to [her/him]. Otherwise [s/he] just runs around classroom. In addition, [Student] has engaged in aggressive behaviors (hitting other kids, spitting, hits teachers, jumps off table, etc). More

²⁶ *Id.* at 1-2 (144-45).

²⁷ *Id.* at 3 (146).

²⁸ *Id.* at 7 (150).

²⁹ P26:2 (346).

³⁰ P14:9 (162).

recently [Student] has demonstrated that [s/he] is starting to learn some routines like going to the bathroom or putting things in trash starting to understand some of the language. [Student] has also been observed to be very friendly and enjoys relationships with adults. [S/he] has become more open to redirection than [s/he] was before.³¹

Teaching Strategies GOLD is an observational system for assessing children from birth through grade H. The behaviors observed for assessment were Attends and Engages, Persists, Solves Problems, Shows Curiosity and Motivation, Shows Flexibility and Inventiveness in Thinking, Recognizes and Recalls, Makes Connections, Uses Classification Skills, Thinks Symbolically, and Engages in Sociodramatic Play. Examiner A found that Student could persist through some challenges when s/he is using certain materials and demonstrated curiosity by exploring and investigating objects around him/her. His/her challenges included attending and engaging, solving problems, showing flexibility and inventiveness in thinking, recognizing and recalling, making connections, using classification skills, thinking symbolically, and engaging in sociodramatic play.³² On the Wechsler Preschool and Primary Scale of Intelligence (“WPPSI-IV”), Student had difficulty engaging in the test activities. Due to his/her communication limitations, s/he was not able to respond verbally, had difficulty following directions, and was often off-task and engaged in disruptive behaviors. The Full Scale IQ and Verbal Comprehension Index could not be computed because necessary subtests could not be completed. Student scored in the Average range in Visual Spatial Processing (91) but in the 0.4th percentile in Receptive Vocabulary.³³ The Developmental Assessment of Young Children (“DAYC-2”) measures cognition, communication, social-emotional development, physical, and adaptive behavior for children from birth through age 5 years 11 months. Student scored in the Below Average range in Adaptive Behavior (85, 16th percentile).³⁴ On the PKBS-2, Student’s speech therapist and occupational therapist completed rating scales. Their responses yielded scores in the High Risk Level in Social Cooperation, Social Interaction, Social Independence, on the Social Skills Composite Scale, Externalizing Problems, and on the Problem Behaviors Scale, and in the Moderate range in Internalizing Problems.³⁵

Results indicate that [Student] does not display appropriate compliance with the types of structure and regulation typically imposed by teachers (Social Cooperation). Results indicate that [Student] sometimes follows instructions from adults and is cooperative. [S/he] sometimes shows self control. However, [s/he] never sits and listens when stories are being read and rarely follows rules. [Student] never shares toys or belongings. [S/he] never apologizes and never takes turns. [Student] also has difficulty with social interaction and with social independence. These scales are primarily related to peer forms of social adjustment. Results indicated that [Student] never tries to understand another child’s behavior, rarely plays with several different children, does not make friends easily and is almost never invited by other children to play. [Student] never comforts other children who are upset or shows affection for other children. [S/he] never invites other children

³¹ P6:1 (69).

³² *Id.* at 5-6 (73-4).

³³ *Id.* at 6-8 (74-6).

³⁴ *Id.* at 8-9 (76-7).

³⁵ *Id.* at 9-10 (77-8).

to play... Given [her/his] social skills deficits, *in the classroom*, [Student] will benefit from interventions to help [him/her] develop [her/his] social skills. Intervention should focus on how to make friends, start conversations with [her/his] friends, participate in group activities, understanding social cues, and how to use turn-taking skills during games and conversation... Given [his/her] significant behavior difficulties, *in the classroom*, [Student] will benefit from a behavior plan that includes specific classroom interventions to address challenging behaviors...³⁶

On the Behavior Assessment System for Children (“BASC-3”), Teacher B completed rating scales. Teacher B’s T-scores in Hyperactivity, Aggression, Atypicality, and Functional Communication were in the Clinically Significant range.³⁷

Examiner A concluded that Student qualified for special education services with a disability classification of Developmental Delay (“DD”):

Taken together, results of observations, direct interaction with [Student], interviews, and developmental tests, indicate that [Student] is displaying significant delays in [his/her] development. [Student] demonstrates a developmental delay in verbal comprehension, expressive and receptive language (per history and qualitative assessment) in both English and Spanish. Furthermore, [her/his] profile indicates that [Student] has not developed the emotional regulation, attention control, or behavioral control expected of a child [his/her] age. [Student] is displaying a marked ongoing pattern of inattention and impulsivity that interferes with [her/his] functioning at school. Results suggest a significant developmental delay in [his/her] overall level of social/emotional development. These delays significantly impact [his/her] ability to access the [grade R] curriculum in the general education setting. [Student] can be expected to have significant difficulty keeping up with [her/his] same age peers. Based on the results of this evaluation, [Student] is eligible for Special Education under the classification of Developmental Delay according to the Individuals with Disabilities Education Act...³⁸

Examiner A recommended that Student be taught to communicate with signs, gestures, and picture cards as s/he continues to develop her/his speech with multimodality instruction that will assist him/her in understanding and remembering what is said in the classroom. In light of Student’s behavioral issues, Examiner A recommended the development of a behavior intervention plan (“BIP”). Examiner A also recommended that Student receive supports and accommodations to address his/her short attention span, sensory issues, and need for movement.³⁹

11. On December 18, 2023, DCPS developed a BIP. The problematic behaviors were (1) hitting, pushing, punching, biting, kicking, spitting, and grabbing (40 minutes per day), (2)

³⁶ *Id.* at 10-11 (78-9), emphasis provided in the text.

³⁷ *Id.* at 11-12 (79-80).

³⁸ *Id.* at 14 (82).

³⁹ *Id.* at 15-16 (83-4).

eloping-running around classroom and school building/leaving assigned area (10 minutes per day), and (3) struggles to follow classroom schedule (150 minutes per day).⁴⁰

12. On December 19, 2023, DCPS issued a Final Eligibility Determination Report for Student. DCPS found that Student was *not* an English Learner (“EL”) and remained eligible for services with a disability classification of DD:

[Student’s] developmental delay adversely impacts [her/his] ability with verbal comprehension, and expressive and receptive language (per history and qualitative assessment) in both English and Spanish. Furthermore, [his/her] profile indicates that [Student] has not developed the emotional regulation, attention control, or behavioral control expected of a child [her/his] age. [Student] is displaying a marked ongoing pattern of inattention and impulsivity that interferes with [his/her] functioning at school. [Student’s] overall level of social-emotional development is impacted. These delays significantly impact [his/her] ability to access the [grade R] curriculum in the general education setting. [Student] can be expected to have significant difficulty keeping up with [her/his] same-age peers.⁴¹

13. On January 23, 2024, DCPS conducted an IEP Annual Review meeting. Student’s disability classification was DD.⁴² In Special Considerations, the IEP team reported that Student’s behavior, hitting and spitting when frustrated, impeded his/her learning or that of others. In the English Learner section, the team reported that Spanish was the primary language spoken in the home and recommended ESL/ELL services and/or services to support Student’s English language development. In the Communication section, the team reported that Student’s language delays impacted her/his ability to participate in the general education setting. The team determined that Student did not require assistive technology.⁴³ In Communication, the PLOP reported the result of Witness C’s Speech and Language Evaluation and that Student demonstrated difficulty following directions. In therapy sessions, s/he followed one-step directions presented in English and Spanish related to classroom routines used in the classroom 3/5 opportunities given gestures and supports when motivated and attentive. Student primarily used gestures and jargon to communicate. When requesting help, s/he would walk up to an adult and hand a desired object. In recent therapy sessions, Student had been able to approximate the sign for “more” and verbally approximate “mas” (“more” in Spanish) by saying “ma” in 3/5 opportunities given fading models and cues. S/he verbally produced “no” and approximates “yeah” when answering yes/no questions. Student had been using a communication board that was in English and Spanish; s/he had been responding to the board and using it given moderate supports in 3/5 opportunities. The first, second, and fourth goals from the previous IEP were repeated. The third goal was replaced with: using a total communication approach (word approximations/signs/pictures), Student will request (e.g., action, item, assistance) and respond (e.g., yes/no questions, labeling) in 8/10 opportunities.⁴⁴

⁴⁰ P35:1 (388).

⁴¹ P15:1-2 (164-65).

⁴² P17:1 (204).

⁴³ *Id.* at 2 (205).

⁴⁴ *Id.* at 3-6 (206-9).

In Adaptive Daily Living Skills (“ADLS”), the PLOP reported that Student had demonstrated the ability to follow limited directions provided by visual cue cards, but s/he needed to be called or redirected numerous times throughout directions being given. S/he could pay attention to sights and sounds and could repeat actions to obtain similar results. The goals were: (a) during whole group instruction, Student will participate in structured activities (e.g., song with hand motions) by following one-step, oral instruction, provided with a visual cue card (e.g., illustrations for each hand movement paired with text, such as "clap hands") and pre-teaching (e.g., teacher will teach and practice each hand motion with student before music begins), (b) s/he will respond to his/her name and attentional instructions (e.g. "look", "stop", "wait", "come back") across all environments by looking to the speaker and complying with the command given no more than one gestural prompt, and (c) when given a timer set for 5 minutes, Student will independently attend to a table activity that involves a tactile activity (e.g., matching, sorting, building, or painting) until the timer indicates the end of the time period, given no more than 2 verbal reinforcers or prompts (i.e. "Keep working hard!" or "Great start. You're half-way finished.").⁴⁵

In Cognitive, the PLOP reported that Student had demonstrated the ability to line up objects in a row. S/he had also demonstrated the ability to copy an adult counting to 5 on their fingers. According to GOLD data, Student should be able to place objects in two or more groups based on differences in a single characteristic. S/he should also be able to group objects by one characteristic and then regroup them using a different characteristic. At her/his current level, s/he could match similar objects. Student could match up letters and complete puzzles where s/he must match up letters. According to GOLD data, Student should be able to sustain work on age-appropriate, interesting tasks, ignore most distractions and interruptions, and plan and pursue a variety of appropriately challenging tasks. S/he could repeat actions to obtain similar results. The goals were: (a) given a set of objects within 5 arranged in a row, Student will verbally count the objects using one-to-one correspondence (e.g., pointing, moving each object from one place to another, crossing out), with guided questions, (b) Student will participate in a choral reading of the alphabet, pointing to at least 10 letters (at least 1 must be the opposite “case” from the others), verbally naming the letters, and (c) given three illustrated cards with an instructional level target action verb (e.g., jump, sit, walk) read-aloud and a teacher model of the action, Student will identify the target word by pointing to the correct card.⁴⁶

In Emotional, Social and Behavioral Development (“Behavior”), Teacher B reported in the PLOP that Student had recently demonstrated an approximation of following the classroom routine regarding morning arrival and hallway transitions. In January 2024, Student began walking in line with his/her peers during hallway transitions with increased positive verbal praise to maintain the expected behavior. The PLOP reported the results of the October 2023 SDQ. While the current BIP progress monitoring suggested slight recent growth, Student continued to present with maladaptive behaviors that impacted his/her access and progress in the general education curriculum including aggression towards others, mostly when s/he does not have access to a preferred item or activity, eloping to avoid non-preferred tasks or to access a preferred task or activity, and difficulties following and attending the classroom schedule, rules, and routines. The goals were: (a) Student will follow, at minimum, three classroom scheduled activities/routines, given adult verbal and visual prompting and modeling, (b) given prompting, an adult model, and

⁴⁵ *Id.* at 7-9 (210-12).

⁴⁶ *Id.* at 10-12 (213-15).

visual cues, Student will improve regulation as demonstrated by identifying three expected (for example, using a safe body, following directions, or taking turns) and three unexpected (such as hitting, kicking, or invading other personal space, leaving her/his assigned area, not following directions, etc.) classroom behaviors, and (c) given a model and visual example of specific observable behaviors (e.g., sitting down with correct posture, raising a quiet hand) that are expected during a five-minute preferred activity (e.g. Play Dough), Student will comply with the expected behavior, with no more than four redirections from the adult, (e.g., hand-over-hand help to raise a quiet hand, verbal reminder of rules, picture of the rule), compliant in two out five observable behaviors.⁴⁷

The IEP team prescribed five hours per week of specialized instruction inside general education, two hours per month of BSS (one hour outside general education), and four hours per month of SLP services (two hours outside general education). Other Classroom Aids and Services included consulting with the Office of Bilingual Education to determine appropriate support services for bilingual learners, providing three-word phrases s/he can use to request, providing short and simple directions, providing gestures or visual cues as necessary, and preferential seating in a position that facilitates the use of prompts, cues, or other strategies during learning and teaching.⁴⁸

14. On June 17, 2024, DCPS issued Student's year-end IEP Progress Report.⁴⁹ Staff Member A, Student's SLP provider, reported that Student made No Progress on the first two goals and was Progressing on the last two:

Currently, [Student] follows routine and non-routine directions in up to 50% of opportunities given maximal supports. At times, [Student] is easily distracted. S/he benefits from modeling of directions... [Student] follows directions targeting basic concepts in 3/5 opportunities given a visual model and/or prompting. [Student] demonstrates relative strengths in matching actions/items with pictures... [Student] requests and responds in 8/10 opportunities given moderate to maximal supports. At times, [Student] becomes frustrated and will try to grab items instead of requesting. [Student] continues to benefit from modeling of "more" and will imitate the approximation of "please"... [Student] imitates items and actions with verbal approximations with up to 8 items when motivated and attentive. [S/he] produces/imitates the following words: "go", "stop", "ciao", "jump", "sun", "dog", "eat", "fan".⁵⁰

In ADLS and Cognitive, the goals had not been introduced during the reporting period.⁵¹ In Behavior, Student was reported to be Progressing on all three goals:

[Student] will follow at least three scheduled routines in the classroom. However, [s/he] requires adult prompting, modeling, and verbal and visual cues. This skill is

⁴⁷ *Id.* at 13-16 (216-219).

⁴⁸ *Id.* at 17 (220).

⁴⁹ P31:1 (366).

⁵⁰ *Id.* at 1-2 (366-7).

⁵¹ *Id.* at 2-3 (367-8).

inconsistent, and [s/he] still needs maximum support to consistently follow the schedule and routine. Out of 10 observations and reports, [s/he] has demonstrated this skill in 6 instances... [Student] has made progress in improving regulation as demonstrated by identifying three expected and three unexpected classroom behaviors. [S/he] has shown improvement in using a safe body, following directions, and taking turns. However, [s/he] still needs more support in areas such as avoiding hitting, kicking, or invading other personal space, as well as staying within her/his assigned area and consistently following directions. [Student] has shown improvement in 6 out of 10 opportunities, and continued support and reinforcement in these areas is recommended... [Student] has made limited progress in following expected behaviors during a preferred activity. Despite frequent redirection from the adult, [Student] has only shown compliance with 2 out of 5 observable behaviors in 5 out of 10 trials. [S/he] still requires redirections, modeling, and prompting to maintain the expected behavior.⁵²

15. Throughout the 2023-24 school year, Student was entitled to four hours per month of SLP services. School began on August 31, 2023 for students in grade R. School was in session for only three weeks in December and April and two weeks in June. Thus, Student was entitled to 36 hours (2160 minutes) of SLP services.⁵³ With the issuance of the IEP on January 23, 2024, Student was entitled to receive two hours per month of BSS for the remainder of the school year. Thus, Student was entitled to ten hours (600 minutes) of BSS.⁵⁴

With respect to SLP services, in September, Student received 150 minutes of services, in October – 165 minutes, November – 110 minutes, absent 105 minutes, December – 40 minutes, absent 145 minutes, January - 30 minutes, absent 65 minutes, February 0 minutes, absent 60 minutes, March – 45 minutes, absent 90 minutes, April 190 minutes, absent 30 minutes, May – 60 minutes, absent 45 minutes, and June 0 minutes, absent 65 minutes. For the year, s/he received 790 minutes and was absent for 605 minutes of attempted services.⁵⁵

With respect to BSS, in January, Student received 60 minutes of services, in February – 225 minutes of services, in March – 120 minutes, in April – 105 minutes, in May – 105 minutes, absent 60 minutes, and June – 60 minutes, absent 60 minutes. For the year, s/he received 675 minutes and was absent for 60 minutes of attempted services.⁵⁶

16. On December 13, 2024, DCPS when Student was repeating grade R at School B, School B conducted an AED meeting.⁵⁷ Petitioner was represented at the meeting by Attorney A and Witness B.⁵⁸ In response to Attorney A's question about ELL services, Witness E informed Attorney A that DCPS begins offering ELL services in grade H; Petitioner agreed with School B's proposal to have Student repeat grade R based on her/his behaviors and inability to perform in

⁵² *Id.* at 3-4 (368-9).

⁵³ P11:5 (131), P17:17 (220).

⁵⁴ P17:17 (220).

⁵⁵ P33:1-5 (376-80).

⁵⁶ *Id.*

⁵⁷ R37:1 (226).

⁵⁸ P27:1 (348).

grade H.⁵⁹ The AED report revealed that Student was still having challenges following classroom routines and procedures. S/he did not engage in whole group instruction and would engage in small group instruction for a maximum of five to seven minutes. Student showed interest in learning to write and counted by pointing but was not able to verbalize while doing so. When attempting to play with classmates, Student would briefly engage but would take objects from her/his peers or hit them when s/he did not get her/his way. S/he gets overstimulated and run throughout the classroom, out of the classroom, jumps off tables, and causes an unsafe environment. “[Student’s] behaviors are better managed when [s/he] has a one-on-one support or with the special education resource teacher, [Witness G].” During lunch, if another student has a food item that s/he likes, Student would take the other student’s food and eat it. “Overall [Student] requires constant redirection and support from the teachers in the classroom and will benefit from a one-to-one support person.”⁶⁰ In Communication, the team concluded that “[Student] continues to benefit from speech therapy services. [S/he] is a nonverbal student who is learning how to communicate using different modes of communication. A communication device would be beneficial for [Student].”⁶¹ In Motor Skills/Physical Development (“Motor”), it was observed that s/he often attempts to abscond from the classroom, does not sit with her/his classmates for morning meeting or group learning, and was not able to manipulate buttons but was able to manipulate a zipper that has been started for him/her. “[Student’s] fine motor deficits impact [his/her] ability to independently participate in pre-writing, writing, drawing, and cutting tasks without MAX adult support.”⁶² After conducting occupational therapy and behavioral observations of Student, DCPS proposed the administration of an FBA and an OT evaluation.⁶³

17. On January 26, 2025, Examiner B completed an Occupational Therapy Initial Evaluation. Student was referred for the evaluation by the school’s multidisciplinary team (“MDT”) due to concerns in the areas of fine motor, visual motor, and sensory motor relating to difficulty with writing skills, scissor skills, and movement seeking behaviors.⁶⁴ Teacher C, Student’s general education teacher, reported that s/he had challenges with following classroom routines and procedures and did not engage in whole group activities even with constant redirecting and attempting to use special sensory seating on the carpet. S/he would participate in small group instruction for up to three minutes if it involved writing or counting. Student demonstrated number recognition by holding up her/his fingers when asked numerals 1-5. If a classmates had something s/he wanted, Student would take the item without asking and sometimes upset his/her peers. Student was unable to answer any of Examiner B’s questions about what s/he likes in school or to play with.⁶⁵ On the DAYC-2, Student’s score of 62 in Physical Development, which measured grasping, manipulating, and functional use of hands to accomplish age-appropriate tasks, was in the Very Poor range.⁶⁶ The Sensory Profile 2: School Companion (“SP-2”) measures a student’s responses to sensory events in the classroom as reflected in a teacher’s rating scales. Student registered in the Much More Than Others in every measured category:

⁵⁹ *Id.* at 2 (349).

⁶⁰ R37:2 (227).

⁶¹ *Id.* at 9 (234).

⁶² *Id.* at 11 (236), emphasis provided in the text.

⁶³ *Id.* at 12 (237); P53:1 (469).

⁶⁴ P7:1 (86).

⁶⁵ *Id.* at 2, (87).

⁶⁶ *Id.* at 3-4 (88-98).

Results of the School Companion Sensory Profile-2 indicate [Student] is unable to respond to sensory events in a functional manner at school. [Student's] scores on the School Companion Sensory Profile-2 indicate that [s/he/] is not sensing and processing incoming sensory information like the majority of [his/her] same age peers. [Student's] behavior and emotional responses in the educational setting indicate that [s/he] is not able to appropriately interpret sensory information and appropriately self-regulate [her/his] responses. Overall, the ratings indicate that [Student] avoids, shows sensitivity, seeks, and registers sensory experiences much more than other children. An Avoiding Pattern is associated with being overwhelmed, bothered, or needing to control the amount/type of sensations around oneself. The Sensitivity Pattern is defined as the degree that someone notices sensations. The Registration Pattern reflects the degree someone misses sensory cues. [S/he] also shows a Seeking Pattern of behavior much more than others indicating a greater degree of interest in sensory experiences.⁶⁷

Student's Motor Planning was Below Expectations: "[S/he] demonstrated difficulty completing the necessary movements needed in order to plan, conceptualize, and execute the necessary movements for age-appropriate novel or multi-step school related tasks. [S/he] requires several demonstrations and several attempts." In Fine Motor Skills, Student evince sufficient skill to open packages during lunch. S/he grasped writing utensils with an inconsistent grasp, alternating between a fistled grasp and a digital pronated grasp. S/he demonstrated adequate fine motor strength to open and close scissors in order to make several snips on paper, but s/he used an inefficient thumbs down grasp and at times attempted to use both hands to operate the scissors. S/he was able to unbutton one button but was unable to button any buttons, and s/he would not engage in a lacing activity. His/her bilateral coordination skills were adequate. Visual Motor Integration Skills consist of coordinated hand and finger movements given visual information. Student's VMI skills were "decreased" as s/he did not have the fine motor skills to manipulate scissors to cut along a line, could not color within a boundary of a 4" square, and was only able to catch two out of 10 underhand tennis ball tosses. In terms of handwriting, Student grasped writing tools with an alternating fistled grasp and a digital pronated grasp. S/he refused to write her/his name but was observed to draw a U, t, E, l, O and Y. When asked to trace his/her name, s/he refused, but his/her classroom teacher reported that s/he enjoys drawing in the classroom. Throughout the evaluation session, Student demonstrated progressively limited seated attention as s/he was visually distracted by objects in the evaluation room. Student was not responsive to auditory input, often requiring directions to be repeated several times and requiring his/her name to be repeated several times before s/he would respond. Student had limited sustained attention with activities as s/he moved from one activity to the next very quickly without fully engaging in all of the activities.⁶⁸

Examiner B concluded that Student's OT skills would impact her/his ability to function in the school environment:

Based on this comprehensive occupational therapy evaluation, [Student] demonstrates deficits in the areas of fine motor, visual motor, sensory processing

⁶⁷ *Id.* at 5-6 (90-91).

⁶⁸ *Id.* at 6-8 (91-93).

skills, and self-care skills. [Student's] fine motor skill delays may impact [his/her] ability to manipulate classroom materials and tools such as writing utensils and scissors with independence and control. [His/her] deficits with visual motor skills may impact [her/his] ability to produce grade-level expected prewriting strokes, shapes, and letters from a model. [His/her] deficits with sensory processing skills may impact [her/his] ability to tolerate and attend to [her/his] educational programming without challenges. [His/her] deficits within the area of activities of daily living may impact [her/his] ability to complete age-expected school based self-care tasks with maximized independence.⁶⁹

Examiner B deferred the determination of Student's need for OT services to the IEP team, but she offered a number of recommendations for the classroom in Fine Motor and Sensory Processing,⁷⁰

18. On January 31 2025, DCPS completed an FBA Level 2.⁷¹

19. On February 21. 2025, DCPS issued a Final Eligibility Determination Report. The MDT determined that Student remained eligible for services with a disability classification of DD. Student's disability impacted her/his participation in the general education curriculum in ADLS, Cognitive, Communication, Behavior, and Motor.⁷²

20. On March 28, 2025, DCPS conducted an IEP Annual Review meeting. Student's disability classification was DD.⁷³ In Special Considerations, the Communication and Assistive Technology sections were changed from the previous IEP to indicate that Student would benefit from the use of assistive technology to support her/his communication needs.⁷⁴ In ADLS, the PLOP reported that Student does not engage in whole group instruction but will sometimes engage in small group for a maximum of 5- 7 minutes. S/he does show some interest in learning to write her/his letters and counts by pointing, but is still unable to verbalize while doing so. When attempting to play with other students, Student will briefly engage but will take the objects from his/her peers or hit them when s/he cannot get his/her way. Student becomes over stimulated and will begin to run throughout the classroom, out of the classroom, and jump off tables causing an unsafe environment. His/her behaviors are better managed when s/he has a one-to-one support and/or during times when s/he receives specialized instruction. During lunch, if another student has a food item s/he likes, s/he will take the student's items and eat them. Student requires constant redirection and support from the teachers in the classroom. The goals were unchanged from the previous IEP.⁷⁵

In Cognitive, the PLOP was identical to that in ADLS, and the goals were unchanged from the previous IEP.⁷⁶ In Communication, the PLOP reported that Student inconsistently follows one

⁶⁹ *Id.* at 9 (94).

⁷⁰ *Id.* at 9-10 (94-95).

⁷¹ P36:1 (394).

⁷² P20:2 (254).

⁷³ P22:1 (297).

⁷⁴ *Id.* at 2 (298).

⁷⁵ *Id.* at. 3 -8 (299-304).

⁷⁶ *Id.* at 9-14 (305-10).

step directions; s/he follows directions when s/he chooses to follow them. When complexity is added such as expanding the length of the sentence or a spatial concept (put the car behind the book), s/he cannot follow the direction. S/he has not demonstrated the ability to follow a two-step direction. Using total communication (word approximations/signs/pictures), Student will request (e.g., action, item, assistance) and respond (e.g., yes/no questions, labeling). S/he uses the sign for thank you and when provided with a model, s/he will use words to request items with 60% accuracy. Student can follow one step directions sometimes. S/he is provided with one word phrases and a visual model. Using total communication (word approximations/signs/pictures), Student will request (e.g., action, item, assistance) and respond (e.g., yes/no questions, labeling). Student is able to respond to yes/no questions that are very simple. S/he responds with no; s/he does not yet say yes. However, s/he demonstrates that s/he understands through his/her body language. S/he is able to sign and ask for help. Sometimes s/he imitates and says all done when shown the sign for all done. S/he has communication boards in the classroom that are in English and in Spanish. Student seems to prefer sign language paired with a word; s/he does not have a consistent communication modality that she uses. S/he cannot independently label common objects. The goals were: (a) given up to three visual, verbal, or gestural cues, Student will follow 1-2 step directions related to language based activities, basic concepts and classroom routines, (b) using total communication (word approximations/signs/pictures/communication device), Student will request (e.g., action, item, assistance) and respond (e.g., yes/no questions, labeling), and (c) given fading clinician cues, Student will use total communication to spontaneously label or identify at least 10 items by pointing, producing words or word approximations from each category: common objects, food, body parts/clothing items, animals, and actions.⁷⁷ In Motor, the PLOP reported the results of Examiner B's evaluation. The goals were: (a) using a multisensory approach and adaptations as needed, Student will demonstrate increased independence with school-based activities of daily living skills by manipulating fasteners (e.g. snaps, zippers, buttons) to improve fine motor skills and bilateral coordination with minimal assistance, and (b) using a multisensory approach and adaptations as needed, Student will complete school-level fine motor activities (e.g., building activities, drawing shapes, completing puzzles, coloring, gluing, tracing, cutting, pre-writing) while using a functional grasp on tools with no more than two verbal prompts or visual cues.⁷⁸ In Behavior, the PLOP reported that Teacher C completed an SDQ that reflected behaviors including hitting other students and eloping. The following was found: HIGH risk to obtain any disorder; emotional disorder (anxiety, depression etc.) - Medium risk; behavioral disorder – High risk; hyperactivity or concentration disorder - Medium risk. The goals were: Student will utilize positive coping strategies to handle stressful situations or work demands in which s/he manifests disruptive or withdrawn behavior (i.e. kicking chair, hitting others) as demonstrated by engaging in the requested activity in a calm and positive manner with one prompt, and (b) given visual and verbal directions to transition from one classroom activity to another, Student will complete the transition as directed with teacher prompting within the allotted time.⁷⁹

The IEP team prescribed twenty-two hours per week of specialized instruction outside general education, and three hours per month of OT services, four hours per month of SLP services, and three hours per month of BSS, all outside general education. Other Classroom Aids and

⁷⁷ *Id.* at 15-20 (311-16).

⁷⁸ *Id.* at 21-23 (317-19).

⁷⁹ *Id.* at 24-25 (320-21).

Services included a child lock on the door to prevent elopement.⁸⁰ The team determined that Student would be placed in a Communication and Education Support (“CES”) classroom.⁸¹

21. On April 11, 2025, DCPS issued Student’s IEP Progress Report for the reporting period ending on April 7, 2025.⁸² Witness F, Student’s SLP provider at School B, reported that Student was Progressing on three of his/her four goals:

[Student] is able to follow routine based directions. When asked to follow one step directions during [her/his] most recent speech therapy session [s/he] followed directions to give the speech therapist one item and [s/he] followed directions to sit down. The speech therapist provides [her/him] with a pointing gesture, sign language or [his/her] communication board... [Student] is able to follow routine based directions. [Student] is not yet able to follow directions that include basic concepts. [S/he] is still working on following simple one step directions... [Student] continues to sign “thank you” when provided with a model. [S/he] signs “help” sometimes independently. [S/he] is provided with a model when necessary. [S/he] is not yet using words to request. [S/he] points or pulls the communication partner to indicate what [s/he] wants. If the communication partner does not understand [s/he] cries or has a meltdown which indicates that [s/he] is frustrated... [Student] continues to respond to yes/no questions that are simple. [S/he] continues to respond with “no.” [S/he] does not yet say "yes". [Student] has been observed to sign “thank you,” and “help.” [S/he] has used an approximation of all of the following words: no, open, all done, hold on. [S/he] used a communication device to click help once. [S/he] is not using words to label items. However, [s/he] attempts to use a variety of communication methods to communicate.⁸³

In ADLS, Student was reported to be Progressing on two of her/his three goals:

[Student] has made very minimal progress toward [her/his] goal of participating in structured activities during whole group instruction by following 1-step oral instructions with visual cues and pre-teaching support. Although these supports are consistently provided, [Student] is currently able to engage in the targeted hand motions in approximately 1-2 out of 5 opportunities. [S/he] continues to require frequent prompting and individualized support to initiate and sustain participation in whole group songs with motions. With regards to hand motions, [Student] can count/signal to 10 on [her/his] fingers, using one hand, but does not communicate with words in Spanish or English... [Student] has made minimal progress toward [her/his] goal of responding to [his/her] name and attentional instructions {e.g., "look," "stop," "wait," "come back"} across all environments. [S/he] continues to require multiple prompts, including frequent gestural and verbal cues, to attend and comply with simple directives. At this time, [s/he] is not yet consistently able to respond with no more than one gestural prompt in 4 out of 5 opportunities...

⁸⁰ *Id.* at 26 (322).

⁸¹ *Id.* at 29 (325).

⁸² R34:1 (219).

⁸³ *Id.* at 1-3 (219-21).

[Student] is making slight progress toward independently attending to a table activity involving tactile engagement (e.g., matching, sorting, building, or painting) for a full 5-minute period with no more than two verbal prompts. [S/he] is more likely to sustain attention and complete the activity when it is of high interest to [her/him]. In those instances, [s/he] is beginning to respond positively to verbal reinforcers and can remain engaged for most or all of the timer duration in 2-3 out of 5 sessions. Continued support, reinforcement, and offering of preferred materials are being used to promote greater consistency and generalization across activities.⁸⁴

In Cognitive, Student was Progressing on one of her/his three goals:

At this time, [Student] is not yet able to participate in choral reading of the alphabet by pointing to at least 10 letters (including at least one in the opposite case) and verbally naming them during classroom reading or word work activities. Despite consistent support and opportunities during letter naming sessions, [s/he] requires significant prompting and does not yet demonstrate independent engagement in this task. With regards to letters, [Student] continues to trace [his/her] name pretty well... [Student] is not yet able to consistently identify instructional-level target action verbs when presented with three illustrated cards, a verbal cue, and a teacher model. Although [s/he] is provided with visual support and direct modeling, [s/he] is not yet accurately pointing to the correct card for 4 out of 5 target words. [Student] continues to require additional support to build receptive vocabulary for common action words... [Student] has realized some gains with respect to this goal [of following three classroom scheduled activities/routines] at the moment. [His/her] teacher continues to use verbal/visual cues to support [her/him] in this area⁸⁵.

In Behavior, Student had made No progress on her/his two goals:

[Student] requires ongoing intervention support in this area [self-regulation]. [S/he] is not able to consistently incorporate safe body elements when engaged with [her/his] peers in cooperative play... [Student] is not able to realize this goal [complying with expected behavior] with any level of proficiency at the moment. [S/he] is not able to consistently follow teacher redirection efforts when engaging in off-task behaviors.⁸⁶

22. On April 17, 2025, Witness B, Petitioner's educational advocate, sent a letter to Witness H, School B's Special Education Coordinator, requesting a Comprehensive Audiological Evaluation, an SLP Reevaluation, an A/T Evaluation, an independent FBA, that a communication partner be added to the Communication section of the IEP, and that baselines be added to all of the IEP goals "to reflect [Student's] current performance."⁸⁷

⁸⁴ *Id.* at 3-4 (221-2).

⁸⁵ *Id.* at 4-5 (222-3).

⁸⁶ *Id.* at 5 (223).

⁸⁷ P57:1-2 (492-3).

23. On May 2, 2025, DCPS issued a Location of Services letter to Petitioner placing Student in a CES classroom at School C for the 2025-26 school year.⁸⁸

24. On May 28, 2025, Witness B completed a Compensatory Education Proposal for Student.⁸⁹ The alleged denials of FAPE included (1) the failure timely and comprehensively to evaluate Student as of June 1, 2023, (2) the failure to provide an appropriate IEP and placement for the 2024-25 school year, and (3) the failure to implement Student's IEPs from the 2023-24 school year to the present. The periods of harm were: August 28, 2023 – June 17, 2024 and August 26, 2024 – June 18, 2025 for the failure to evaluate, August 26, 2024 – June 18, 2025 for the failure to provide an appropriate 2024-25 IEP, and August 28, 2023 – June 17, 2024 for the failure to implement Student's IEPs. Witness B opined that but for the denials of FAPE, Student “would have been able to make, at least, one year's worth of academic and behavioral progress and mastered the goals on [her/his] IEP.” Witness B proposed as compensatory services: 85 hours of tutoring by a bilingual tutor, five hours of counseling/therapy, and 22 hours of SLP services.⁹⁰

25. Throughout the 2024-25 school year, Student was entitled to four hours per month of SLP services. School for students in grade R began on August 29, 2024. School was in session for only three weeks in November, December, and April and two weeks in June. Thus, s/he was entitled to 35 hours (2100 minutes) of SLP services.⁹¹ S/he was entitled to two hours per month of BSS from the beginning of the school year until the development of the IEP on March 28, 2025; thereafter, Student was entitled to receive three hours per month of BSS for the remainder of the school year. Thus, s/he was entitled to 22 hours (1320 minutes) of BSS.⁹²

With respect to SLP services, in September, Student received 315 minutes of services, in October – 151 minutes, November – 0 minutes, December – 125 minutes, January - 40 minutes, absent 45 minutes, February 60 minutes, absent 90 minutes, March – 51 minutes, absent 90 minutes, April 110 minutes, May – 72 minutes, absent 90 minutes, and June 45 minutes. For the year, s/he received 969 minutes and was absent for 315 minutes of attempted services.⁹³

With respect to BSS, in September, Student received 120 minutes of services, October - 180 minutes, November – 180 minutes, December – 90 minutes, January - 60 minutes, February – 0 minutes, in March – 0 minutes, April – 60 minutes, in May – 180 minutes, absent 60 minutes, and June – 0 minutes. For the year, s/he received 870 minutes and was absent for 60 minutes of attempted services.⁹⁴

26. Petitioner described Student as a very intelligent kid who learns very fast and is very organized. S/he loves to study and loves sports. Student understands what we say, but s/he cannot speak; s/he only needs help to talk to other people. The Assistant Principal at School A recommended that Student move to School B, a bilingual school for the 2024-25 school year. Student repeated grade R at School B because of behavioral concerns; s/he wanted to leave the

⁸⁸ R41:1 (259).

⁸⁹ P58:1 (495).

⁹⁰ *Id.* at 2-4 (496-8).

⁹¹ P17:17 (220), P22:26 (322).

⁹² *Id.*

⁹³ R42:1-79 (260-338).

⁹⁴ R43:1-57 (339-395).

classroom all the time. School B did not have any ESL classes. Student behaves differently at home than at school: no eloping at home. Petitioner testified that Student's behavior problems are the result of being taught in English instead of Spanish. Petitioner communicates with Student through sign language. On cross-examination, Petitioner denied saying that Student could not speak; she then said that Student can speak some phrases in Spanish.⁹⁵

27. Witness A was DCPS' Director of Curriculum, Strategy & School Supports in the Language Access Division. Her department designs curriculum for students who have multilingual needs. Her office's curriculum materials are accessible online. Her office does not participate in IEP development. On cross-examination, Witness A testified that ELL services are available to students in grade R.⁹⁶

28. Witness B was Petitioner's educational advocate. She opined that in June of 2023, Student required the following evaluations: speech and language, comprehensive psychological, OT, A/T, and an ELL survey. Witness B opined that Student required an EL Screener because it is required by the Office of the State Superintendent of Education ("OSSE") for first-time students whose first language is not English. When asked if she had concerns about the July 2023 IEP, Witness B opined that it was inappropriate because it provided only SLP services, no A/T, no accommodations, and did not address that fact that Student was an English language learner. In response to my question as to what accommodations the IEP was lacking, Witness B opined: visual aids, preferential seating, extended time, and A/T. Witness B also expressed concern that BSS was not prescribed after have been offered during the 2022-23 school year. It also should have been based on an A/T the FBA was developed in November 2023. She opined that the January 2024 IEP was inappropriate because it identified Student as an English language learner, but did not add A/T, OT services, or accommodations: visual aids. Preferential seating, extended time, A/T. Witness B opined that the March 28, 2025 IEP was inappropriate because the PLOPs did not provide Student's current capabilities. She opined further that the CES placement provided in that IEP should have been provided during the 2023-24 school year and definitely no later than the beginning of the 2024-25 school year. The IEP was not appropriate because it was not informed by A/T evaluation and EL screener results. When asked how she derived the 85 hours of tutoring in her Compensatory Education Proposal, she testified that it was based on not receiving support as a bilingual student and the failure to provide more than five hours of specialized instruction. On cross-examination, Witness B conceded that EL screeners are not mandatory for grade R students. She also conceded that the March 2025 IEP prescribed use of an iPad and that she had never witnessed Student speaking English or Spanish.⁹⁷

29. Witness C was the speech and language therapist at Facility A who conducted the June 2023 Initial Speech and Language Evaluation. At that time, Petitioner was only concerned about Student's speech, not his/her behavior. At the eligibility meeting, Petitioner did not disagree with the classification of SLI. Petitioner also agreed with the terms of the IEP developed in July 2023. Witness C did not perceive Student's behavior to be a problem because s/he was easily redirected during the evaluation. As for A/T, since Student had limited vocabulary, the IEP team recommended low-tech aids such as visual schedules, picture symbols, and vocabulary boards.

⁹⁵ Testimony of Petitioner.

⁹⁶ Testimony of Witness A.

⁹⁷ Testimony of Witness B.

The first Communication goal, following one and two-step directions, was appropriate because s/he had difficulty following directions. The second goal was appropriate because s/he had difficulty understanding descriptive concepts like “on” or “under.” The third goal was needed to help her/him make requests to meet his/her needs. The fourth was added to increase his/her vocabulary. Witness C disagreed that Student needed to be taught in Spanish, opining that children at Student’s age could acquire both languages.⁹⁸

30. Witness D was the school social worker at School B who provided Student’s BSS. He developed the Behavior goals in the March 2025 IEP. The first goal, using positive coping strategies, was motivated by results of the SDQ he conducted and addressed impulse control and remaining on task. Witness D worked with Student on turn-taking and helping him/her to interact with his/her peers. The second goal was designed to address transitioning with visual or verbal prompting. The SDQ indicated that Student was at high risk for a behavior disorder. Witness D completed a second FBA in January 2025; the nature and intensity of Student’s behaviors were similar to those at School A. Witness D also developed a second BIP in January 2025 to address hitting, pushing, punching, and eloping. Strategies included use of manipulatives, verbal praise for good behavior, incentives, and having Student serve as a classroom helper.⁹⁹

31. Witness E was a special education teacher and the local Education Agency (“LEA”) Representative for School B. He testified that he checked on Student daily. Witness E described Student as aggressive and nonverbal. When asked why Student was taught in English, Witness replied that all students are taught in English. He testified that ELL services are first offered in grade H. Student repeated grade R, with Petitioner’s agreement, because of her/his aggressive behavior. The March 2025 IEP team decided to provide Student an iPad because s/he could get it immediately rather than going through the process of an AED meeting and an evaluation. The IEP was developed on March 28, 2025; Student received the iPad on April 11th. Although the IEP team prescribed a CES classroom, which was not available at School B, Petitioner did not want Student moved until the 2025-26 school year.¹⁰⁰

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, and this hearing officer’s own 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 in statute 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

⁹⁸ Testimony of Witness C.

⁹⁹ Testimony of Witness D.

¹⁰⁰ Testimony of Witness E.

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.¹⁰¹

The issues in this case involve the alleged failure of DCPS to provide appropriate IEPs and placements. Under District of Columbia law, DCPS bears the burden of persuasion as to these issues. Petitioners bear the burden as to all other issues.¹⁰²

Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on July 11, 2023 for the 2023-24 school year. Specifically, Petitioner asserts that the IEP was inappropriate because it (1) did not provide sufficient behavioral interventions (no BIP and insufficient BSS minutes), (2) were not based on updated evaluative data in that no A/T evaluation, OT evaluation, comprehensive psychological evaluation, FBA, or ELL screener had been conducted, (3) did not provide sufficient specialized instruction hours or placement (4) did not provide appropriate related services (no OT or ELL services) and (5) did not provide classroom and statewide-assessment participation and accommodations.

The Supreme Court's first opportunity to interpret the predecessor to IDEA, The Education of the Handicapped Act ("EHA"), came in *Board of Education of the Hendrick Hudson Central School District v. Rowley*.¹⁰³ The Court noted that the EHA did not require that states "maximize the potential of handicapped children 'commensurate with the opportunity provided to other children.'"¹⁰⁴ Rather, the Court ruled that "Implicit in the congressional purpose of providing access to a 'free appropriate public education' is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child...¹⁰⁵ Insofar as a State is required to provide a handicapped child with a 'free appropriate public education,' we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction... In addition, the IEP, and therefore the personalized instruction should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public school system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade."¹⁰⁶

More recently, the Court considered the case of an autistic child under IDEA who, unlike the student in *Rowley* was not in a general education setting.¹⁰⁷ The Tenth Circuit had denied relief, interpreting *Rowley* "to mean that a child's IEP is adequate as long as it is calculated to confer an 'educational benefit [that is] merely... more than *de minimis*.'"¹⁰⁸ The Court rejected the Tenth

¹⁰¹ D.C. Code § 38-2571.03(6)(A)(i).

¹⁰² *Schaffer v. Weast*, 546 U.S. 49 (2005).

¹⁰³ 458 U.S. 176, 187 (1982).

¹⁰⁴ *Id.* at 189-90, 200

¹⁰⁵ *Id.* at 200.

¹⁰⁶ *Id.* at 203-04.

¹⁰⁷ *Andrew F. ex rel. Joseph F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (2017).

¹⁰⁸ *Id.* at 997.

Circuit’s interpretation of the state’s obligation under IDEA. Even if it is not reasonable to expect a child to achieve grade level performance,

... [h]is educational program must be appropriately ambitious in light of [his/her] 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... It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom, but is satisfied with barely more than *de minimis* progress for those who cannot.¹⁰⁹

In *Endrew*, the Supreme Court held that an IEP must be designed to produce more than minimal progress in a student’s performance from year to year:

When all is said and done, 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. For children with disabilities, receiving instruction that aims so low would be tantamount to “sitting idly... awaiting the time when they were old enough to drop out...” The IDEA demands more. The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.¹¹⁰

The provision of a FAPE must be “in conformity with the [child's] individualized education program required under section 1414(d)...”¹¹¹ An IEP “is the means by which special education and related services are tailored to the unique needs of a particular child.”¹¹² An IEP must be in place for each disabled student “[a]t the beginning of each school year,”¹¹³ and must outline a comprehensive plan to “meet the child's needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum.”¹¹⁴

I will address each of Petitioner’s allegations individually.

The IEP did not provide sufficient behavioral interventions (no BIP and insufficient BSS minutes).

Student migrated to the United States from South America in February 2023 at the age of Y. Two months later, Petitioner secured an evaluation by Facility A because of her concerns as to Student’s communication skills. The ASQ assessment, which included an interview of Petitioner, noted that “Speech is only concern.” Thus, at the AED meeting on June 2, 2023, DCPS ordered the administration of a speech and language evaluation to assess deficits revealed in the ASQ assessment by Facility A: “saying [her/his] first and last name, describing actions by pictures,

¹⁰⁹ *Id.* at 1000-01 (citations omitted)

¹¹⁰ 137 S.Ct. at 1000-01.

¹¹¹ 20 U.S.C. § 1401(9)(D). *See id.* § 1414(d)(2).

¹¹² *Endrew, supra*, 580 U.S. at 391, quotation marks omitted, quoting *Rowley, supra*. 458 U.S. at 181.

¹¹³ 20 U.S.C. § 1414(d)(2)(A).

¹¹⁴ *Id.* at § 1414(d)(1)(A)(i)(II)(aa).

saying two things about common objects, following three consecutive, unrelated directions, using all of the words in a sentence, decreased expressive vocabulary, using phrases and sentences,” and that Student would be evaluated “to determine areas of strength and need.” Within three weeks of the AED meeting, DCPS completed an Initial Speech and Language Evaluation that revealed Student’s “severe expressive language delay,” and with receptive and expressive vocabulary below age-expectations. Less than a month after the evaluation was completed, and before Student could ever have been enrolled in a DCPS school, DCPS found Student eligible for services and prescribed the most SLP services ever prescribed to a DCPS student as a related service: four hours per month.

IDEA regulations require that parents are included on every IEP team.¹¹⁵ The regulations compel the local education agency to take particular steps to ensure parents’ participation in IEP meetings and to document their efforts to ensure that participation.

Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including—

- (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
- (2) Scheduling the meeting at a mutually agreed on time and place...
- (c) If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls...
- (d) Conducting an IEP Team meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as—
 - (1) Detailed records of telephone calls made or attempted and the results of those calls;
 - (2) Copies of correspondence sent to the parents and any responses received; and
 - (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.¹¹⁶

These provisions are not cited because Respondent failed to afford Petitioner the opportunity for meaningful participation in the July 2023 IEP meeting. Rather, they are cited to stress the importance IDEA places on parents’ role in the development of IEPs. The circumstances in this case are unique. Student endured a tortuous path from South America to America at the tender age of Y, arriving but ten months ago from this writing. This child had never attended school regularly before s/he was presented to DCPS by his/her mother as a child with delayed communication skills. The record reveals that Petitioner expressed no concerns at any time leading up to the development of the IEP that Student presented with behavioral problems. No academic record existed to suggest that s/he did. Under these circumstances, DCPS acted reasonably in relying on Petitioner’s experience with her child as to the problems s/he had incurred in the past. Thus, DCPS evaluated Student for

¹¹⁵ 34 C.F.R. §300.321.

¹¹⁶ 34 C.F.R. §300.322.

communication delays, the evaluation found “severe expressive language delay,” and within five months of his/her entry into the country, Student had an IEP that prescribed the maximum amount of SLP services ever prescribed on a DCPS IEP. Petitioner offered no persuasive evidence that DCPS should have suspected that Student presented with behavioral problems rising to the level of an IDEA disability. Therefore, I conclude that she has failed to make a *prima facie* showing that Student’s IEP required behavioral supports.

The IEP was not based on updated evaluative data in that no A/T evaluation, OT evaluation, comprehensive psychological evaluation, FBA, or ELL screener had been conducted.

In the previous section, I concluded that DCPS was justified in not evaluating for behavioral concerns but only in the area in which his/her parents informed them that they had concerns, communication. For the same reason, I conclude that DCPS had no reason to suspect, in July 2023, that Y-year-old Student had cognitive, academic, or occupational therapy deficits. Student had not been in the country before February and had never attended school. DCPS had no more reason to assume that Student had these deficits than any other Y year old child presented for evaluation by his/her parents for evaluation for a specific, perceived deficit.

IDEA regulations require that LEAs evaluate children with disabilities in all areas of suspected disabilities:

Each public agency must ensure that... the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities...¹¹⁷

IDEA requires the IEP team to consider the language needs of the child in the case of a child with limited English proficiency, and to consider whether the child needs assistive technology devices and services.¹¹⁸ That is precisely what the IEP team did in this case. Petitioner places great weight on School A’s failure to evaluate and initiate ELL services for Student. In Other Classroom Aids and Services, the IEP team directed the staff to consult with the Office of Bilingual Education to determine appropriate support services for bilingual learners. However, it was apparent that Student’s problem was not transitioning from processing and speaking Spanish to doing so in English. Rather, Student was not only essentially non-verbal, s/he also was deficient in receptive vocabulary. Thus, DCPS’ initial IEP was focused primarily on developing Student’s expressive and receptive vocabulary skills, following directions presented visually or verbally, and learning to express his/her needs effectively.

Petitioner argued that DCPS was derelict in failing also to conduct an A/T evaluation. However, the only speech and language expert who testified was Witness C, who conducted the Speech and Language Evaluation immediately prior to the development of the IEP, disagreed. She testified that an A/T evaluation was not necessary based on Student’s extreme vocabulary deficits; the team recommended low-tech aids such as visual schedules, picture symbols, and vocabulary

¹¹⁷ 34 C.F.R. § 300.304 (c)(4).

¹¹⁸ 20 U.S.C.A. § 1414(d)(3)(B).

boards that were more appropriate at this stage of his/her development. Petitioner also argued that DCPS violated OSSE guidelines for ELL by failing to conduct the EL screener as part of his/her initial evaluations. Again, Student's problem was not transitioning from elementary Spanish to elementary English. Instead, s/he was effectively nonverbal in both Spanish and English. The IEP team placed a higher priority on getting Student to say words at all.

***The IEP did not provide sufficient specialized instruction hours or placement.
The IEP did not provide appropriate related services (no OT or ELL services).***

As discussed above, Petitioner offered no evidence that she notified DCPS that Student had a history, at age Y, warranting specialized instruction. Moreover, Petitioner did not report anything in Student's history to warrant an OT evaluation. DCPS developed an IEP to address the developmental need Petitioner reported to DCPS and that was confirmed in Witness C's evaluation: severe expressive communication delays. EL services were discussed above and are also not related services.¹¹⁹ I conclude that Petitioner has failed to make a *prima facie* case on this issue.

The IEP did not provide classroom and statewide-assessment participation and accommodations.

Witness B, Petitioner's educational advocate, testified that the IEP was inappropriate because it did not include any classroom accommodations. In response to my question as to what accommodations the IEP was lacking, Witness B opined: visual aids, preferential seating, extended time, and A/T. While the IEP does not provide accommodations, it does provide Other Classroom Aids and Services that include visual cues and preferential seating. Witness B offered no reason for the need for extended time, normally provided for testing purposes. This would not seem to be a necessary accommodation in grade R where little if any testing will take place. Finally, as discussed above, the only expert speech therapist to testify opined that low-tech communication classroom aids and services were sufficient for Student's elemental needs at this point.

For all of these reasons, I conclude that DCPS has met its burden of proving that the IEP it developed on July 11, 2023, was reasonably calculated to enable Student to make progress consistent with her/his unique needs: a first-time, Y year old student, nonverbal in English and Spanish, with moderately delayed receptive language skills and severe expressive vocabulary delays.

Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on December 18, 2023 for the 2023-24 school year. Specifically, Petitioner asserts that the IEP was inappropriate because it (1) did not include a BIP, (2) was not based on updated evaluative data in that no A/T evaluation, OT evaluation, or ELL screener had been conducted (3) did not provide sufficient specialized instruction hours or placement (4) did not provide appropriate

¹¹⁹ ESL services do not fit the description of interpreting services or SLP services in 34 C.F.R. 300.34(c)(4) or (c)(15).

related services (no OT or ELL services) and (5) did not provide classroom and statewide-assessment participation and accommodations.

Petitioner did not offer a December 18, 2023 IEP into evidence. Thus, she failed to make a *prima facie* case on this allegation.

Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on January 23, 2024 for the 2024-25 school year. Specifically, Petitioner asserts that the IEP was inappropriate because it (1) did not include a BIP, (2) was not based on updated evaluative data in that no A/T evaluation, OT evaluation, or ELL screener had been conducted (3) did not provide sufficient specialized instruction hours or placement (4) did not provide appropriate related services (no OT or ELL services) and (5) did not provide classroom and statewide-assessment participation and accommodations.

Whether DCPS denied Student a FAPE by failing to provide an appropriate placement. Specifically, Petitioner asserts that Student should have been placed in a self-contained class as of the beginning of the 2024-25 school year, which was not available at School B

Student began school for the first time on August 31, 2023 at School A. Her/his teachers soon observed behavioral problems that affected Student's ability to access the curriculum. As described in detail in paragraph 9 above, s/he was inattentive, had difficulty with transitions, would not follow classroom routines, engaged in disruptive behaviors, and was occasionally physically aggressive towards staff members and peers. Thus, DCPS convened an AED meeting on October 25, 2023 in which the team ordered the administration of a psychological evaluation. That evaluation was completed on December 1, 2023. By that time, Student's behavior had begun to improve: "More recently [Student] has demonstrated that [s/he] is starting to learn some routines like going to the bathroom or putting things in trash - starting to understand some of the language. [Student] has also been observed to be very friendly and enjoys relationships with adults. [S/he] has become more open to redirection than [s/he] was before." Nevertheless, Examiner A concluded that Student qualified for services with a Developmental Delay, that s/he had "not developed the emotional regulation, attention control, or behavioral control expected of a child [his/her] age," and was "displaying a marked ongoing pattern of inattention and impulsivity that interferes with [her/his] functioning at school." Examiner A recommended the development of a BIP and that Student receive supports and accommodations to address his/her short attention span, sensory issues, and need for movement. Less than three weeks later, DCPS developed a BIP. On January 23, 2024, DCPS developed Student's annual IEP.

I will address Petitioner's allegations individually.

The IEP was inappropriate because it did not include a BIP.

DCPS developed an updated BIP on December 18, 2023, as described in paragraph 11 above.

The IEP was not based on updated evaluative data in that no A/T evaluation, OT evaluation, or ELL screener had been conducted.

The IEP did not provide appropriate related services (no OT or ELL services).

Nothing had materially changed in Student's profile since the previous IEP other than School A having the opportunity to observe, experience, and collect data on Student's behavior. Student's primary obstacle to learning and age-appropriate behavior remained her/his inability to communicate effectively. On his/her December 2023 Psychological Evaluation, Student was unable to complete a number of critical subtests "due to her/his communication limitations." There was no more evidence of a need for an A/T or OT evaluation, or an EL screener than there was at the Initial IEP meeting in July 2023. DCPS again developed an IEP to address the developmental needs found in the current evaluations: severe expressive communication delays and behavioral issues, primarily inattention and impulsivity.

The IEP did not provide sufficient specialized instruction hours or placement.

The IEP team added specialized instruction to Student's IEP for the first time: five hours per week inside general education. This would allow a special education teacher to "push-into" Student's general education class to begin to teach Student to enhance the implementation of Student's Cognitive and ADLS goals.

The IEP did not provide classroom and statewide-assessment participation and accommodations.

The Other Classroom Aids and Services continued to provide visual cues and preferential seating and added three-word phrases Student could use to make requests.

Student should have been placed in a self-contained class as of the beginning of the 2024-25 school year, which was not available at School B.

While only halfway through Student's first year in school, the IEP team updated Student's IEP based on observation, experience, and evaluations. In the first issue presented, I found the July 2023 IEP appropriate because it was reasonably calculated to begin to address Student's communication delays. The January 2024 IEP added Behavior and two hours per month of BSS goals to address the following weaknesses: (1) following classroom scheduled activities/routines, (2) improving self-regulation by identifying three expected and three unexpected classroom behaviors, and (3) given models and visual examples of specific observable behaviors, complying with the expected behaviors. The IEP also added five hours per week of push-in support from a special education teacher for the first time. I conclude that these enhancements to Student's Initial IEP, provided halfway through his/her first year in any school, were reasonably calculated to enable Student to make progress consistent with his/her unique circumstances.

DCPS was mindful of its obligation under IDEA to provide services to Student in the least restrictive environment consistent with its obligation to provide a FAPE:

*To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.*¹²⁰

Thus, with Student having no previous academic history, it was reasonable to start Student in a general education environment. Once Student's behavior and a subsequent evaluation demonstrated that her/his profile was more complicated than originally presented, DCPS promptly increased services and moderately reduced the restrictiveness of Student's environment accordingly. The fact that Student was still only Z years old and in his/her first year of schooling justified a deliberate approach in increasing the restrictiveness of Student's environment.

IEPs must be reviewed and updated annually.¹²¹ Thus, DCPS would have been obligated to update Student's IEP at the beginning of the 2024-25 school year only if it would have constituted a denial of FAPE to have failed to do so. In Student's year-end, 2023-24 IEP Progress Report, and described in detail in Paragraph 14 above, Student was reported to be Progressing on two of his/her four Communication goals. As will be discussed below, Student's progress in Communication was significantly affected by School A's failure to provide a substantial portion of Student's SLP services. Moreover, Student's ADLS and Cognitive goals were Not Introduced during the final reporting period. However, these indications of a lack of progress are due to a failure to implement Student's IEP rather than an indication that the IEP was inappropriate. In Behavior, Student was reported to be Progressing on all three goals. The evidence supports a finding that despite School A's failure to implement Student's IEP with fidelity, s/he made progress in the areas in which s/he received prescribed services. Therefore, I conclude that DCPS was not obligated to update the January 2024 IEP at the beginning of the 2024-25 school year. I also conclude that DCPS met its burden of proving that the January 2024 IEP was reasonably calculated to enable Student to make progress consistent with his/her unique circumstances.

Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on March 28, 2025 for the 2024-25 school year. Specifically, Petitioner asserts that the IEP was inappropriate because it (1) was not based on updated evaluative data in that no A/T evaluation or ELL screener had been conducted, (2) did not provide classroom and statewide-assessment participation and accommodations, and (3) the A/T section of Consideration of Special Factors failed to address once again appropriate A/T tools that Student would benefit from due to the lack of evaluative data.

By the time the March 2025 IEP was developed, School B had more than a full year to judge the effectiveness of the program developed in January 2024. At an AED meeting in December 2024, it was reported that Student remained nonverbal but was learning how to communicate using

¹²⁰ 20 U.S.C. §1412(a)(5)(A), emphasis added.

¹²¹ 34 C.F.R. § 300.324(b)(1)(i).

different modes of communication. The team concluded that a communication device would be beneficial for Student]. In Motor, it was observed that Student often attempted to abscond from the classroom, his/her fine motor deficits affected his/her ability to participate in pre-writing, writing, drawing, and cutting tasks without significant adult support. Consequently, School B proposed the administration of an FBA and an OT evaluation. In her January 2025 Occupational Therapy Evaluation, Examiner B concluded that Student demonstrated deficits in the areas of fine motor, visual motor, sensory processing skills, and self-care skills. In the IEP Progress Report that was issued relatively contemporaneously to the development of the March 2025 IEP, as described in detail in paragraph 21 above, Student was reportedly Progressing on three of four Communication goals, two of three ADLS goals, one of three Cognitive goals, and had made no progress on her/his two Behavior goals.

At the IEP meeting on March 28, 2025, the IEP team concluded that Student was not making adequate progress in the general education environment. Student had made no progress on a number of his/her goals during the reporting period in which the IEP was developed, including two of three Cognitive goals and both Behavior goals. Significantly, Student had made minimal progress in the ability to participate in whole group activities, was not able to comply with expected behavior “with any level of proficiency,” and was not able to respond consistently to teacher redirection efforts when engaging in off-task behaviors. The IEP team developed an IEP that provided 22 hours per week of specialized instruction in a self-contained CES classroom outside general education classroom along with four hours per month of SLP services, three hours per month of OT services for the first time, and three hours per month of BSS, an increase of one hour per month. The CES program is designed to meet the needs of students with significant communication issues and significant behavior issues. CES class sizes are limited to eight students with one special education teacher and two paraprofessionals.¹²²

Based on Student’s failure to make expected progress, the IEP team significantly increased the level of services for Student including 17 additional hours per week of specialized instruction, with all 22 hours such instruction to be performed outside general education in a program designed specifically for students with significant communication delays, three new hours per month of OT services, one additional hour per month of BSS, as well as the four hours per month of SLP services outside general education. Over Student’s first two years in DCPS, his/her IEP teams methodically increased the restrictiveness of his/her educational environment, consistent with its statutory obligation to determine whether Student could make progress in a general education environment. Based on observations, experience with Student, and evaluations, the IEP teams moved from an unrestricted general education environment at School A at the beginning of the 2023-24 school year, to a minimally restrictive environment at School B, to a significantly restrictive self-contained CES classroom at School C by the end of the 2024-25 school year, all before Student entered grade H. Thus, Student was assured of receiving maximal support before being introduced to an academic curriculum in elementary school. I conclude that DCPS has met its burden of proving that the IEP it developed on March 28, 2025 was reasonably calculated to enable Student to make progress consistent with his/her unique circumstances.

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<https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/Attachment%20J9%20%28DSI%20SY18-19%20Staff%20Programs%20and%20Resources%20Guide%29.pdf>

Whether DCPS denied Student a FAPE by failing to implement Student’s IEP during the 2023-2024 and 2024-25 school years. Specifically, Petitioner asserts that DCPS failed to provide the student with all her/his academic and related services. The student’s Service Trackers and IEP Progress Reports revealed significant gaps in the delivery of his/her cognitive, Adaptive Daily Living Skills, speech and language goals which have directly impacted his/her progress.

An LEA is culpable for failing to implement a child’s IEP if the services provided materially deviate from the services prescribed in the IEP.¹²³ A material deviation requires more than a minor discrepancy or a “de minimis failure to implement all elements of [the student’s] IEP.”¹²⁴ It is “...[t]he 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.”¹²⁵

The Office of the State Superintendent’s Special Education Process Handbook provides the following guidance on missed related services:

If a student is regularly or chronically missing services, it is best practice for the service provider to collaborate with the parent on attendance support and service implementation. The occasional missed related service session may be unavoidable; however, the LEA must always consider the impact of the missed session on the student’s progress and performance and ensure the continued provision of FAPE. If the IEP team determines that missed services constitutes a denial of FAPE, it should consider the need for compensatory services. LEAs are encouraged to develop and make available a related services policy that details internal procedures for missed services.¹²⁶

As documented in paragraph 15 above, Student received 790 of the 2160 minutes of SLP services prescribed, but was absent for 605 minutes of attempted services during the 2023-24 school year. Since the LEA is not required to make-up services for students’ absences, Student was deprived of 765 hours of SLP services during the 2023-24 school year (35.4%).¹²⁷ As documented in paragraph 25 above, during the 2024-25 school year, Student received, 969 of the 2100 minutes prescribed, but was absent for 315 minutes of attempted services, resulting in a deprivation of 766 minutes (36.5%).¹²⁸ Thus, over the two-school-year period, Student was deprived of 1531 minutes (25.5 hours) of SLP services.

¹²³ *Middleton v. District of Columbia*, 312 F. Supp. 3d 113, 144 (D.D.C. 2018); *Van Duyn ex rel. Van Duyn v. Baker School District 5J*, 502 F.3d 811, 822 (9th Cir. 2007).

¹²⁴ *Johnson v. District of Columbia*, 962 F. Supp. 2d 263, 268 (D.D.C. 2013), quoting *Catalan ex rel. E.C. v. District of Columbia*, 478 F. Supp. 2d 73, 75 (D.D.C. 2007). See *J.B. ex rel. Belt v. District of Columbia, Report and Recommendation*, Case No. 17-cv-1298, 2018 WL 10399853 at 17 (D.D.C. May 8, 2018)(a deviation of less than 10% of the school day was deemed *de minimis*).

¹²⁵ *Turner v. District of Columbia*, 952 F. Supp. 2d 31, 41 (D.D.C. 2013), citing *Wilson v. District of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011).

¹²⁶

https://osse.dc.gov/sites/default/files/dc/sites/osse/service_content/attachments/OSSE%20Special%20Education%20Process%20Handbook%20%28Sept%202023%29.pdf at 23.

¹²⁷ Entitled to 2160 minutes - 790 minutes provided – 605 minutes absent.

¹²⁸ Entitled to 2100 minutes – 969 minutes provided – 365 minutes absent.

As documented in paragraph 15 above, Student received 75 more minutes of BSS than were prescribed for the 2023-24 school year.¹²⁹ As documented in paragraph 25 above, s/he received 390 fewer minutes (6.5 hours) than s/he was entitled to during the 2024-25 school year (18.3%).¹³⁰

I conclude that Petitioner has met her burden of proving that DCPS denied Student a FAPE by failing to provide Student 25.5 hours of SLP services over the 2023-24 and 2024-25 school years and 6.5 hours of BSS during the 2024-25 school year.

Whether DCPS denied Student a FAPE by failing timely to conduct timely and comprehensive evaluations of Student on or before August 22, 2023. Specifically, Petitioner asserts that after DCPS issued a Prior Written Notice on June 1, 2023 indicating the need to conduct assessments to determination of Student’s eligibility for services, it conducted only a bilingual speech and language evaluation. Petitioner asserts that DCPS should also have conducted A/T, OT, and psychological evaluations as well as conducting a timely EL screener such as the “Pre-IPT and K-WAPT screeners” in order to determine appropriate EL services for Student.

IDEA regulations require that LEAs evaluate children with disabilities in all areas of suspected disabilities:

Each public agency must ensure that... the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities...¹³¹

As was discussed in the first issue presented above, when Petitioner brought Student to Facility A for evaluations in April 2023, she informed DCPS that she was only concerned with Student’s communication delays. Student had never attended school before, and DCPS had no reason to suspect that Student had disabilities other than the speech and language disability as to which they were advised by Petitioner. Once School A experienced Student’s behaviors during the first month of the 2023-24 school year, it ordered the administration of a psychological evaluation. Once School B observed Student’s constant movement and fine motor deficits, it ordered an OT evaluation. However, as of August 2023, DCPS was justified in evaluating Student only in speech and language and in prioritizing Student’s communication deficits in during his/her first semester at School A.

¹²⁹ 675 minutes provided – 600 minutes to which s/he was entitled = excess of 75 minutes.

¹³⁰ Entitled to 1320 minutes – 870 minutes provided – 60 minutes absent.

¹³¹ 34 C.F.R. § 300.304 (c)(4).

RELIEF

For relief, Petitioner requests, *inter alia*, (1) an order requiring DCPS to conduct or fund and review an Assistive Technology Evaluation and the Pre-IPT Oral English screener to identify the student as an EL learner; (2) an order requiring DCPS to fund an Independent Functional Behavior Assessment-II (“FBA”), (3) an order requiring DCPS to reconvene the multidisciplinary (“MDT”)/IEP team to review, revise and/or amend the IEP as appropriate based upon the updated data from the aforementioned evaluations, (4) an order requiring DCPS to provide training for the student and staff on the A/T devices that the student will be utilizing to access his/her curriculum, (5) an order requiring DCPS to reconvene the MDT/IEP team to review and revise the IEP to provide for appropriate accommodations due to the students limited English proficiency, (6) DCPS shall provide the student with compensatory education and consideration of additional compensatory education shall be reserved pending completion of the above referenced evaluations, (7) an order requiring DCPS to amend the student’s IEP to increase the Student’s BSS, and (8) DCPS shall pay reasonable attorney fees and costs in this matter. The only denial of FAPE established by a preponderance of the evidence in this proceeding is DCPS’ failure to provide Student all of the SLP and BSS prescribed in his/her IEPs.

ORDER

Upon consideration of the *Complaint*, the *Response*, the *Prehearing Order*, the exhibits that were admitted into evidence, the testimony presented during the hearing, the closing arguments of counsel for the parties, and the parties’ post-hearing submissions, it is hereby

ORDERED, that within fifteen business days of the issuance of this order, DCPS shall provide Petitioner authorization for 25.5 hours of independent SLP services, 6.5 hours of independent psychological counseling/therapy, and reimbursement for Uber/Lyft transportation services to attend compensatory services sessions. Petitioner is not bound by OSSE limitations on hourly compensation for service providers, but the authorizations may require services to be completed within two years from the receipt of the authorizations.

APPEAL RIGHTS

This decision is final except that either party aggrieved by the decision of the Impartial Hearing Officer shall have ninety (90) days from the date this decision is issued to file a civil action, with respect to the issues presented in the due process hearing, in a district court of the United States or the Superior Court of the District of Columbia as provided in 34 C.F.R. §303.448 (b).



Terry Michael Banks
Hearing Officer

Date: December 15, 2025

Copies to: Attorney A, Esquire
Attorney B, Esquire
OSSE Office of Dispute Resolution